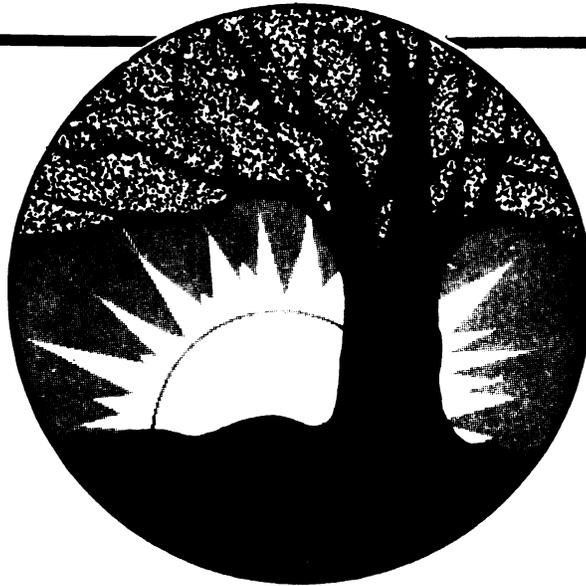


PERFORMANCE AUDIT

Tennessee Department of Transportation
April 2011



Justin P. Wilson
Comptroller of the Treasury



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April 20, 2011

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Bo Watson, Chair
Senate Committee on Government Operations
The Honorable Jim Cobb, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Tennessee Department of Transportation. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the department should be continued, restructured, or terminated.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/dlj
10-042

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Tennessee Department of Transportation
April 2011

AUDIT OBJECTIVES

The objectives of the audit were to determine and assess the following: selected aspects of the department's construction contracting processes, including change orders/supplemental agreements, prequalification, bid analysis, and retainage; the department's process for monitoring and addressing bridge conditions; the department's process for inventorying rights-of-way and classifying excess property as well as leasing and selling of excess right-of-way property; how the department ensures that its employees, as well as its contractors and subcontractors, are legally eligible to work in the United States; how the department ensures its compliance with Policy 22 monitoring requirements; and how the department gathers, validates, and uses information used for performance measure calculations. Additional objectives were to follow up on selected prior audit and investigative findings, to gather information regarding the department's actions to comply with the requirements of Title VI of the Civil Rights Act of 1964, and to present information regarding the department's use of American Recovery and Reinvestment Act of 2009 and related federal monies.

FINDINGS

The Department Lacks a Fully Functional and Readily Accessible Right-of-Way Property Inventory

The department's current right-of-way property database contains information regarding land acquisitions from 1997 to the present time but does not track and inventory unused right-of-way that may potentially be determined excess land (and therefore available to be sold). Since the department is not actively identifying unused or potential excess property, the current system for classifying unused right-of-way as excess is solely request based. The department should consider a more readily accessible, fully functional, right-of-way inventory as a high

priority in the new computer system requirements (page 14).

The Current Prequalification Process Should Be Improved to More Effectively Determine Contractor Qualifications and Better Document the Assessment Process

The current process for determining contractor prequalification appears to be based more on the proper submission of documentation than on an assessment of the submitted information. As a result, it does not ensure an evaluation of contractor responsibility and qualifications that more fully complies with the department's rules and regulations governing prequalification. The

department should implement written policies and procedures for the prequalification process that ensure the criteria stipulated in the rules and regulations are considered and that decisions are documented through a thorough assessment of the information submitted, to ensure all prequalified contractors are actually responsible, financially and otherwise (page 17).

There Is Potential for Inconsistent and Unsupported Decisions in Portions of the Bid Authorization Process Because of a Lack of Written Policies and Procedures

The department's bid authorization process currently operates without any written policies and procedures to guide department personnel involved in authorizing prospective bidders. The absence of written guidance has created some weaknesses in the process including variation in the information used to make the authorization decision and inadequate written documentation when a contractor is not authorized to bid. The department should create written policies and procedures for the bid authorization process, which at a minimum, stipulate what information should be considered in order to authorize contractors to bid and the requirements for written documentation to support the authorization decision (page 22).

The Department Should Identify the Approved Work Classifications on Its Prequalified Contractors List to Provide Adequate Information About Contractor Qualifications to Other Users of the Listing

Although work classifications are an important aspect of prequalification, the department does not provide each contractor's approved work classifications on its list of prequalified contractors, or indicate any ways a contractor has been "limited" in its prequalification. While the department can approve a contractor with a general prequalification status, the department also approves contractors for specific work classifications. Similarly, a contractor with limited prequalification status is approved for certain work classifications, such as asphalt paving, engineering, erosion control, and earthwork, in addition to being limited on the number of contracts or the total contract amount, or limited to performing work only as a subcontractor. As a result, local transportation programs and some department staff may not have complete information with which to assess the qualifications of contractors. Consequently, contractors could be performing work for which they are not qualified (page 24).

OBSERVATIONS AND COMMENTS, FOLLOW-UP OF PRIOR FINDINGS, OTHER AUDIT WORK PERFORMED, AND RECOMMENDATIONS FOR FUTURE AUDIT WORK

The audit also discusses the following issues: potential data issues within the SiteManager system; the department's process for verifying work eligibility of its staff, contractors' employees, and subcontractors' employees; subrecipient monitoring; select prior audit findings' implementation status; bid estimation and analysis; retainage; and fees for overweight/overdimensional permits (page 26).

Performance Audit

Tennessee Department of Transportation

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Performance Audit Tennessee Department of Transportation

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Department of Transportation was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-232, the Tennessee Department of Transportation is scheduled to terminate June 30, 2011. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the Tennessee Department of Transportation should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine and assess selected aspects of the department's construction contracting processes including change orders/supplemental agreements, contractor prequalification, bid analysis, and retainage;
2. to determine and assess the department's process for monitoring and addressing bridge conditions;
3. to determine and assess the department's process for inventorying rights of way and classifying excess property, as well as leasing and selling of excess right-of-way property;
4. to determine and assess how the department ensures that its employees, as well as its contractors and subcontractors, are legally eligible to work in the United States;
5. to determine and assess how the department ensures its compliance with Tennessee Department of Finance and Administration Policy 22 monitoring requirements;
6. to follow up on selected prior audit and investigative findings, including recommendations regarding airport and heliport inspections, and garage management;

7. to review and gather information regarding the department's actions to comply with the requirements of Title VI of the Civil Rights Act of 1964;
8. to determine and assess how the department gathers, validates, and uses information used for performance measure calculations; and
9. to determine and present information regarding the department's use of American Recovery and Reinvestment Act of 2009 and related federal monies.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities of the Tennessee Department of Transportation were reviewed for the period December 2009 through February 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Methods used included

1. review of applicable legislation and policies and procedures;
2. examination of the entity's records, reports, and information summaries;
3. interviews with department staff and staff of other state agencies that interact with the department; and
4. interviews with Federal Highway Administration staff.

HISTORY AND STATUTORY RESPONSIBILITIES

The Tennessee Department of Transportation was established in 1972 under the provisions of *Tennessee Code Annotated*, Title 4, Chapter 3, Part 23. The department was created to plan, design, construct, and maintain the state's highway network. The department also has planning and/or regulatory responsibilities for other modes of transportation such as aeronautics, public transit, railroads, and waterways.

The department is headed by a Commissioner. Key department officers under the Commissioner include the Chief of Administration, who oversees Finance, Human Resources, and Information Technology Offices; a Chief of Environment and Planning, who oversees the department's planning functions and the Multimodal Transportation Resources Division; and a Chief Engineer, who oversees the department's highway design and operations functions. (See organizational chart on page 5.) In addition to the Nashville headquarters, the department also has four regional offices located in Knoxville, Chattanooga, Nashville, and Jackson, as well as a variety of sub-regional locations across the state. The regional offices are responsible for field

operations, including highway maintenance and repair, engineering and highway marking, bridge repair and inspection, and materials testing. As of January 13, 2011, the department had 4,108 employees statewide.

ORGANIZATION

Commissioner's Office

In addition to providing executive leadership, the Commissioner's Office includes the Project Management Division, the Internal Audit Office, the Legal Division, the Legislative Services Office, the Civil Rights Office, and the Aeronautics Division.

Project Management Division

The Project Management Division uses multi-disciplinary teams to develop future construction and other projects. It also manages the State Industrial Access program, which provides funding for infrastructure to support new and expanding industry throughout the state.

Internal Audit Office

The Internal Audit Office reviews department operations to improve efficiency, increase effectiveness, and promote internal controls. The office also conducts internal investigations and reports results to management.

Legal Division

The Legal Division provides a range of legal services to the Commissioner, his staff, and the divisions of the department, including preparation and review of contracts, resolution of construction contract disputes, and administrative hearings. The division's attorneys are located at both the department's headquarters and its regional offices.

Legislative Services Office

The Legislative Services Office coordinates and manages the department's legislative agenda, develops legislative proposals to carry out department initiatives, and analyzes and communicates the effect of proposed legislation regarding transportation issues in Tennessee. Overall, the office serves as the Commissioner's liaison with the Governor's Office and the Legislature.

Civil Rights Office

The Civil Rights Office administers three programs: Affirmative Action, Title VI, and Small Business Development. The Affirmative Action program facilitates equal opportunity throughout the department by ensuring all employment practices are conducted in a fair manner which affords employees and applicants equal employment on the basis of merit, experience, and other work-related criteria. The Title VI program ensures that department personnel, contractees, and service beneficiaries are aware of the provisions of Title VI of the Civil Rights Act of 1964. The program's mission is to ensure that no person is excluded from participation

in, is denied the benefits of, or is subjected to discrimination under any program or activity receiving federal financial assistance from the department on the grounds of race, color, age, sex, disability, or national origin. The Small Business Development program assists and encourages business opportunities for small and disadvantaged business enterprises (DBEs) participating in federally funded projects in the highway construction and transportation industries.

Aeronautics Division

The Aeronautics Division administers federal and state funding to assist in the location, design, construction, and maintenance of Tennessee's public airports. It is also responsible for inspecting and licensing Tennessee's approximately 74 public, general aviation airports and 126 heliports. The division also provides aircraft and related services for state government executives, staff for the Tennessee Aeronautics Commission, and multiple educational support programs across the state.

Bureau of Administration

The Chief of Administration oversees the Strategic Planning Office, Governor's Highway Safety Office, Central Services Division, Human Resources Division, Community Relations Division, Information Technology Division, and Finance Division. Most of these offices provide support for other units within the department or other centralized, specialized services which cut across multiple aspects of transportation policy.

Strategic Planning Office

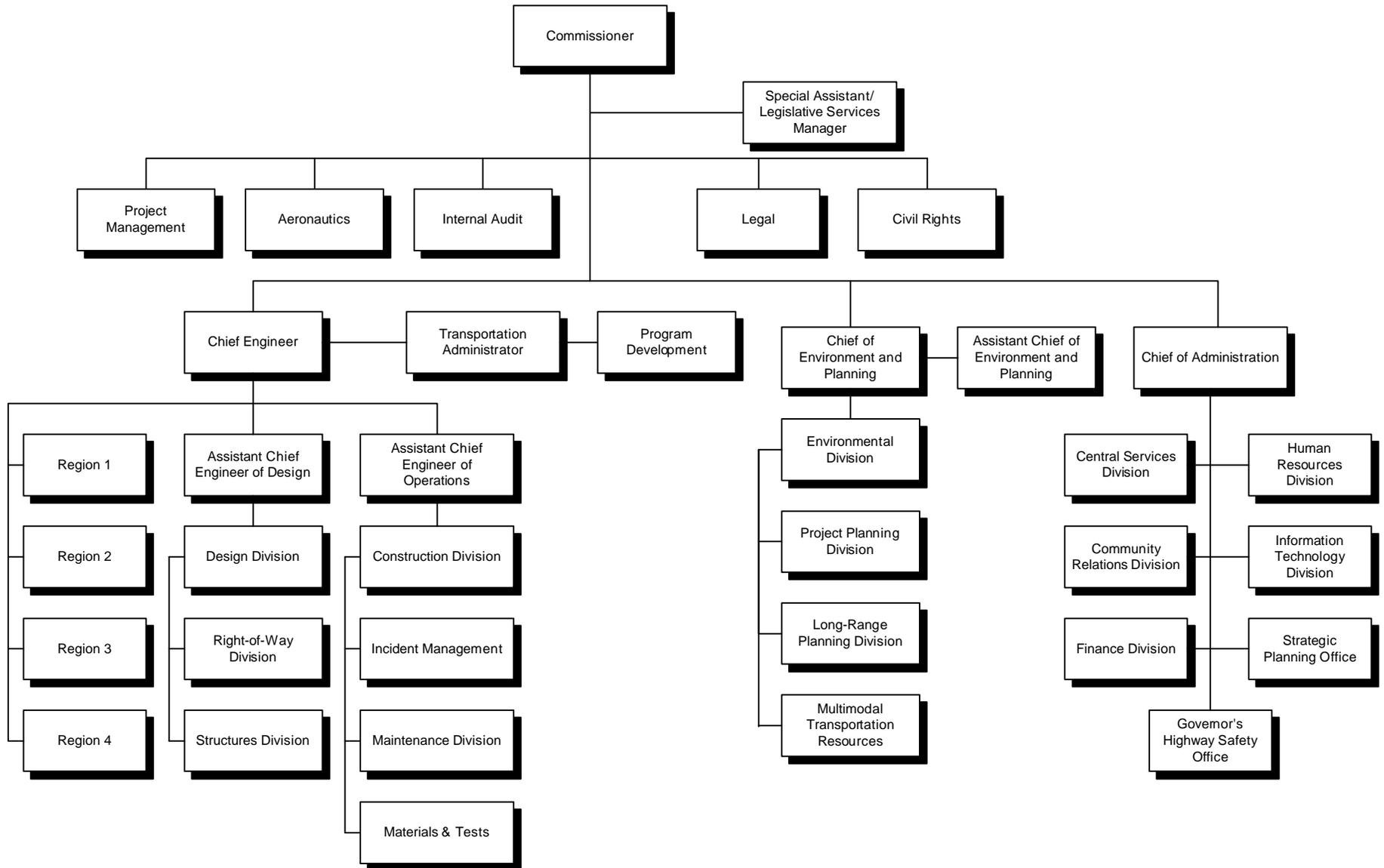
The Office of Strategic Planning is responsible for the department's strategic planning process and other department-wide initiatives. The office works with all units of the department to promote and coordinate strategic planning and management, and to implement management improvements.

Governor's Highway Safety Office

The Governor's Highway Safety Office (GHSO) is Tennessee's advocate for highway safety. This office works with law enforcement, judicial personnel, and community advocates to coordinate activities and initiatives relating to the human behavioral aspects of highway safety.

The GHSO's mission is to develop, execute, and evaluate programs to reduce the number of fatalities, injuries, and related economic losses resulting from crashes on Tennessee's roadways. The office works in tandem with the National Highway Safety Administration to implement programs focusing on occupant protection, impaired driving, speed enforcement, truck and school bus safety, pedestrian and bicycle safety, and crash-data collection and analysis. Programs administered by the Governor's Highway Safety Office are 100 percent federally funded.

Tennessee Department of Transportation Organization Chart



Central Services Division

Central Services is charged with administrative oversight of the Overweight/Overdimensional Permit Section, the Office Services Support Section, the Mobile Equipment Procurement and Departmental Contracts Section, the Copy Center, and the Two-Way Wireless Communications Section.

Human Resources Division

The Human Resources Division provides the day-to-day human resources management for the department's employees. The division's responsibilities include employment processes, employee training activities, employee counseling assistance, drug and alcohol testing, employee relations activities, classification-compensation issues, recruiting efforts, and retirement counseling.

Community Relations Division

The Community Relations Division's goal is to improve and maintain the department's relationships with citizens across the state. This division includes Constituent Services, Public Involvement and Communication, and the department's Public Information Officer.

Information Technology Division

The Information Technology Division is responsible for the direction, planning, coordination, and management of the department's computerized information resources. Information Technology staff evaluate, purchase, and install computer hardware and software; manage the department's local area network/wide area network; support mainframe computer applications; and provide technical assistance to department personnel.

Finance Division

The Finance Division is responsible for the department's accounting system, including all billing and receipts, payroll, consultant auditing, and accounts payable. This office also prepares and manages the department's budget.

Bureau of Environment and Planning

The Chief of Environment and Planning oversees the Environment, Project Planning, Long Range Planning, and Multimodal Transportation Resources Divisions.

Environment Division

The Environment Division coordinates the department's efforts to protect, preserve, and enhance the environment during transportation system planning, development, and maintenance. The division includes six offices, as described below.

- The Social and Cultural Resources Office assesses the impacts of transportation projects within communities and oversees the avoidance, mitigation, and remediation of the impacts from early project planning through construction.

- The Environmental Documentation Office prepares environment documents required for federal- and state-funded transportation projects.
- The Natural Resources Office reviews and analyzes project plans, and acquires all environmental permits needed for transportation projects from federal and/or state regulatory agencies.
- The Beautification Office manages a range of regulatory programs, such as the Junkyard Control program, as well as programs that preserve, sustain, and enhance the beauty of Tennessee's landscape.
- The Environmental Comprehensive Inspections Office oversees construction projects and works closely with the Tennessee Department of Environment and Conservation and other regulatory agencies involved with oversight of the department's construction and maintenance activities.
- The Environmental Facilities Compliance Office helps ensure that the department's facilities comply with environmental regulations.

Project Planning Division

The Project Planning Division supports the transportation project development process by providing planning-level transportation reports and information through its four offices. Specifically, the Short Range Planning Office provides traffic forecast data and analysis used to help develop transportation projects, and produces a variety of planning studies used in the development and maintenance of highway infrastructure such as Bridge Replacement Studies. The Conceptual and National Environmental Policy Act (NEPA) Planning Office prepares technical studies, such as location studies or planning cost estimates, required for the preparation of planning documents and analyzes the impacts, alternatives, and mitigation measures for all major federal actions affecting the environment statewide. The Project Safety Office collects and maintains statewide crash data as well as developing safety projects identified in the Hazard Elimination Safety and High Risk Rural Roads Programs. The Travel Data Office collects a variety of data, such as traffic volumes and travel-time surveys, and prepares the Annual Average Daily Traffic book and website.

Long Range Planning Division

The Long Range Planning Division consists of three offices that focus on long-range project development. The Systems Planning and Policy Office is responsible for planning projects such as highway systems planning and travel demand modeling, as well as coordination of metropolitan and rural planning organizations. The Research Office coordinates research activities, reports research results, and maintains a library of research materials and publications. The Geographic Information System (GIS) Mapping and Facilities Data Office collects roadway inventory data that are loaded and maintained in the TRIMS (Tennessee Roadway Information Management System) database and prepares GIS maps as well as other functional maps (e.g., city or traffic maps).

Multimodal Transportation Resources Division

The Multimodal Transportation Resources Division supports alternative transportation providers through grants and public-private partnerships. The division includes the Passenger Transportation Office and the Freight and Rail Transportation Office. The Passenger Transportation Office plans and promotes public transportation as well as providing research and technical assistance. The Freight and Rail Transportation Office funds rail and track structure improvements, engineering services, and assistance in waterways studies.

Bureau of Engineering

The Chief Engineer oversees all engineering projects and divisions as well as the four regional field offices and the Program Development Division. The Chief Engineer is assisted by the Transportation Administrator, the Assistant Chief Engineer of Design, and the Assistant Chief Engineer of Operations.

Program Development Division

The Program Development Division develops transportation programs, establishes project schedules, coordinates various state and federal programs with local governments, and serves as the liaison to the Federal Highway Administration.

Assistant Chief Engineer of Design

The Assistant Chief Engineer of Design coordinates the project development process, coordinates problem resolution for the Bureau of Engineering, and oversees the divisions of Design, Right-of-Way, and Structures.

Design

The Design Division oversees the survey and design functions, including conducting aerial and ground surveys, establishing roadway design criteria, and the developing of right-of-way and construction plans for proposed highway improvement projects. This division also is responsible for public sales of transportation project plans.

Right-of-Way

The Right-of-Way Division is responsible for the appraisal and acquisition of land needed for state highway construction and relocation of families and businesses affected. It also coordinates the relocation of utilities and railroads for highway construction, and disposes of excess right-of-way.

Structures

The Structures Division prepares hydraulic and structural designs for approximately 120 bridges annually. This division also generates contract plans for the repair and seismic retrofit of state-owned bridges, and produces designs for other transportation structures such as retaining walls, box culverts, and noise barrier walls.

Assistant Chief Engineer of Operations

The Assistant Chief Engineer of Operations oversees the divisions of Incident Management, Materials and Tests, Construction, and Maintenance.

Incident Management

The Incident Management Office provides training and resources for incident scene clearance, and builds relationships with law enforcement, fire fighting, emergency medical services, and other agencies responding to incident scenes. This office operates the HELP program, which has trucks on the state's most heavily traveled highways to assist motorists in distress, reduce traffic congestion, and improve safety.

Materials and Tests

The Materials and Tests Division performs geotechnical investigations to ensure that all materials used on department projects meet the appropriate American Society for Testing and Materials and American Association of State Highway and Transportation Officials specifications. The division also helps develop new specifications for the department's projects.

Construction

The Construction Division prepares proposals, bids, and contracts for the department's highway and bridge projects. It also prequalifies contractors prior to their bidding on projects and writes department contract specifications. The division's four regional construction managers monitor the progress of projects in each of the department's four regions.

Maintenance

The Maintenance Division handles roadway signing and marking, rest area services, engineering investigations, and railway inspection and regulation. Field maintenance employees are located in every regional office.

Regional Offices

Although the Chief Engineer oversees the department's four regional offices, these offices' staff work on a variety of department functions, not limited to engineering. For example, regional staff work with highway maintenance and repair, construction engineering, traffic and highway marking, bridge repair and inspection, state-aid program and administration, materials and tests, highway beautification, environmental planning, and general administration. Overall, the regional offices implement the policies developed at the headquarters in downtown Nashville. The regional offices account for approximately 75 percent of the department's staff and are located in Knoxville (Region 1), Chattanooga (Region 2), Nashville (Region 3), and Jackson (Region 4). Each regional office is overseen by a Director of Operations.

REVENUES AND EXPENDITURES

Statement of Revenues and Expenditures Actual Revenues by Source For the Fiscal Year Ending June 30, 2010

<i>Source</i>	<i>Amount</i>	<i>Percent of Total</i>
State	\$871,073,600	48.0%
Federal	911,896,500	50.2%
Other	32,725,900	1.8%
Total Revenue	\$1,815,696,000	100%

Source: Tennessee State Budget 2011-2012.

Statement of Revenues and Expenditures Actual Expenditures by Account For the Fiscal Year Ending June 30, 2010

<i>Source</i>	<i>Amount</i>	<i>Percent of Total</i>
Payroll	\$226,290,100	12.5%
Operational	1,589,405,900	87.5%
Total Expenditures	\$1,815,696,000	100%

Source: Tennessee State Budget 2011-2012.

Budget and Anticipated Revenues For the Fiscal Year Ending June 30, 2011

<i>Source</i>	<i>Amount</i>	<i>Percent of Total</i>
State	\$868,000,000	48.1%
Federal	899,718,000	49.9%
Other	36,764,000	2.0%
Total Revenue	\$1,804,482,000	100%

Source: Tennessee State Budget 2011-2012.

AMERICAN RECOVERY AND REINVESTMENT ACT

The department, like many transportation agencies across the country, has been deeply impacted by the February 2009 signing of the federal American Recovery and Reinvestment Act (Recovery Act). The law's goals were to spur economic activity, invest in long-term growth, create new jobs, and save existing jobs. To achieve these goals, the Recovery Act made \$787 billion available for tax credits, increased funding for federal programs (e.g., education or unemployment benefits), and funding for grants, loans, and contracts that would improve the nation's infrastructure, including transportation.

Tennessee's Recovery Act Transportation Projects

During 2009 and 2010, Tennessee was awarded \$724.6 million from the Recovery Act for transportation projects, as shown in Table 1 on page 13. The department directly administered \$573.7 million of these funds for projects throughout the state, including the following:

- *Transportation Investment Generating Economic Recovery (TIGER) discretionary grants.* Tennessee was part of two winning TIGER projects – the Crescent Corridor Intermodal Freight Rail Project and the Appalachian Short-line Rail Project. The department received \$52.5 million for the Crescent Corridor project to construct an intermodal rail facility in Memphis in order to continue the development of Norfolk Southern's rail route from the Gulf Coast to the Mid-Atlantic. The Appalachian Short-line Rail project will rehabilitate railways for five unconnected short-line railroads in West Virginia, Kentucky, and Tennessee. The department received \$2.8 million for its portion of this project.
- *FAA Grant-in-Aid for Greenville Airport.* The grant-in-aid program provided funding for airport improvement projects that would enhance capacity, safety, and security. The department received \$4.6 million for the Greenville airport to rehabilitate the runway and address a line-of-sight safety issue.
- *Stewart County Ferry Boat Grant.* The department received \$3 million for the Cumberland City Ferry to construct a new ferry barge, new landings, and a floating terminal.
- *EPA Truck Stop Electrification discretionary grant.* The department received \$2 million to equip truck stops with truck-stop electrification technology, which provides heating and cooling for sleeper cabs and power to run electrical appliances. This allows truck drivers to turn off their trucks' engines, which saves fuel and reduces emissions.

Additionally, the Federal Highway Administration (FHWA) awarded the department \$486.9 million under the Highway Infrastructure Funds program for highway restoration, repair, and construction projects. As of December 31, 2010, the department had awarded contracts for 206 projects using these funds, with contract amounts ranging from \$72,161 to \$36.2 million. The

department also administered \$21.2 million for the Federal Transit Administration's Rural Transit Grant program for transit projects in 15 rural or small urban areas.¹

Impact of Recovery Act Funding

The influx of Recovery Act funding into the department affected its operations by increasing the number of projects that contracts had to be awarded for and for which the funds had to be obligated from March 2009 to March 2010. For example, the Recovery Act required that the department obligate most of the funds it had received to a project within one year (by early March 2010) rather than having multiple years to obligate the funds under traditional federal awards. In order to obligate these funds within a year, the projects had to be bid and the contracts awarded during a narrow, ambitious time frame. Additionally, Recovery Act funds could not be used to supplant funds intended for already planned projects, but rather had to be used for new projects. Therefore, the Recovery Act transportation projects had to be planned in addition to the department's normal project load.

The Recovery Act also brought new and intensive reporting requirements. The department is required to submit both monthly and quarterly progress reports on each Recovery Act project.² The Office of Management and Budget requires the quarterly reports, while the Federal Department of Transportation requires transportation projects to report monthly. Even though some of the Recovery Act funding was directly apportioned to cities, counties, or planning organizations for transportation projects, the department is also required to submit the reports for these projects in addition to reports for projects funded through Recovery Act funds administered by the department. These reports continue until the project is complete and all of the funds have been expended.

¹ Additional information about the department's ARRA efforts is available online at <http://www.tdot.state.tn.us/recovery/default.htm>.

² While the EPA Electrification grant is administered by the Department of Transportation, it is not considered a transportation Recovery Act project and is only required to have quarterly progress reports.

Table 1
American Recovery and Reinvestment Act Funding for Transportation in Tennessee

Federal Highway Administration (FHWA)		
TDOT Administered Highway Infrastructure Funds	\$ 486,877,182	
Stewart County Ferry Boat Discretionary Grant	\$ 3,000,000	
On-the-Job Training / Support Services Discretionary Grant	\$ 800,000	
TIGER I – Crescent Corridor Intermodal Freight Rail Project	\$ 52,500,000	
TIGER I – Appalachian Regional Short-line Rail Project	\$ 2,820,458	
<i>Subtotal – TDOT Administered FHWA Recovery Act Funds</i>	<u>\$ 545,997,640</u>	
Direct Apportionment to Large Urban Metropolitan Planning Organizations	\$ 69,934,160	
Direct Apportionment to Small Urban Metropolitan Planning Organizations	\$ 15,889,701	
<i>Subtotal – Direct Apportionment FHWA Recovery Act Funds</i>	<u>\$ 85,823,861</u>	
Total Recovery Act Funds from FHWA to Tennessee		<u>\$ 631,821,501</u>
Federal Transit Administration (FTA)		
Rural Transit Funds	<u>\$ 21,168,758</u>	
<i>Subtotal – TDOT Administered FTA Recovery Act Funds</i>	<u>\$ 21,168,758</u>	
Direct Apportionment to Small Urbanized Areas	\$ 9,771,871	
Direct Apportionment to Large Urbanized Areas	\$ 42,276,173	
Fixed Guideway – Chattanooga TN-GA	\$ 28,040	
<i>Subtotal – Direct Apportionment FTA Recovery Act Funds</i>	<u>\$ 52,076,084</u>	
Total Recovery Act Funds from FTA to Tennessee		<u>\$ 73,244,842</u>
Federal Aviation Administration (FAA)		
Grants-in-Aid to TDOT for Greeneville Airport	<u>\$ 4,568,353</u>	
<i>Subtotal – TDOT Administered FAA Recovery Act Funds</i>	<u>\$ 4,568,353</u>	
Direct Apportionment to Major Air Carriers	<u>\$ 12,966,517</u>	
<i>Subtotal – Direct Apportionment FAA Recovery Act Funds</i>	<u>\$ 12,966,517</u>	
Total Recovery Act Funds from FAA to Tennessee		<u>\$17,534,870</u>
Environmental Protection Agency (EPA)		
Reduction in Diesel Emissions/Truck Stop Electrification Discretionary Grant	\$ 2,000,000	
<i>Subtotal – TDOT Administered EPA Recovery Act Funds</i>	<u>\$ 2,000,000</u>	
Total Recovery Act Funds from EPA to Tennessee		<u>\$ 2,000,000</u>
<i>Subtotal – TDOT Administered Recovery Act Funds</i>	<u>\$ 573,734,751</u>	
<i>Subtotal – Direct Apportionment Recovery Act Funds</i>	<u>\$ 150,866,462</u>	
Total Transportation Recovery Act Funds to Tennessee		<u>\$ 724,601,213</u>

Source: Tennessee Department of Transportation (TDOT).

FINDINGS AND RECOMMENDATIONS

1. The department lacks a fully functional and readily accessible right-of-way property inventory

Finding

The department's current right-of-way property database contains information regarding land acquisitions from 1997 to the present time. The database also contains information specifying uneconomic remnants,³ for which the Federal Highway Administration (FHWA) requires separate inventorying and reporting by the department, and "loss of access" acquisitions.⁴ The database does not, however, currently provide a means to readily access the information. In addition, the department does not track and inventory unused right-of-way that may potentially be determined excess land (and therefore available to be sold). These weaknesses hinder the department's ability to fully and adequately monitor, maintain, and safeguard state property. By developing a system to better track, maintain, and report on all right-of-way and potential excess land, the department will also be able to take advantage of related existing, but currently under-utilized, geospatial data while more fully complying with federally recommended management practices.

The department's primary mission is the building and maintaining of roadways, and as a result, the department purchases, owns, and maintains a significant amount of property throughout the state. Based on information reported to the FHWA, during federal fiscal years 2007-2010 (October 1-September 30), the Right of Way Division purchased 5,510 parcels at a total cost of \$204,150,466. Using the average number of parcels purchased and the average cost per parcel during those 4 years, we estimated that the department could have an additional \$510 million worth of land acquisitions in 10 years. In 20 years that total could be over \$1 billion. Therefore, it is important for the department to maintain and have ready access to an inventory of the right-of-way property that belongs to the department, to ensure that properties are adequately monitored, maintained, and safeguarded.

The FHWA Office of Real Estate Services' Project Development Guide advises state transportation departments that "procedures established to develop and maintain an inventory are essential to any effective property management program" and goes on to recommend a computer application to carry out this function. When asked how the department tracks and inventories right-of-way, the Director of the Right of Way Division stated that the department has an inventory of right-of-way acquisitions from 1997 to the present time, although the information is

³ An uneconomic remnant results when the acquiring agency only partially acquires property, with the remaining property being determined to have little or no value to the owner. When land is deemed an uneconomic remnant, FHWA rules state the agency is obligated to make an offer to buy this property, but the owner can decline to sell.

⁴ A "loss of access" property occurs when the department acquires property which is access controlled, i.e., the remainder property after the acquisition would not have access to the road and is land locked.

not readily accessible. According to the director, a full inventory (i.e., prior to 1997) would require reviewing all recorded warranty deeds, which are on file at county courthouses throughout the state.

The FHWA Office of Real Estate Services' Project Development Guide also states that in post-construction property management, the state transportation department "has the opportunity to function as a profit-making private enterprise" because highway right-of-way is a capital asset and the state transportation department "has a fiduciary responsibility to conserve and protect this asset and to obtain the highest return possible for the taxpayers." Furthermore, this guide states that the second step for project closing is to review the final right-of-way plans in order to identify excess lands or uneconomic remnants not needed for the construction, operation, and maintenance of the highway facility. However, with the exception of uneconomic remnants and loss of access acquisitions, the department currently has no method of identifying unused right-of-way property that might potentially be determined to be excess land that is available to be sold. When asked about whether the department conducts reviews following project completion to identify excess lands as recommended by the FHWA, the Right of Way Division Director stated that this process would be expensive. According to the director, this would require the department to essentially produce a new set of project plans reflecting the finalized project, incorporating all changes that were made to the original plans.

Since the department is not actively identifying unused or potential excess property (other than uneconomic remnants and loss of access acquisitions), the current system for classifying unused right-of-way as excess land is solely request based. A person or entity wanting to purchase or lease land that is right-of-way property owned by the department will submit a request to the regional office serving the area. This request is forwarded to the central office and the Excess Land Committee, which meets six times per year to review requests and makes recommendations to the Commissioner as to whether such land should be considered excess. According to staff, this process may take approximately 18 months to complete. Aside from uneconomic remnants, the only documented excess properties are those sold or leased.

The Right of Way Division Director acknowledged that TRIS (Tennessee Right-of-Way Information System), the department's centralized right-of-way inventory database, does not provide readily accessible inventory information and lacks fields for geospatial data and an excess land component. According to both the Right of Way Director and the Director of Information Systems, the contract for developing TRIS expired before the excess land component and reporting functions were programmed and geospatial data was not a consideration at that time. According to the Director of Information Systems, the department hopes to issue a request for proposal in 2011 for a replacement right-of-way information system that will provide more readily accessible information and will incorporate geospatial data fields. However, when auditors asked the Right of Way Director if the new system would provide a mechanism to track all unused/potential excess land, he stated that it is their desire to produce a listing of all uneconomic remnants and "loss of access" property that the department purchases. While this listing would allow the department to better track and maintain an inventory of unused land, it will exclude a large portion of real property, resulting in an incomplete inventory.

Due to the heavy investment and amount of property owned by the department and because the department is obligated to conserve and protect this capital asset, management should consider whether the development of a readily accessible right-of-way inventory should be a high priority. With the advances in technology paired with the department's investment in geospatial data and mapping capabilities, the department has the potential to more effectively track, monitor, and safeguard right-of-way property. For example, in August 2010, the department cited approximately 80 property owners on Highway 321 in Townsend (Sevier County) with encroachments, ranging from shrubs and signs to buildings and in-ground pools. This particular right-of-way property was purchased in the late 1940s or early 1950s. If the department had a centralized inventory system and active unused land identification, these encroachments may have been identified earlier, thereby minimizing the effect on both the department and the affected property owners. Additionally, if the department incorporates the use of technologies it has available, such as geospatial data, aerial photography, and satellite images available on the Internet, it is possible that staff could perform many monitoring functions (that in the past would have required labor-intensive review and travel) without leaving the office. However, this is contingent upon the department maintaining accurate right-of-way inventory records.

The Missouri Department of Transportation recently won an FHWA 2010 Excellence in Right-of-Way award for the department's Realty to Roads program, which was developed to market excess property in an effort to find funds for highway programs. In fiscal year 2009, the agency removed 228 parcels from its inventory and generated over \$4 million for highway improvements. The Realty to Roads project director pointed out that while the process brings in extra money, it also saves on maintenance costs and puts the property back on the tax rolls to aid local communities.

Recommendation

The department should consider a more readily accessible, fully functional, right-of-way inventory as a high priority in the new computer system requirements. Without a readily accessible inventory, it is impossible for department management to safeguard these assets and to ensure property is needed and being used as intended.

Management's Comment

We concur in part. We agree the Right of Way Division needs a fully functional and readily accessible database which provides a right-of-way inventory. We do not agree with the auditors' interpretation of a right-of-way property inventory. Our current database captures the area acquired and the amount paid on all tracts for a project. In addition, this information is captured in Edison. It is noted that our current database was not completed and this information is not readily available. We consider this database and the information in Edison to be our inventory. In addition the division maintains an inventory of all uneconomic remnants and loss of access property the department acquires annually. These properties we know are not needed for the highway. This information is also depicted on our highway plans.

The finding makes several statements that the department is not actively identifying unused right-of-way other than uneconomic remnants and loss of access property. Before property can be determined excess, it must come before the Excess Land Sub-Committee for recommendation to the Commissioner. The committee considers several factors when reviewing a request including, for example, future expansion, clear zone, and safety requirements. We know uneconomic remnants and loss of access property are not needed for highway purposes and any other property determined to be excess and sold would lie within existing right-of-way. The department designs our highway projects and sets the right-of-way limits based on what is required to construct the road. Most properties sold through excess land are parcels that lie within the existing right-of-way and are sold to the adjoining landowner (disposal of surplus property is regulated by Section 12-2-112, *Tennessee Code Annotated*). These type transactions typically do not involve large areas of land. To try to determine if there is potential excess land within the existing right-of-way would require the department to complete some type of as-built plans. There is a cost associated with this and this cost could far outweigh the revenue generated. The department could go to this expense only to find that the Excess Land Sub-Committee would not approve the sale or the adjoining landowner was not interested in buying the property.

2. The current prequalification process should be improved to more effectively determine contractor qualifications and better document the assessment process

Finding

The current process for determining contractor prequalification appears to be based more on the proper (i.e., complete and timely) submission of documentation than on an assessment of the submitted information. As a result, it does not ensure an evaluation of contractor responsibility and qualifications that more fully complies with department's rules and regulations governing prequalification.

Background

The Tennessee Department of Transportation determines the responsibility and qualifications of prospective bidders and subcontractors as required by Section 54-5-117, *Tennessee Code Annotated*, through the prequalification process. Prospective bidders and subcontractors are required to be prequalified in order to bid on a project or to be approved as a subcontractor. The department also requires that all contractors for federal and state-funded local transportation programs be prequalified.

Contractors apply for prequalification by completing a 14-page paper application and submitting it to the department's Construction Division. This application requests, for example, information regarding a contractor's experience, equipment, business relationships, and some financial information. The application must be filed at least 14 days prior to the date a contractor

wants to bid on a project or be approved for work as a subcontractor. Department staff must complete the prequalification approval process within the 14 days.

An approved prequalification may be either general or limited. Both types of prequalification approve a contractor for specific work classifications, but a limited prequalification limits a contractor to a limited amount and/or number of contracts or to perform work only as a subcontractor. A contractor's prequalification expires 12 months from the end of the contractor's preceding fiscal year, but the contractor receives a three-month grace period after the expiration date in which to apply for a renewal. The department requires a complete resubmission of the application for renewal.

The prequalification determination is made by Construction Division personnel. The department, in its prequalification rules and regulations, established criteria to be used in evaluating whether the contractor is responsible and qualified to perform work within the classifications for which the contractor seeks prequalification, as shown in Exhibit 1 below.

Exhibit 1 Prequalification Determination Criteria

Department of Transportation Rules and Regulations 1680-5-3-.05(1)(c):

The Prequalification Office will review each completed prequalification application and such additional information as the Prequalification Office may request or the applicant may provide for the purpose of evaluating whether the applicant is responsible and qualified to perform work within the work classification(s) for which the applicant seeks prequalification. The evaluation will be made in consideration of:

1. The amount, variety and quality of the applicant's prior work experience, including the prior work experiences of the applicant's key personnel, if requested;
2. The availability to the applicant of the equipment needed to perform the work required in such work classification(s);
3. The department's performance evaluations of the applicant, if available;*
4. The financial responsibility of the applicant, the applicant's affiliates, and any business firms with which any partner, owner, officer, or authorized representative is or has been associated;
5. The business integrity and responsibility of the applicant, the applicant's affiliates, and any partner, owner, officer, or authorized representative of the applicant;
6. The environmental record of the applicant, the applicant's affiliates, and any partner, owner, officer, or authorized representative of the applicant;
7. The completeness and accuracy of the applicant's prequalification application; and
8. Any other information the Prequalification Office may have requested, received, or examined with respect to the application's responsibility and qualifications.

* Performance evaluations would only be available for contractors that have worked as a prime contractor for TDOT. The finalized evaluations are maintained with the Construction Division.

Prequalified contractors are placed on a list that the department publishes on its website. This list, updated almost daily, contains the contractor's contact information and prequalification expiration date, and indicates whether the contractor has a limited prequalification or is a disadvantaged business. When a contractor is limited, the department will send a letter detailing the specific limitation(s).

The prequalification rules and regulations provide contractors a method to appeal the department's decision. When an appeal is received, the Chief Engineer will schedule an informal hearing before the Prequalification Committee. After the hearing, the committee advises the Commissioner of its decision, but the final decision is made by the Commissioner. Because an appeal hearing is considered informal, formal rules of evidence and civil procedure are not used. During our review, the department reported having only one appeal, and therefore we were unable to evaluate compliance with the appeal rules. However, it does appear, based on department rules, that individuals making the initial decision are not involved in the appeal decision.

Under Rule 1680-5-3.07, the department has the authority to modify, revoke, or restrict a contractor's prequalification, or to temporarily disqualify a prequalified prime contractor or subcontractor. The department may take these actions if, for example, a current contract is behind schedule enough to prevent prompt completion of any additional contracts or the contractor has a record of noncompliance with contract requirements. The contractors are provided with written notice of the decision to modify or disqualify a prequalification with the reasons for the action.

Conclusion

While the department has rules and regulations governing contractor prequalification, the current process is based largely on the proper submission of information rather than considering the quality and significance of that information. Based on discussions with staff and a cursory review of files, auditors concluded that the prequalification process is administrative rather than analytical and, thus, does not ensure that contractors meet all the prequalification criteria stipulated in the rules and regulations. Essentially, if a contractor answers all of the questions on the application and submits all of the required information, the contractor will be prequalified. The prequalification files contain only prior years of applications and attached information, and a copy of the letter stipulating contractor limitations when applicable. Based on our discussions and observations, it appears that personnel making the prequalification determination lack an understanding of, and in some cases overlook, some of the determination criteria. For example, while the rules and regulations require contractor past performance evaluations to be considered, personnel stated that those evaluations are not considered even though the finalized evaluations are maintained in the Construction Division. Staff also stated that financial responsibility could not be evaluated because the submission of a financial statement is not required. However, auditors pointed out that the prequalification application requests other information that could be used to assess financial responsibility, such as a gross annual receipts amount or whether the contractor has filed for bankruptcy. Consequently, the department is not routinely using all available information to evaluate a contractor's qualifications and responsibility. Additionally,

subsequent processes, such as subcontractor approval, may be adversely affected by a failure to ensure contractors meet all qualification criteria supporting contractor work classifications.

Any lack of understanding or lack of assurance that contractors meet the stipulated prequalification criteria could be attributed to a lack of detailed policies and procedures and resulting weaknesses in documentation. There is no systematic documentation of prequalification decisions, which limits management's ability to fully review and support those decisions, and also prevented auditors from obtaining sufficient evidence of the department's compliance with the rules and regulations. Overall, auditors concluded that the implementation of written policies and procedures for prequalification would help ensure compliance with the prequalification rules and regulations by requiring documentation to support prequalification decisions and giving staff an understanding of management's intent and expectations for this process.

In guidance published in 2009,⁵ the Federal Highway Administration (FHWA) provided an example of how a state transportation department can improve the prequalification process by using a rating system for prequalification criteria. Specifically, FHWA recommends assessing a contractor's ability to perform work by using a five-level systematic rating scale for each prequalification criterion. FHWA states that such a rating system may be more effective than other rating systems and discourages not having a defined rating system because it does not provide valuable information. The department may need to consider going beyond simple policies and procedures and develop a defined rating system as described by FHWA.

Recommendation

The department should implement written policies and procedures for the prequalification process that ensure the criteria stipulated in the rules and regulations are considered and that decisions are documented through a thorough assessment of the information submitted, to ensure all prequalified contractors are actually responsible, financially and otherwise. By implementing these policies and procedures, management not only will communicate to the staff making the decisions the intent and importance of the process, but will also have a structure in place that allows for monitoring of staff decisions and a basis to support those decisions if appealed by a contractor. Furthermore, management may want to consider reviewing the prequalification criteria to determine if information that is more detailed would be beneficial to achieve more qualitative assessments of contractors' qualifications. The department may need to develop a more qualitative rating system for prequalification as described by the FHWA.

⁵ FHWA's guidance describes a framework for an enhanced low bid awards process that differs from a traditional low bid process, and focused on making enhancements such as tightening contract requirements by establishing prequalification standards for contractors.

Management's Comment

We concur in part. The division takes the contractor prequalification process very seriously. There are currently over 1200 contractors prequalified, many who do not bid work or quote as subcontractors.

The division believes that our review and assessments are completed in accordance with the rules and are effective. As required in the rules, the division reviews each completed prequalification application to evaluate the work for which the applicant seeks prequalification. We believe the evaluation is made in consideration of the criteria listed in Section 1680-5-3-05(1)(c), although admittedly, the performance evaluation may not always be reviewed during this process. The performance evaluation, as is the contractor's bonding capacity, is routinely used when the department has special project prequalification requirements. In addition, performance evaluations, and several other factors as noted in Section 1680-5-3-.07(2), are considered if the department intends to modify, revoke, or temporarily disqualify a bidder.

While, as stated in the conclusions, the prequalification process is "administrative rather than analytical," those firms with past problems or conflicts with the department or who negatively answer questions in the "Contractor Responsibility" section of the questionnaire are reviewed in greater detail and more analytically to protect the department's interests.

The level of risk with this approach to prequalification of contractors has proven to be successful. In addition to being prequalified by the department, all contractors must provide a Payment and Performance Bond, if awarded a contract. Surety companies providing the bonds review contractors' workloads, financial capacity, and business integrity before issuing the necessary bonds. This process provides an additional level of protection for the department and taxpayers, with the surety company providing the bond being at the greatest risk should a contractor default.

Since the Prequalification Rules went into effect October 1, 2006, no company has defaulted on a contract with the department. This would indicate that the current process is effective and adequate with only responsible contractors bidding department projects.

The Construction Division, in consultation with the department's Legal staff, will establish written guidelines to better document discussions with the contractor and decisions made during the assessment and approval process. This guidance, as well as any other changes considered necessary, will be completed by December 31, 2011.

3. There is potential for inconsistent and unsupported decisions in portions of the bid authorization process because of a lack of written policies and procedures

Finding

The department's bid authorization process currently operates without any written policies and procedures to guide department personnel involved in authorizing prospective bidders.

In addition to prequalifying contractors, the department also assesses the responsibility and qualifications of prime contractors desiring to bid on contracts administered by the department through a bid authorization process. Prior to each bid letting, these contractors must complete a bid authorization form and send it to the Construction Division before 4:00 p.m. the day before the letting.

If the contractor is on the prequalified list, the contractor's authorization request is given to one of four Assistant Directors of Construction for approval. These staff will approve the authorization request if they believe the contractor can perform at least 30 percent of the construction project, as required by federal rules. Once staff approves the bid authorization, the contractor must pay \$25 for each project where authorization was granted. Staff enter bid authorizations into Bid Express so the contractor will be able to enter its bid, which is Internet-based.

The absence of written guidance has created some weaknesses in the process including variation in the information used to make the authorization decision and inadequate written documentation when a contractor is not authorized to bid.

Variation in Information

Department personnel, who make the bid authorization decisions, use a variety of information to determine the contractor's responsibility and qualification to perform at least 30 percent of the work. However, the specific types of information reviewed vary between personnel. Most of the information reviewed for the decision is from the prequalification questionnaire, but our review found that personnel independently choose the information they use. For example, some personnel review both the contractor's equipment list and approved work classifications while others may only review the work classifications. In addition to the prequalification questionnaire, some personnel may use other information, such as past performance evaluations (which should have been considered during the prequalification review) to support their decision.

Inadequate Written Documentation

The bid authorization process determines whether a potential bidder is responsible, or in other words, whether the bidder is physically organized and equipped with the financial wherewithal to undertake and complete a project. The Federal Highway Administration

(FHWA) requires that when a bidder is determined to be non-responsible, the state transportation department document this decision in writing.

A review of the bid authorizations for January to June 2010 found that bid authorization denials did not always have adequate documentation. Our review included 889 bid authorizations, of which 22 were not approved. Of these 22:

- 10 were not submitted timely;
- in 6 cases the contractor withdrew following discussions with department personnel;
- 2 were not approved for unknown reasons;
- one was not prequalified and thus was ineligible to be approved; and
- 3 were subcontractors and thus would not be bidding directly.

The type of documentation supporting their decisions varied depending on the underlying reason for the disapproval. For example, authorization forms received after the deadline had proof of the time and date of receipt attached. In contrast, when a bid authorization request was simply not approved, there was no documentation to support the decision.

Because of the weaknesses in portions of the bid authorization process, there is a risk that bid authorization decisions made by department personnel could be inconsistent and not fully supported, particularly when a contractor is determined to be non-responsible.

Recommendation

The department should create written policies and procedures for the bid authorization process, which at a minimum, stipulate what information should be considered in order to authorize contractors to bid and what written documentation is required to support the authorization decision.

Management's Comment

We concur in part. We agree that there are no written procedures or guidance for division staff. However, we believe the risk is low and there are minimal weaknesses in the current process.

Regarding "Variation in Information," division staff use the information contained in the prequalification form and their personal knowledge of the company from past experience, as well as the contractor's long-standing history to make bid authorization determinations. Each individual uses all the tools available to make the appropriate decision when authorizing a company to bid.

Regarding “Inadequate Written Documentation,” when division staff review a bid authorization, they determine if the contractor can complete at least 30 percent of the work in the proposal contract based on the work classifications in the “approved” prequalification form. When there are concerns or questions regarding a contractor’s ability to perform 30 percent of the work, division staff will typically call the contractor to gather additional information and to make the contractor aware of the division’s concern. Of the 889 bid authorizations reviewed, there appeared to be only 8 that did not have documentation of the decision made.

The Construction Division, in consultation with the department’s Legal staff, will establish written guidance to better document discussions with the contractor and decisions made during the bid authorization process. The guidance, as well as other changes considered necessary, will be completed by October 1, 2011.

4. The department should identify the approved work classifications on its prequalified contractors list to provide adequate information about contractor qualifications to other users of the listing

Finding

Although work classifications are an important aspect of prequalification, the department does not provide each contractor’s approved work classifications on its list of prequalified contractors. Furthermore, the listing does not disclose in what way a contractor is “limited” in the prequalification.

According to Rule 1680-5-3.07, the department has the authority to modify, revoke, or restrict a contractor’s prequalification, or to temporarily disqualify a prequalified prime contractor or subcontractor. The department may take these actions if, for example, a current contract is behind schedule enough to prevent prompt completion of any additional contracts or the contractor has a record of noncompliance with contract requirements. The contractors are provided with written notice of the decision to modify or disqualify, with the reasons for the action.

While the department can approve a contractor with a general prequalification status, the department approves contractors for specific work classifications. Similarly, a contractor with limited prequalification status is approved for certain work classifications, such as asphalt paving, engineering, erosion control, earthwork, etc., in addition to being limited on the number of contracts or the total contract amount, or to performing work only as a subcontractor.

As stated, although work classifications are an important aspect of prequalification, the department does not provide a contractor’s approved work classifications on its public, Internet-based list of prequalified contractors used by persons involved in federal and state-funded local transportation programs. The list also does not specify in what way a contractor is “limited” in its prequalification. Because the department does not publish the approved work classifications

and prequalification limits, local transportation programs may not have complete information with which to assess the qualifications of contractors. (In addition, auditors' discussions with 12 local program personnel throughout the state raised concerns about local personnel's understanding of information available on the website, and the information's limitations.) Consequently, contractors could be performing work for which they are not qualified.

According to staff making subcontracting decisions, the department also relies on the prequalified contractor list to approve subcontractors for state transportation projects. Because the department is not verifying the work classifications of these subcontractors, there is also the possibility that a subcontractor is performing work for which it is not prequalified. While department personnel use the published list for approval, they also have access to the completed prequalification application that could be used to identify the approved work classifications.

Recommendation

The department should add the approved work classifications for both general and limited prequalified contractors to the prequalified listing available on the website. The list should also disclose in what ways a "limited contractor" is limited. (A limited prequalification limits a contractor to a limited amount and/or number of contracts or to perform work only as a subcontractor.) Department management should evaluate the prequalification process's effectiveness at assessing compliance with prequalification criteria, to ensure work classifications are appropriate prior to detailing this information on the website. Until the approved work classifications are able to be added to the listing on the department's website, the department may consider ways to educate those persons involved in local transportation programs about the work classifications and how to obtain more complete information. The department may also want to consider the addition of policies and procedures requiring staff to ensure that subcontractors are working within approved work classifications rather than just verifying the subcontractor is prequalified.

Management's Comment

We concur in part. We currently do not post the work classifications or limits, for those contractors in the "limited" status, on our website. With over 1200 prequalified firms, the division will need to determine if it is feasible to make this change. Local agencies with questions about various contractors currently have the ability to call the division to seek information if needed.

Consideration will be given to adding the information to our website, if it can be done without costly reprogramming of the current reports. In addition, we will communicate with division staff to confirm that subcontractors are prequalified to do the work proposed on the subcontract form.

OBSERVATIONS AND COMMENTS

The issues discussed below did not warrant findings but are included in this report because of their potential effect on the operations of the department and on the citizens of Tennessee.

Inconsistencies Between Paper Contract Files and SiteManager Data

The Construction Division currently uses SiteManager, developed by AASHTO (American Association of State Highway and Transportation Officials), to electronically store the contract and project data, such as subcontracts and change orders. SiteManager is the department's standard system for managing the full construction project life cycle and provides the interface to the state standard Edison financial system. The division also keeps a paper file of the data at the regional offices and at the central office. According to the construction director, most of the contract and project data, including payment information, is maintained in the regional office. The files in the central office contain the subcontract information. The Construction Director confirmed there is no comprehensive file containing contract data in the central office.

Because of the importance of SiteManager, we assessed the accuracy of the data. We randomly selected 50 construction contracts from a listing of contracts closed between January and September 2010. We compared data in the computer system to information in physical files maintained at the central office. Based on this review, we experienced issues with a lack of information in the files and paper filing errors. While most of the contract information can be accessed in SiteManager, some of the information for the older contracts was only partially converted over into SiteManager. Overall, due to the issues encountered in this review, we were unable to determine the accuracy of the data in SiteManager.

Since the department failed to provide 4 files (8%), auditors were limited to reviewing 46 files. Four of 46 files (9%) lacked sufficient information to verify SiteManager data. After deducting these 8 files from the sample, we were able compare 42 files to data in SiteManager. Of the information auditors could verify, 13 of 42 (31%) contained errors. The following was noted in the review:

- Six of 42 files (14%) had subcontract totals that significantly differed between the physical file and SiteManager. After discussions with management, auditors determined that three were due to filing errors with the paper filing system. One subcontract was a second tier subcontract, meaning that a subcontractor contracted the work to another subcontractor. Additionally, management explained that one contract in the sample began prior to SiteManager implementation. Therefore, only subcontract information occurring after the implementation date was entered.

Management reported that the final contract was indeed correct in SiteManager and had last been updated in June 2009, prior to the audit beginning.

- Twenty-six of 42 files (62%) had no change orders per SiteManager. Of these 26 files, 6 (23%) had change orders in the physical file that were never entered into SiteManager.
- Two of 42 physical files (5%), one of which also had subcontract issues as listed above, contained contract revisions (including increasing the quantities of materials) without being updated in SiteManager. The division director stated that this practice is only applicable to Region 4.

Due to these discrepancies, we were unable to conclude whether the data in SiteManager are accurate for audit purposes. As the division moves further into electronic contracting, it will become imperative that information in SiteManager be accurate and reliable. Consequently, since the department currently does not have a detailed written plan to migrate to fully electronic contracting, the division should focus on ensuring that physical files are accurate and readily available if management depends on paper documentation rather than electronic.

Review of Department Efforts to Verify Work Eligibility of Staff, Contractors' Employees, and Subcontractors' Employees

While the Tennessee Department of Transportation already takes some steps to ensure its employees, its contractors' employees, and its subcontractors' employees are legally eligible to work in the United States, it could take more steps under current statutes. Additionally, the General Assembly has the option to enact further legislation directing the state and/or local governments, as well as the private sector, to use further controls, such as E-Verify, to verify employment eligibility.

Department Employees Required to Submit I-9 Forms

The department's Human Resources Division oversees efforts to ensure that department employees are legally eligible to work in the United States. Under Section 50-1-103(b), *Tennessee Code Annotated*, the department, as an employer, cannot knowingly employ an illegal alien. In order to fulfill this statute and federal requirements, every new department employee is required to complete a federal Employment Eligibility Verification Form (Form I-9) within three days of employment. The I-9 form requires the department to review employee-provided documents, such as a birth certificate or passport, to prove that the employee is legally authorized to work in the United States. The completed I-9 form is forwarded to the department's Human Resources Division, where it is reviewed for completeness and its contents entered into Edison, the state's online accounting and human resource system. Generally, this process is completed only once, at the time of hire. However, the division also maintains a spreadsheet listing personnel who must be reverified in the future, such as aliens who have time-limited work permits. (Employees in this situation are, however, ultimately responsible for updating the department regarding their work eligibility.)

Department Contractors and Subcontractors Must Attest to Their Employees' Work Eligibility

Similar to the state, private entities, including (but not limited to) those who contract or subcontract with the state, cannot knowingly employ an illegal alien under Section 50-1-103(b), *Tennessee Code Annotated*. However, entities that contract with the state are subject to additional requirements. For example:

- 2006 Public Acts, Chapter 878 (Section 12-4-124, *Tennessee Code Annotated*) specifically prohibits the state from contracting with any entity that knowingly uses illegal workers.
- 2007 Public Acts, Chapter 529 (Section 50-1-103, *Tennessee Code Annotated*) gives the Commissioner of Labor and Workforce Development authority to conduct an investigation if a complaint is received from a local governmental agency, officer, employee, or entity that believes that an illegal alien has been knowingly employed.
- Department of Finance and Administration guidance, issued to comply with Executive Order 41 (signed by Governor Bredesen on September 5, 2006 – See Exhibit 2) requires contractors to semiannually provide attestation statements that they are not knowingly using illegal workers to fulfill state contracts. Additionally, contractors are required to obtain similar semiannual attestations from their subcontractors.
- Department of Transportation contracts also include provisions requiring attestation statements, consistent with model contract language developed by the Department of Finance and Administration.
- The Federal Highway Administration similarly requires that contractors receiving federal monies through federally funded, state contracts must complete and maintain I-9 forms on all contractor employees supported by federal monies.

In order to fulfill these requirements, the department requires that a contractor signing a department contract must also sign a standardized statement attesting that he or she will not “knowingly” hire illegal immigrant labor using state-provided monies. Contractors must reattest every six months, in January and June.

Contractors are monitored in several ways to ensure they meet their federal and state obligations:

- The designated state supervisor for each construction project is required to maintain a file for each project including the state-required attestation statements.
- The Federal Highway Administration’s area engineers conduct routine inspections of project sites, including checking that contractors have completed I-9 forms on file for employees. The frequency of federal inspections varies based on the project’s size and complexity.

- The state Department of Finance and Administration annually selects a sample of contracts from across all state agencies to ensure that they contain the proper language and that the contracting agency, such as the Tennessee Department of Transportation, has obtained the appropriate attestations from contractors. For fiscal years ending June 30, 2007 through 2010, 37 Tennessee Department of Transportation contracts were selected for random checks. No work eligibility/attestation problems were found through fiscal year 2009; the 2010 reviews were not completed at the time of auditors' fieldwork.

Additionally, the Department of Finance and Administration has developed a process to handle complaints from citizens who have reason to believe that state contractors are using illegal labor. Specifically, a citizen completes a standardized form and submits it to the Department of Finance and Administration. The information is then turned over to the state agency whose contract is under question. The contracting agency, such as the Tennessee Department of Transportation, first seeks additional information or clarification from the contractor to remedy the situation as appropriate. If the procuring agency determines that there is sufficient reason to go forward with an investigation, the complaint is forwarded to the state Department of Labor and Workforce Development, the only state agency with legal authority to enforce labor laws. Ultimately, an employer found to have knowingly hired an illegal immigrant could lose any local- or state-issued business license, pursuant to Section 50-1-103(e)(1), *Tennessee Code Annotated*.

The Department and the General Assembly Can Take Additional Actions Regarding Employment Eligibility Verification

Although the state already takes several steps to help ensure that contractors' and subcontractors' employees are legally eligible to work in the United States, the department can take further action within existing statutes.

Specifically, the current standard contract language gives the Tennessee Department of Transportation authority to review the contractors' and subcontractors' employment records beyond whether a current attestation is on file. For example, the department could initiate a process of annually selecting a sample of contracts and then reviewing those contractors' personnel files, essentially to determine whether the attestation statement on file can be supported. However, legal counsel for the Department of Finance and Administration, which provides guidance regarding Executive Order 41 implementation (as discussed on page 30), expressed concerns that the contract language is not clear whether a contracting agency, such as the Tennessee Department of Transportation, can specifically require or specifically review files with the sole criterion that a completed I-9 or other specific documentation must be on file for any given employee. However, according to legal counsel, the department could examine the files and make a determination whether there was anything in the files that would raise a "red flag" concerning the contractors' employees' legal work eligibility. At the time of our audit fieldwork, no definition or other criteria had been developed to help the department determine what constitutes a "red flag."

Exhibit 2
Excerpts from Executive Order 41
Signed by Governor Bredesen on September 5, 2006

“NOW THEREFORE, I, Phil Bredesen, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and law, do hereby order and direct the following:

1. The Commissioner of Finance and Administration is directed to immediately begin promulgating rules and regulations to effectuate Public Chapter No. 878 in order to ensure full compliance with both the letter and spirit of this law.
2. The Department of Finance and Administration is directed to develop policies to ensure that all contracts entered into by an Executive branch state entity are in compliance with the provisions of Public Chapter 878 and this Executive Order. The Department of Finance and Administration is directed further to assist each Executive branch state entity in implementing procedures, including, if appropriate, random checks of the personnel records of entities with which they contract, to ensure compliance with Public Chapter 878 and this Executive Order.
3. In addition to attesting to compliance with Public Chapter 878 upon entering into a contract, as required by Public Chapter 878, each Executive branch state entity that enters into a state contract shall require contractors to update such attestations at least semi-annually during the term of the contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials performing the random checks described in paragraph (2) above.
4. To the extent possible under existing law and the terms of such contracts, each Executive branch state entity shall apply and enforce the provisions of both Public Chapter 878 and the Executive Order both to all current and future contracts to which their entity is a party.
5. In order to carry out the provisions of this Executive Order, every contract procurement initiated by an Executive branch state entity on or after October 1, 2006, shall include the following:
 - a. Explicit language deeming the requirements of Public Chapter 878 a material provision of the contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of the contract.
 - b. Language explicitly establishing the authority of the state to conduct random checks of personnel records, as described above in paragraph two (2).
 - c. Language requiring the semi-annually attestations and requiring contractors to obtain such semi-annually attestations from any subcontractor utilized to perform work that is the subject of the state contract, as described above in paragraph three (3). Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.”

If based on its review, the department believes that there are sufficient concerns about a contractor's employment files to raise a "red flag," the matter would then be referred to the state Department of Labor and Workforce Development for a full investigation and legal enforcement. Other state departments, including the Tennessee Department of Transportation, do not have such enforcement authority.

If the department chooses to start in-depth contractor employee record reviews, it would likely benefit from working with the Departments of Labor and Workforce Development and Finance and Administration, to develop criteria to trigger a referral for formal investigation, as well as a process that would provide standardized information needed by the Department of Labor and Workforce Development to initiate a formal investigation. As a part of this process, the Tennessee Department of Transportation may need to work with the Department of Finance and Administration's legal counsel to improve future contract language to better enable future employment record reviews.

Additionally, the General Assembly has the option to adopt new legislation requiring any government and/or private employers to take additional steps to verify employees' legal employment eligibility. For example, as of January 2011, fourteen states require some combination of public and/or private employers to use E-Verify to provide an additional check that their employees are legally eligible to work (see Table 3). E-Verify is a free Internet-based system operated by the federal government. It allows participating employers to electronically verify their employees' authorization based on federal Homeland Security and Social Security records. Results are generally returned online within seconds. The federal government reports that more than 97 percent of queries receive immediate employment authorizations. There is a federal process in place to protect and assist employees who should be eligible but do not receive immediate authorizations, to give them time and the ability to correct their federal records so they can receive appropriate authorization.

Table 3
States Requiring E-Verify
As of January 18, 2011

State	Citation	Year	Applies to:
Arizona	HB 2779 HB2745	2007 2008	All employers, public and private
Colorado	HB1343 SB139 SB193	2006 2008	State contractors
Georgia	SB529 HB2 SB447	2006 2009 2010	State agencies, contractors, and subcontractors
Idaho	Executive Order	2006	State agencies, contractors
Minnesota	Executive Order	2008	State agencies, state contracts
Mississippi	SB2988	2008	All employers, public and private
Missouri	HB1549 HB3	2008 2009	Public employers, contractors and subcontractors
Nebraska	L403	2009	Public employers, public contractors
North Carolina	SB1523	2006	State agencies
Oklahoma	HB1804	2007	Public employers, contractors, subcontractors
Rhode Island	Executive Order	2008	State agencies, grantees, contractors, subcontractors
South Carolina	HB4400	2008	All employers, public and private, phased in by 2010
Utah	SB81 SB39	2008 2009	Public employers, contractors, subcontractors
Virginia	H737	2010	State agencies

Source: National Conference of State Legislatures. Immigrant Policy Project. "E-Verify: Frequently Asked Questions." Revised January 18, 2011. Downloaded from <http://www.ncsl.org/default.aspx/TabId=13127> on February 8, 2011.

Department Working to Strengthen Policy 22 Subrecipient Monitoring

The department's Finance Division is currently working to address a known weakness in how it monitors state-funded grant recipients. Specifically, the department, like other state agencies, must monitor state-funded grant recipients by following the Department of Finance and Administration's Policy 22, which requires the department to design a monitoring plan with specific elements, including assigning a level of risk to each program and selecting a sample consisting of a minimum of one-third of the total number of recipients per year for closer, more formal monitoring.

The department is working to improve how it monitors state-funded grant recipients under Policy 22. The department's External Audit unit conducts the department's Policy 22 reviews. However, the sample is selected from a list of state-funded grants provided by the grant programs themselves. Ideally, the complete list of grants, from which the sample is selected, should be independently generated in order to ensure all grants are treated equally and/or fairly in the sample selection process, and that program staff do not purposefully or accidentally fail to list all applicable grants. To address this potential problem, the department is in the process of developing an electronic query to allow External Audit and other department staff to independently generate a list of all state-funded grants from Edison, the state's online accounting system.

Additional information regarding the department's subrecipient monitoring and other weaknesses identified was detailed in the Division of State Audit's *Single Audit Report for the Year Ended June 30, 2010*. See Appendix 3 for a copy of the relevant information.

FOLLOW-UP OF PRIOR FINDINGS

As part of this audit, auditors followed up on certain critical findings from prior Division of State Audit sunset audits or special reports.

Medical Heliports Not Submitting Annual Surveys as Required

Unlike at the time of sunset audits in 2002 and 2007, departmental policy no longer requires that all public-use heliports be inspected by department staff on an annual basis. Rather, current policy requires that "renewal of public use heliport licenses at established healthcare facilities will be accomplished by an annual survey," which essentially is a self-administered inspection. Additionally, department policy calls for all other public-use heliports to be inspected every three years. However, the department reports that currently there are no public-use heliports in Tennessee meeting the definition to require the three-year inspection.

Because prior sunset audits in 2002 and 2007 reported that the department was not inspecting heliports according to then departmental policy, auditors examined department records to determine if the now-required annual surveys of medical heliports are occurring as required. Based on data provided by the department, approximately 23 out of 118 heliports at established healthcare facilities do not have annual surveys on file with the department for 2009 because local authorities responsible for submitting the required surveys failed to do so. Similarly, 14 out of 122 medical heliports did not submit required surveys for 2010, according to the department.

The department reports that it works closely with local authorities to encourage the required submissions. For example, since this audit's fieldwork ended, the department reports that it has and continues to work with some local heliport authorities to increase the number of filings. However, because the department does not provide funding to the local heliport authorities and because the heliports are often managed by local volunteer organizations, the department's authority to compel provision of self-inspection forms is limited. Additionally, the most logical tool potentially at the department's disposal, revoking the heliport's authority to operate, may not be in the best interest of those people served by an otherwise functional heliport, especially in isolated, rural areas.

Bridge Inspections Conducted in a Timely Manner

Since the 2002 and 2007 sunset audits, the department has improved the timeliness of its bridge inspections. The prior audits reported several major concerns with the department's bridge inspection process, most notably that bridges were not inspected as frequently as required by federal code and state policy. These inspections are critical to help ensure that the approximately 23,000 bridges on Tennessee's public roads are properly assessed, maintained, and safe for the traveling public.

According to the 2009 National Bridge Inspection Standards Annual Program Review of the department, which was conducted by the Federal Highway Administration for fiscal year 2009, the department generally conducts bridge inspections as frequently as required by federal policy. Specifically, as of November 2009, all bridges had been inspected within the federally required 24-month frequency. Similarly, data provided by the department to the auditors as of October 2010 show that approximately 99% of bridges have been inspected within the federally mandated 24-month period.

Follow-Up on Special Reports Concerning Department Garages

The Division of State Audit issued two special reports, in 1999 and 2000, concerning improper activities at two of the department's garages. For the current audit, we reviewed the department's procedures related to its maintenance garages, in response to these investigations and special reports.

A special report issued in May 1999 reported that staff of the department's Region 3 garage, located in Nashville, had improperly disposed of a surplus automobile lift from the garage, and eight department employees had repaired non-state vehicles in the state garage. Additionally, in the process of making repairs to non-state vehicles, a state-owned forklift was damaged. In response to the special report, the improperly disposed lift was returned to the state, the department disciplined several employees, and the state was reimbursed for the cost of the forklift damage by the offending employee. Additionally, the department issued a memorandum in February 1999, prohibiting repair of non-state vehicles at department-owned garages. Finally, department management ordered that its employees be informed about existing excess property disposal procedures.

The January 2000 report found that three staff at the Region 1 garage, located in Knoxville, ordered parts for use on personal vehicles at state expense, resulting in a direct loss to the state of over \$8,500. As a result of the investigation, numerous personnel were disciplined (disciplinary actions included dismissals, written warnings, and accepted resignations), the state was reimbursed some costs, and the employee responsible for the majority of the state's losses pled guilty to a Class D felony.

In both cases, many of the actions were not detected earlier and were easier for the guilty parties to commit because of absent, weak, or inconsistently applied internal controls. For example, it would have been harder for garage staff to perpetrate the theft of automotive parts if

- there had been a full and meaningful reconciliation of vehicles needing parts with those actually receiving parts;
- parts orders were only generated in writing, thus requiring only written authorizations;
- the state only paid vendor invoices which included detailed accounting of the parts sold to the state;
- receipts for received parts had been signed immediately; and
- there had been more separation of duties between employees responsible for identifying needed parts, ordering parts, receiving parts, and fixing vehicles using the parts.

During this current audit, we noted that the department reports it now has controls in place to help address many of these problems. For example, the current process includes separation of duties between key aspects of the vehicle repair process:

- a service writer works directly with the customer, opens a work order, and receives and signs for any purchased parts;
- a mechanic determines when a part is needed and installs the part once received;

- a higher-level mechanic determines whether a part needed by the mechanic is in stock or must be ordered and enters the received part into the work order; and
- a supervisor approves part orders and reconciles paperwork generated during the parts ordering, receipt, and installation phases.

Although the department's process has already undergone considerable change, it will likely undergo more change as the state's centralized procurement and human resources computer system, Edison, continues to come online. For example, according to garage management, only some of the parts needed by department mechanics can currently be purchased through Edison. Other parts must be manually ordered using paper-based processes. Although there is some overlap, electronic and paper-based purchasing systems typically require two different sets of controls to ensure purchases are legitimate. As procurement moves completely over to the Edison system, the paper controls will become obsolete and electronic controls within the Edison system will become more important.

OTHER WORK PERFORMED

Bid Estimation and Analysis

The Federal Highway Administration (FHWA) in CFR Title 23, Volume 1, Section 635.114, states

(c) Following the opening of bids, the STD [state transportation department] shall examine the unit bid prices of the apparent low bid for reasonable conformance with the engineer's estimated prices. A bid with extreme variations from the engineer's estimate, or where obvious unbalancing of unit prices has occurred, shall be thoroughly evaluated.

Subsection (d) further requires written justification of a state transportation department's decision to award or reject a bid when there are obvious unbalanced bid items.

Section 54-5-118, *Tennessee Code Annotated*, states that "any and all bids may be rejected, in the discretion of the commissioner, and they shall be rejected if the best bid is not deemed reasonable and fair to the state."

Furthermore, the department's Policy 335-02 states that when the apparent low bid exceeds the engineer's estimate by 10 percent it will be reviewed by the Bid Review Committee. Also, if the apparent low bid is determined to be irregular and the difference between the irregular bid and the next lowest bid exceeds 10 percent or \$50,000, whichever is less, it will also be reviewed by the Bid Review Committee. The Bid Review Committee must consist of at least three of the following (or their designees): the Chief Engineer, the Assistant Chief Engineer over

Operations, the Director of Construction, the Assistant Directors of Construction, the Bid Analysis Manager, and the Director of Maintenance when the contract is maintenance related. Policy 335-02 provides a review procedure that includes reviewing for irregular bids, cost, and unbalancing. After thorough review of the bids, the Director of Construction will advise the Commissioner of the findings and recommendations and recommend appropriate action. The Commissioner's decision is final.

Preparation of State Estimate

Because the state estimate is integral to bid analysis, we obtained an overview of the process. There are no internally developed policies and procedures associated with development of the state estimate, but the Director of Estimation and Market Analysis stated that staff follows the FHWA Guidelines on Preparing Engineer's Estimate when estimating project costs. This guidance advises that estimation is not an exact science, but that "estimate accuracy relies on the estimator using all the available resources to create a fair and reasonable value for the work given all particular job conditions and evaluating these conditions accurately to establish a credible estimate."

Currently, the section has two engineers who develop the initial project estimate, and the Director of Estimation and Market Analysis reviews those estimates. This section uses an in-house developed estimating program that is populated from data in the DSS/BAMS (Decision Support System), which houses all bid data since 2002. The auditors worked through a demonstration of this system with the director, and it does appear that system is capable of allowing experienced estimators to follow the applicable FHWA guidance. This guidance lists three possible estimating approaches: actual cost, historic data, and combination. This section uses the combination approach, which uses both actual cost data and historic bid data.

The FHWA guidance states,

The estimate must have credibility if the bid review process is to be effective. Estimate accuracy should be judged by comparing the estimate against the low bid. Estimate accuracy relies on the estimator using all the available resources to create a fair and reasonable value for the work given all particular job conditions and evaluating these conditions accurately to establish a credible estimate.

The guidance further states, "it is felt the engineer's estimate should be within +10 percent of the low bid for at least 50 percent of the projects." Based on the review discussed below, it appears that estimators produced credible project estimates with the current estimation system for the letting reviewed.

Review of December 10, 2010, Bid Letting

We reviewed the bid letting which occurred on December 10, 2010, and involved 43 projects. We determined that the department rejected bids for six projects, leaving 37 contracts totaling over \$133 million. Based on our review of awarded contracts, 24 were below the state estimate and 13 were above, which averaged out to contract cost being just 0.4 percent above the

state estimate. We further reviewed the 13 contracts above the state estimate and found that on average, these contracts were just 9 percent over the state estimate, which is less than the 10 percent triggering review by the Bid Review Committee. The apparent low bids that exceeded the state estimate by over 10 percent were reviewed by the Bid Review Committee as required by policy. Therefore, we concluded that for this letting, the estimation and review appeared reasonable for these contracts.

According to department documentation, the six projects for which the bids were rejected will be let for bids again at a later date. The following is a breakdown of why these contracts and accompanying bids were rejected:

- two were rejected due to questioning unit prices;
- two were rejected because the apparent low bidder's prequalification had been revoked due to safety concerns;
- one was rejected due to being nearly 20% higher than the state estimate and some constructability issues; and
- one had only one bidder, and that bidder was over 20% above the state estimate.

Retainage

Retainage is a contractual arrangement where payment for a percentage of the value of completed work is withheld until project completion. While state law allows retainage of up to 5 percent to be withheld from construction contracts, the Tennessee Department of Transportation has not withheld any retainage on contracts since August 2005. The decision to no longer withhold retainage was in response to a change in federal regulations for the Disadvantaged Business Enterprise program. These regulations provided three options for state transportation departments that would satisfy the requirement of prompt payment of retainage from prime contractors to subcontractors. The department opted to decline to withhold retainage from prime contractors and to prohibit prime contractors from withholding retainage from subcontractors because this option was easiest to administer and to implement.

Retainage typically was withheld to protect against non-completion or poor contractor performance. The department also relied on retainage as a fund it could use to balance the contract's account if the department overpaid a contractor, and to pay subcontractors and suppliers as ordered by a court if the prime contractor had not paid these parties. Without retainage, department staff stated they use other means to control some of these situations. They stated that the department now relies on performance bonds to protect against default or incomplete or substandard work, although performance bonds are more complicated and time consuming. (According to staff, they would probably only pursue the bond in cases of default.) Staff said that they attempt to keep better records to guard against overpaying contractors and to have a procedure to collect on any overpayments.

RECOMMENDATION FOR FUTURE AUDIT WORK/DEPARTMENT REVIEW

Fees for Overweight/Overdimensional Permits

During the course of the audit, information was gathered which should be considered for inclusion in future audit work and/or department review. Because the information was provided to auditors late in the fieldwork phase of the audit and because of the complexity of the topic, auditors were unable to complete all of the work necessary to determine the validity of these concerns during the course of this audit. However, the information is important for the department and should be considered for future audit work and/or department investigation.

Specifically, information was gathered regarding the department's overweight/overdimensional permits. These special permits are issued for vehicles, motor trucks, semi-trailers and trailers whose weight or size, including their load(s), surpass normally allowed highway, bridge, or similar weight and size limits. Key department management staff voiced concerns that the current fee structure for at least some of these permits is out-of-date and likely does not consistently recover the department's costs. For example, the current fee levels may not allow the department to recoup costs associated with staff reviewing permit applications and physically inspecting infrastructure before and/or after some oversized/overweight loads complete their journey. Because the overweight/overdimensional permit rules have not been revised since 2003, it is reasonable to conclude that the fees may be out-of-date and should be reviewed to ensure that the department fully captures its permitting costs.

However, before the fees can be reviewed, the department will need to consider whether to automate its permitting process. The federal government sponsored a peer review of the department's bridge inspection program in 2008 which recommended that the department consider further automating the permitting process in order to reduce the burden imposed on bridge staff by the current process. Because such a large scale change could potentially dramatically change the department's permitting costs and because peer reviews serve as best-practice suggestions rather than a mandated federal directive, a review of the current permit fees should not occur until the future of the current process is clearly decided.

RECOMMENDATIONS

ADMINISTRATIVE

The Tennessee Department of Transportation should address the following areas to improve the efficiency and effectiveness of its operations.

1. The department should consider a more readily accessible, fully functional, right-of-way inventory as a high priority in the new computer system requirements. Without a readily accessible inventory, it is impossible for department management to safeguard these assets and to ensure property is needed and being used as intended.
2. The department should implement written policies and procedures for the prequalification process that ensure the criteria stipulated in the rules and regulations are considered and that decisions are documented through a thorough assessment of the information submitted, to ensure all prequalified contractors are actually responsible, financially and otherwise. By implementing these policies and procedures, management not only will communicate to the staff making the decisions the intent and importance of the process, but will also have a structure in place that allows for monitoring of staff decisions and a basis to support those decisions if appealed by a contractor. Furthermore, management may want to consider reviewing the prequalification criteria to determine if information that is more detailed would be beneficial to achieve more qualitative assessments of contractors' qualifications. The department may need to develop a more qualitative rating type system for prequalification as described by the Federal Highway Administration.
3. The department should create written policies and procedures for the bid authorization process, which at a minimum, stipulate what information should be considered in order to authorize contractors to bid and the requirements for written documentation to support the authorization decision.
4. The department should add the approved work classifications for both general and limited prequalified contractors to the prequalified listing available on the website. The list should also disclose in what ways a "limited contractor" is limited. (A limited prequalification limits a contractor to a limited amount and/or number of contracts or to perform work only as a subcontractor.) Department management should evaluate the prequalification process's effectiveness at assessing compliance with prequalification criteria, to ensure work classifications are appropriate prior to detailing this information on the website. Until the approved work classifications are able to be added to the listing on the department's website, the department may consider ways to educate those persons involved in local transportation programs about the work classifications and how to obtain more complete information. The department may also want to consider the addition of policies and procedures

requiring staff to ensure that subcontractors are working within approved work classifications rather than just verifying the subcontractor is prequalified.

Appendix 1

Title VI and Other Information

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, the audit team compiled information concerning federal financial assistance received by the Tennessee Department of Transportation and the department's efforts to comply with the Title VI requirements. The results of the information gathered are summarized below.

In the federal contract year 2010, the Tennessee Department of Transportation received \$973,456,344 in federal funds. See Table 4.

Annual Title VI Compliance Plan

Management submits a Title VI Implementation and Compliance Plan to the Federal Highway Administration and the Tennessee Human Rights Commission (THRC) annually. The most recent plan is dated September 2010 and was submitted to the THRC on October 1, 2010.

Title VI Staff

The Title VI Section of the Civil Rights Office is staffed with the following: one Executive Director, one Program Director, one Program Coordinator, two Specialists, and an Administrative Assistant. Staff perform desk assessments and conduct on-site reviews, on-site training, technical assistance, group training, and liaison work. The Title VI Director oversees the overall Title VI Program. The director ensures the division provides regional Title VI training for department personnel and subrecipients; monitors Title VI activities; promotes outreach; and provides technical assistance on relevant issues. In addition, the Program Director receives, reviews, and if necessary, investigates Title VI complaints; drafts investigative summaries; and coordinates with the Environmental Division to ensure there are no Title VI issues present in proposed projects.

Title VI Tracking and Monitoring

According to management, each year Title VI staff complete a Staggered Review Process form for each Title VI fund subrecipient. The purpose of the form is to identify and target compliance reviews. Once information is gathered, staff decide whether an on-site review, desk review, assessment, and/or a No Change and Assurance statement is warranted. Each entity is not evaluated annually. Subrecipients such as airports, local governments, nonprofit transportation providers, rural transits, Enhancement grants, Metropolitan Planning Organizations (MPOs), and Governor Highway Safety Office grants may go two or three years without a desk or on-site review. The department's internal "core" areas, which include Construction, Design, Environmental, Long Range Planning, Project Planning, and Right of Way Divisions, submit Title VI reports annually. Staff refer to Table 5 as a guide when monitoring the various program recipients.

Table 4
Programs and Funds
October 1, 2009, through September 30, 2010

Federal Grantor	Project Description	Amount
Federal Aviation Administration	Airport Improvement Program	\$18,216,082
National Highway Transportation Safety Administration	State and Community Highway Safety	\$5,713,827
National Highway Transportation Safety Administration	Alcohol Traffic Safety and Drunk Driving Prevention Incentives Grants	\$5,720,622
National Highway Transportation Safety Administration	Occupant Protection	\$944,911
National Highway Transportation Safety Administration	State Traffic Safety Information System Improvement Grants	\$1,223,260
National Highway Transportation Safety Administration	Incentive Grant Program to Prohibit Racial Profiling	\$594,794
National Highway Transportation Safety Administration	Child Safety and Child Booster Seats Incentive Grants	\$823,254
National Highway Transportation Safety Administration	Incentive Grant Program to Increase Motorcyclist Safety	\$305,378
National Highway Transportation Safety Administration	Alcohol Open Container	\$34,717,223
Federal Highway Administration	Highway Planning and Construction	\$885,476,051
Federal Transportation Authority	Federal Transit Metropolitan Planning Grant	\$457,733
Federal Transportation Authority	Federal Stimulus Grant	\$7,691,932
Federal Transportation Authority	Federal Transit New Freedoms Grant	\$79,542
Federal Transportation Authority	Federal Transit Elderly and Disabled Grant	\$2,157,386
Federal Transportation Authority	Federal Transit Capital Investment Program	\$4,606,401
Federal Transportation Authority	Formula Grants for Other Than Urbanized Areas	\$3,507,030
Federal Transportation Authority	Job Access – Reverse Commute Grant	\$1,220,918
Total		\$973,456,344

Table 5
Review Schedule for Title VI Program Entities

Entity	Review Schedule
Enhancement Grants	Annual Desk / On-site Review
Airports	Conduct 8 desk audits / on-site reviews each region per year based on target indicators
MPOs	Conduct desk audit / on-site review every 2 years before or after FHWA compliance review
Post Awards (Local Municipalities)	Conduct desk review / on-site review every 3 years.
Rural Transits	Require signed Title VI assurances and “No change Affidavit.” If target indicators are present, conduct desk audit / on-site review and require regional and/or online training if Title VI Coordinator has not received in the past 3 years.
Local Programs	Determine from target indicators; if none exist, require signed assurances and “no change affidavit” (on an as needed basis). If indicators exist, require desk audit / on-site review and require regional and/or online training if Title VI Coordinator has not received in the past 3 years.
Non-Profits	Submit annual desk / on-site review report
Department Internal Programs	Construction, Environmental, Design, Planning, and ROW (submit a report annually) All other department programs (submit a report annually)

Core area program recipients complete and submit annual assessments to the department’s Title VI Section for review. There is a Title VI Coordinator for each core area who completes the reports and works as a liaison to the Title VI Section. Department Title VI Specialists review the assessment reports from these core program areas, and if any deficiencies are noted, the specialists work with the appropriate area Title VI Coordinator to develop action plans and make corrections.

According to the department’s Annual Implementation Report, the section completed 8 on-site reviews and 67 assessments, and obtained 53 assurances among 477 program reviews for the Contract Year 2009-2010. We briefly sampled some section files to determine whether monitoring activities were being performed. Twenty-five files were judgmentally selected from the 2010 contract year. We determined that assessments are being conducted and/or assurances are being obtained. A number of files showed that deficiencies had been identified and were later corrected. Overall, it appears that monitoring work is being conducted.

Title VI Training and Awareness

Department Civil Rights Office staff provide ongoing Title VI training through annual scheduled regional sessions, specialized or technical assistance upon request, and through an online certification program. In addition, the Civil Rights Office provides training aids on its website via a data collection toolkit.

Department staff also provide outreach and education programs which include distributing Title VI brochures and FHWA Title VI Training DVDs and publishing a quarterly Title VI e-Report. The office also conducts quarterly Title VI Advisory Committee meetings and holds quarterly Title VI teleconferences.

The Division of Multimodal Transportation Resources (DMTR) coordinates with minority publications such as the Silver Star News, the Pride Publishing Company, and Mundo Hispano, to publish the "Statewide Competitive Grants" information for minority readers. In addition, DMTR uses locally developed human services transportation coordination plans, public notices/hearings, and rural planning organization meetings to advise the public of upcoming grants.

Title VI Complaints

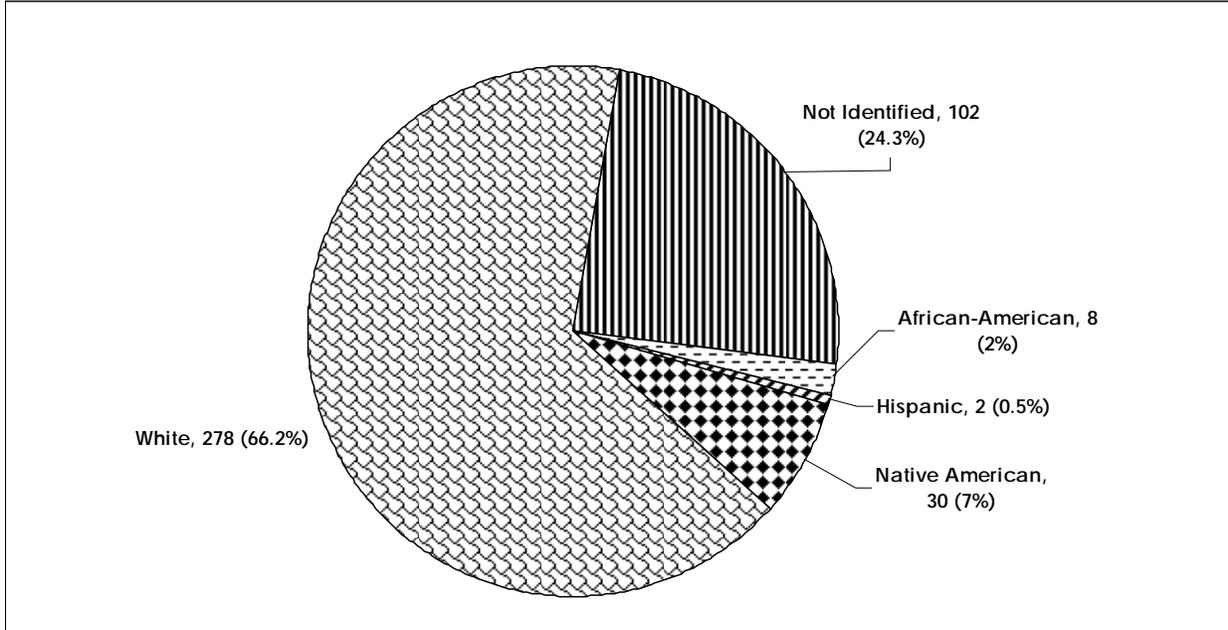
Complainants can file Title VI complaints with the department's Title VI Program Director via a formal complaint form. Complaints must be filed within 180 calendar days of the alleged occurrence and must meet several requirements. Upon receipt of a complaint, the Title VI Program Director determines jurisdiction, whether the complaint is acceptable, and whether additional information is needed to begin an investigation. In cases where the complaint is against a department's subrecipient, the department will assume jurisdiction. Complaints against the department will be referred to the appropriate federal agency. If the program director accepts a complaint for investigation, it will be assigned a case number and be logged into the department's records, and the complainant and respondent will be notified in writing within seven calendar days. We noted during discussions with the Title VI Program Director that not all complaints are entered in the complaint log. The only time a complaint is logged is if the director has determined it to be a legitimate Title VI complaint. However, by failing to log all complaints, auditors were unable to ascertain what percentage of complaints was deemed legitimate. If a large portion of complaints were not legitimate, this could indicate changes are needed in communications to possible complainants or training materials. The department may want to consider changing this practice to ensure all complaints are addressed appropriately.

During federal contract years 2007-2008 and 2008-2009, the department received no complaints. In contract year 2009-2010, the agency received one complaint; however, the director determined that the case did not have merit and dismissed it. The agency reported no complaints in the current Implementation Plan for Sub-recipients and Core Areas.

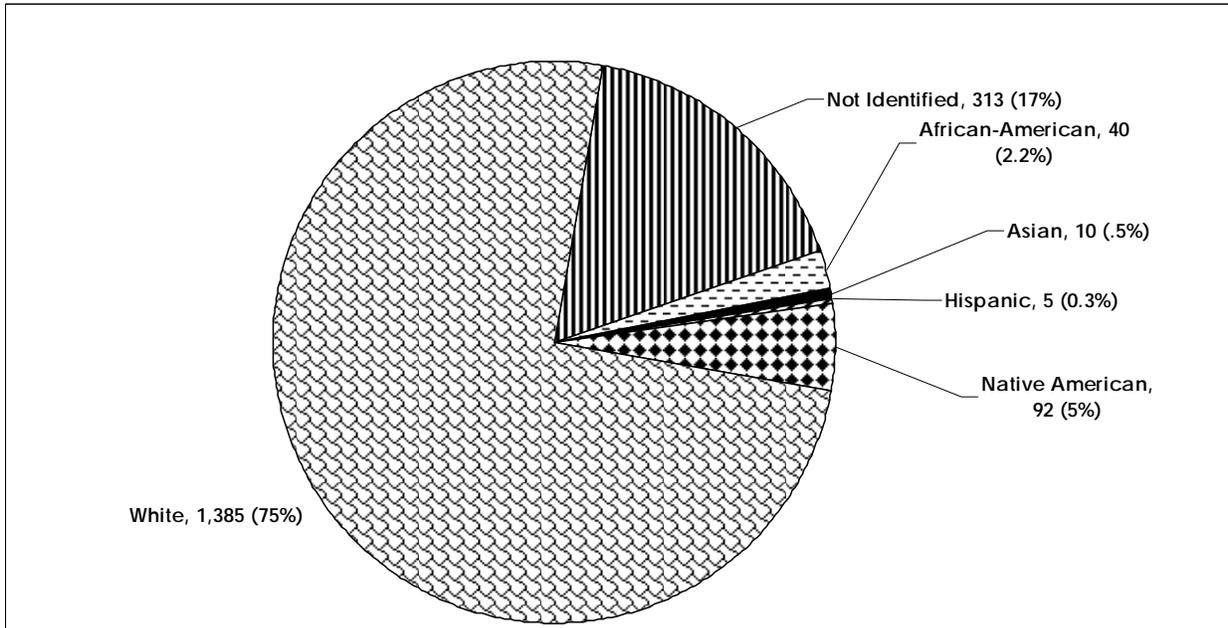
Department Contractors

The charts below detail the breakdown of department contractors and subcontractors for 2010, by ethnicity.

**Contract Distribution by Ethnicity
Federal Contract Year 2010**



**Sub-Contract Distribution by Ethnicity
Federal Contract Year 2010**



Department Staff

Below is a breakdown of department staff by job title, gender, and ethnicity.

**Tennessee Department of Transportation
Staff by Job Title, Ethnicity, and Gender
As of January 13, 2011**

Title	Male	Female	Asian	Black	Hispanic	Indian	White	Other
Account Clerk	1	23	0	7	0	0	17	0
Accountant 2	8	2	2	3	0	0	5	0
Accountant 3	3	2	0	1	0	0	3	1
Accountant/Auditor 1	1	0	0	0	0	0	1	0
Accounting Manager	1	3	0	2	0	0	2	0
Accounting Technician 1	0	5	0	1	0	0	4	0
Accounting Technician 2	0	3	0	1	0	0	2	0
Administrative Assistant 1	0	5	0	1	0	0	4	0
Administrative Assistant 2	0	2	0	1	0	0	1	0
Administrative Assistant 3	0	1	0	1	0	0	0	0
Administrative Secretary	0	35	0	4	0	0	31	0
Administrative Services Assistant 1	0	4	0	0	0	0	4	0
Administrative Services Assistant 2	6	33	0	4	0	1	34	0
Administrative Services Assistant 3	1	17	0	1	0	2	15	0
Administrative Services Assistant 4	5	7	0	2	0	0	10	0
Administrative Services Assistant 5	1	2	0	0	0	0	3	0
Aerial Photo Laboratory Supervisor	1	0	0	0	0	0	1	0
Aerial Photo Laboratory Technician 2	2	0	1	0	0	0	1	0
Aerial Photographer 2	2	0	0	0	0	0	2	0
Aerial Photographer 3	0	1	0	0	0	0	1	0
Affirmative Action Director	0	1	0	1	0	0	0	0
Affirmative Action Officer 2	1	4	0	4	0	0	1	0
Aircraft Chief Pilot	1	0	0	0	0	0	1	0
Aircraft Lead Pilot	6	0	0	0	0	0	6	0
Aircraft Mechanic 1	1	0	0	0	0	0	1	0
Aircraft Mechanic 2	2	0	0	0	0	0	2	0
Aircraft Scheduler	1	0	0	1	0	0	0	0
Archaeologist 2	2	0	0	0	0	0	2	0
Archaeologist Supervisor	1	0	0	0	0	0	1	0
Assistant Commissioner 2	3	0	0	0	0	0	3	0
Attorney 3	1	4	0	2	0	0	3	0
Attorney 4	2	0	0	0	0	0	2	0

Title	Male	Female
Audit Director 2	0	1
Auditor 2	1	3
Auditor 3	2	1
Auditor 4	3	0
Automotive Master Mechanic	2	0
Biologist 4	0	1
Board Member	4	1
Building Maintenance Worker 1	1	0
Building Maintenance Worker 2	2	0
Building Maintenance Worker 3	3	1
CADD Supervisor 1	4	3
CADD Supervisor 2	1	1
CADD Supervisor 3	1	0
CADD Technician 3	28	6
CADD Technician 4	7	3
Civil Engineering Administrator	2	0
Civil Engineering Director	5	1
Civil Engineering Manager 1	21	5
Civil Engineering Manager 2	17	4
Civil Rights Director	0	1
Clerk 1	0	1
Clerk 2	5	2
Clerk 3	4	52
Communications Dispatcher 1	1	0
Communications Dispatcher 2	10	12
Communications System Analyst 2	2	0
Communications System Analyst 3	1	0
Communications System Analyst 4	2	0
Computer Operations Supervisor	0	1
Contract Compliance Officer 2	1	3
Contract Compliance Officer 3	2	1
Custodial Worker 1	3	0
Custodial Worker 2	2	0
Custodial Worker Supervisor 1	1	0
Data Processing Operator 2	0	1
Data Processing Operator 3	0	1
Database Administrator 3	0	1
Database Administrator 4	0	1
Drafting Technician	2	1

Asian	Black	Hispanic	Indian	White	Other
0	0	0	0	1	0
0	1	0	0	2	1
0	1	0	0	2	0
0	1	0	0	2	0
0	0	0	0	2	0
0	0	0	0	1	0
0	1	0	0	4	0
0	1	0	0	0	0
0	0	0	0	2	0
0	0	0	0	4	0
1	0	0	0	6	0
0	0	0	0	2	0
0	0	0	0	1	0
1	10	1	1	21	0
0	0	0	0	10	0
0	0	0	0	2	0
0	0	0	0	6	0
1	1	0	0	23	1
2	0	0	0	19	0
0	1	0	0	0	0
0	0	0	0	1	0
0	3	0	0	4	0
0	9	1	1	45	0
0	0	0	0	1	0
0	8	1	0	13	0
0	0	0	0	2	0
0	1	0	0	0	0
0	0	0	0	2	0
0	1	0	0	0	0
0	4	0	0	0	0
0	2	0	0	1	0
0	1	0	0	2	0
0	2	0	0	0	0
0	1	0	0	0	0
0	1	0	0	0	0
0	0	0	0	1	0
1	0	0	0	0	0
0	0	0	0	3	0

Title	Male	Female
Electronics Technician 2	1	0
Environmental Coordinator Transportation Projects	3	2
Environmental Specialist 4	3	0
Environmental Specialist 5	1	0
Environmental Specialist 6	1	0
Equipment Maintenance Supervisor 1	6	0
Equipment Maintenance Supervisor 2	4	0
Equipment Management Director	1	0
Equipment Mechanic 1	128	0
Equipment Mechanic 2	25	0
Equipment Service Worker	35	3
ERP Consultant 2	0	1
ERP Module Lead	0	1
Executive Administrative Assistant 1	1	0
Executive Administrative Assistant 2	1	1
Executive Administrative Assistant 3	2	2
Facilities Manager 2	1	0
Facilities Manager 3	1	0
Fiscal Director 1	3	1
Fiscal Director 2	3	0
Fiscal Director 3	1	0
Fleet Maintenance Assistant 1	0	1
Fleet Maintenance Assistant 2	1	0
Fleet Supervisor 2	1	0
General Counsel 3	1	0
Geologist 2	2	0
Geologist 3	2	0
Geologist 4	0	1
GIS Analyst 2	1	2
GIS Analyst 3	2	1
GIS Manager 2	1	0
GIS Technician	11	1
GIS Technician Manager 1	2	0
GIS Technician Manager 2	1	0
GIS Technician Supervisor 1	4	2
GIS Technician Supervisor 2	1	1
Graduate Transportation Associate	5	2
Grants Analyst 3	0	1
Grants Program Manager	0	1

Asian	Black	Hispanic	Indian	White	Other
0	0	0	0	1	0
0	0	0	0	5	0
0	0	0	0	3	0
0	0	0	0	1	0
0	0	0	0	1	0
0	1	0	0	5	0
0	1	0	0	3	0
0	0	0	0	1	0
1	7	0	0	120	0
0	1	0	0	24	0
0	12	0	0	26	0
0	0	0	0	1	0
0	0	0	0	1	0
0	1	0	0	0	0
0	0	0	0	2	0
0	0	0	0	4	0
0	0	0	0	1	0
0	0	0	0	1	0
0	1	0	0	3	0
0	0	0	0	3	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	2	0
0	0	0	0	2	0
0	1	0	0	0	0
0	0	0	0	3	0
0	0	0	0	3	0
0	0	0	0	1	0
0	4	0	0	8	0
0	0	0	0	2	0
0	0	0	0	1	0
1	0	0	0	5	0
1	1	0	0	0	0
1	0	0	0	6	0
0	0	0	0	1	0
0	0	0	0	1	0

Title	Male	Female
Grounds Worker 2	4	0
Grounds Worker 3	1	0
Historical Preservation Specialist Supervisor	0	1
Historical Preservation Specialist 3	0	1
Horticulturist	4	0
Human Resource Analyst 1	0	1
Human Resource Analyst 2	1	5
Human Resource Analyst 3	1	2
Human Resource Director 4	0	1
Human Resource Manager 2	0	2
Human Resource Technician 2	0	2
Human Resource Technician 3	0	1
Human Resource Transactions Supervisor	0	1
Highway Maintenance Assistant CO-Supervisor	84	3
Highway Maintenance CO-Supervisor	93	1
Highway Maintenance Floating Crew Supervisor 1	32	3
Highway Maintenance Floating Crew Supervisor 2	12	0
Highway Maintenance Superintendent 1	34	1
Highway Maintenance Superintendent 2	24	0
Highway Maintenance Worker 1	627	99
Highway Maintenance Worker 2	369	24
Highway Maintenance Worker 3	71	4
Highway Response Operator 1	5	1
Highway Response Operator 2	42	2
Highway Response Operator Supervisor 1	10	1
Highway Response Operator Supervisor 2	4	0
Information Resource Support Specialist 2	3	1
Information Resource Support Specialist 3	10	2
Information Resource Support Specialist 4	18	2
Information Resource Support Specialist 5	3	3
Information Systems Assistant	2	2
Information Representative	1	0
Information Systems Analyst 2	0	1
Information Systems Analyst 3	1	0
Information Systems Analyst 4	1	0
Information Systems Associate	1	0
Information Systems Director 2	0	1
Information Systems Director 3	1	0

Asian	Black	Hispanic	Indian	White	Other
0	2	0	0	2	0
0	1	0	0	0	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	4	0
0	0	0	0	1	0
0	0	0	0	6	0
0	0	0	0	3	0
0	0	0	0	1	0
0	0	0	0	2	0
0	1	0	0	1	0
0	0	0	0	1	0
0	0	0	0	1	0
0	13	0	1	73	0
0	9	0	0	85	0
0	7	0	0	28	0
0	1	0	0	11	0
0	2	0	0	33	0
0	2	0	0	22	0
1	158	2	2	562	1
1	73	0	1	318	0
0	21	0	0	54	0
0	2	0	0	4	0
0	7	1	0	36	0
0	3	0	0	8	0
0	0	0	0	4	0
0	2	0	0	2	0
0	2	0	0	10	0
1	4	0	0	15	0
0	1	0	0	5	0
0	2	0	0	2	0
0	0	0	0	1	0
0	0	0	0	1	0
0	1	0	0	0	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	1	0

Title	Male	Female
Information Systems Manager 1	1	0
Information Systems Manager 2	3	1
Information Systems Manager 3	2	1
Legal Assistant	2	2
Maintenance Carpenter 1	1	0
Maintenance Carpenter 2	8	0
Maintenance Electrician 1	2	0
Materials Assistant 1	2	0
Materials Assistant 2	1	2
Materials Assistant 3	24	5
Materials Assistant 4	22	5
Materials Associate 1	2	0
Materials Associate 2	20	1
Materials Manager	2	1
Motor Vehicle Management Assistant Director	1	0
Motor Vehicle Management Director	1	0
Network Technical Specialist 3	1	0
Offset Press Operator 1	2	2
Offset Press Operator 2	2	0
Operations Specialist 1	4	1
Operations Specialist 2	138	20
Operations Specialist 3	41	6
Operations Specialist Supervisor 1	43	6
Operations Specialist Supervisor 2	24	0
Photogrammetrist 2	3	1
Photogrammetrist 3	0	1
Photogrammetrist Supervisor 1	1	0
Printing Services Supervisor	1	0
Printing Services Supervisor 2	2	0
Procurement Officer 1	0	3
Procurement Officer 2	4	1
Program Monitor 2	2	0
Program Monitor 3	0	1
Programmer/Analyst 3	5	0
Programmer/Analyst 4	5	1
Property Utilization Manager 3	1	0
Radio Communications Technician 2	1	0
Radio Communications Technician 3	4	0
Radio Communications Technician Supervisor	1	0

Asian	Black	Hispanic	Indian	White	Other
0	0	0	0	1	0
0	1	0	0	3	0
0	0	0	0	3	0
0	0	0	0	4	0
0	0	0	0	1	0
0	0	0	0	8	0
0	0	0	0	2	0
0	1	0	0	1	0
0	0	0	0	3	0
0	2	0	1	26	0
0	2	0	0	24	1
0	0	0	0	2	0
0	0	0	0	21	0
0	0	0	0	3	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	4	0
0	2	0	0	0	0
0	0	0	0	5	0
0	6	2	2	147	1
3	3	0	1	39	1
1	1	0	0	46	1
0	0	0	0	24	0
0	0	0	0	4	0
0	0	0	0	1	0
0	1	0	0	0	0
0	1	0	0	0	0
0	2	0	0	0	0
0	2	0	0	1	0
1	0	0	0	0	1
0	0	0	0	1	0
0	0	0	0	5	0
1	0	0	0	5	0
0	0	0	0	1	0
0	0	0	0	4	0
0	0	0	0	1	0

Title	Male	Female
Radio Systems Analyst	1	0
Railroad Safety Inspector	5	0
Railroad Safety Specialist	3	0
Right-of-Way Agent 2	0	1
Right-of-Way Agent 3	25	14
Right-of-Way Agent 4	3	4
Right-of-Way Appraiser 2	0	1
Right-of-Way Appraiser 3	10	0
Right-of-Way Appraiser 4	3	1
Right-of-Way Appraiser 5	1	0
Roadway Specialist 1	1	0
Roadway Specialist 2	75	22
Roadway Specialist 3	17	4
Roadway Specialist Supervisor 1	21	6
Roadway Specialist Supervisor 2	15	2
Secretary	1	51
Small Business Development Director	0	1
Storekeeper 1	22	8
Storekeeper 2	2	2
Stores Clerk	6	8
Structural Specialist 1	3	1
Structural Specialist 2	17	4
Structural Specialist Supervisor 1	13	2
Structural Specialist Supervisor 2	10	0
Systems Programmer 2	3	0
Systems Programmer 3	1	0
Title VI Director	0	1
Traffic Technician 2	3	0
Traffic Technician Supervisor	2	2
Training Officer 1	1	0
Training Specialist 2	1	1
Training Specialist 2	2	1
Transportation Administrative Director	1	0
Transportation Administrator	2	0
Transportation Aide 2	8	1
Transportation Assistant 1	58	19
Transportation Assistant 2	82	30
Transportation Assoc-Operation	3	0
Transportation Assoc-Roadway	3	0

Asian	Black	Hispanic	Indian	White	Other
0	0	0	0	1	0
0	1	0	0	4	0
0	0	0	0	3	0
0	0	0	0	1	0
0	2	0	1	36	0
0	2	0	0	5	0
0	0	0	0	1	0
0	0	0	0	10	0
0	0	0	0	4	0
0	0	0	0	1	0
0	0	0	0	1	0
5	8	1	0	81	2
2	3	0	0	16	0
2	2	1	0	22	0
0	2	1	0	14	0
0	5	0	0	47	0
0	1	0	0	0	0
0	1	0	0	29	0
0	2	0	0	2	0
0	2	0	0	11	1
0	0	0	0	4	0
2	1	0	0	18	0
2	1	0	0	11	1
1	0	0	0	9	0
0	0	0	0	3	0
0	0	0	0	1	0
0	1	0	0	0	0
0	1	0	0	2	0
0	1	0	0	3	0
0	0	0	0	1	0
0	0	0	0	2	0
0	0	0	0	3	0
0	0	0	0	1	0
0	0	0	0	2	0
0	1	0	0	8	0
0	23	0	0	54	0
0	19	0	0	93	0
0	1	0	0	2	0
0	0	0	0	3	0

Title	Male	Female
Transportation Assoc-Structure	0	1
Transportation Coordinator	3	20
Transportation Director	5	3
Transportation Investigation Manager	0	1
Transportation Investigator	2	1
Transportation Manager 1	29	5
Transportation Manager 2	20	6
Transportation Management Center Operator	16	10
Transportation Management Center Supervisor 1	7	4
Transportation Management Center Supervisor 2	2	1
Transportation Planner 1	2	4
Transportation Planner 2	1	3
Transportation Planner 3	18	9
Transportation Planner 4	14	12
Transportation Project Manager 1	5	3
Transportation Project Manager 2	13	1
Transportation Regional Assistant Director	5	1
Transportation Regional Director	4	0
Transportation Safety Manager	0	1
Transportation Specialist 1	24	11
Transportation Specialist 2	8	4
Transportation Surveys Supervisor 1	2	1
Transportation Surveys Supervisor 2	2	0
Transportation Technician 1	206	45
Transportation Technician 2	18	3
Transportation Technician 3	116	18
Vehicle Operator	1	0
Website Developer 1	1	0
Website Developer 2	1	0
Word Processing Operator 1	0	1
Totals	3,236	872

Asian	Black	Hispanic	Indian	White	Other
0	0	0	0	1	0
0	2	0	0	21	0
0	0	0	0	8	0
0	0	0	0	1	0
0	1	0	0	2	0
0	2	0	0	32	0
1	2	0	0	23	0
0	9	0	0	17	0
0	2	0	0	9	0
0	0	0	0	3	0
0	2	0	0	4	0
0	0	0	0	4	0
1	6	0	0	20	0
0	9	0	0	17	0
1	1	1	0	5	0
0	1	0	0	13	0
0	0	0	0	6	0
0	0	0	0	4	0
0	0	0	0	1	0
0	8	0	0	27	0
0	1	0	0	11	0
0	0	0	0	3	0
0	0	0	0	2	0
0	21	0	4	226	0
0	3	0	0	18	0
0	19	0	0	115	0
0	1	0	0	0	0
0	0	0	0	1	0
0	0	0	0	1	0
0	0	0	0	1	0
39	626	12	18	3,400	13

Appendix 2
Performance Measures Information

As stated in the Tennessee Governmental Accountability Act of 2002, “accountability in program performance is vital to effective and efficient delivery of governmental services, and to maintain public confidence and trust in government.” In accordance with this act, all executive branch agencies are required to submit annually to the Department of Finance and Administration a strategic plan and program performance measures. The department publishes the resulting information in two volumes of *Agency Strategic Plans: Volume 1 - Five-Year Strategic Plans* and *Volume 2 - Program Performance Measures*. Agencies were required to begin submitting performance-based budget requests according to a schedule developed by the department, beginning with three agencies in fiscal year 2005, with all executive-branch agencies included no later than fiscal year 2012. The Tennessee Department of Transportation began submitting performance-based budget requests effective for fiscal year 2009.

Detailed below are the Tennessee Department of Transportation’s performance standards and performance measures, as reported in the September 2009 *Volume 2 - Program Performance Measures*. Also reported below is a description of the agency’s processes for (1) identifying/developing the standards and measures; (2) collecting the data used in the measures; and (3) ensuring that the standards and measures reported are appropriate and that the data are accurate.

401.00 Headquarters

Performance Standards

1. Increase in percentage of Tennessee’s short line railroad track miles carrying over 286,000 pounds by 3% per year.
2. Increase in total statewide transit passenger trips by 1.5% annually to reduce urban congestion and increase air quality and accessibility.

Performance Measures

1. Percent of short line track miles with a capacity over 286,000 pounds.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
36%	41%	41%

This measure is designed to determine how many rail track miles are equipped to handle heavier rail loads and larger amounts of freight. As track structure is upgraded, train operations can increase speed with fewer derailments and safer conditions along the right-of-way. Results are measured by dividing the total number of short line track miles with a capacity over 286,000 pounds by the total number of short line track miles times 100. The department’s Transportation Manager compares what is reported against grant contracts funded in the fiscal year. For data

verification, the Transportation Manager compares reported information to grant contracts funded during the fiscal year.

2. Annual percent increase in total statewide transit passenger trips.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
2.5%	2%	2%

This measure is designed to track the annual percentage increase in total statewide transit passenger trips in order to manage the growth in traffic congestion by increasing public transportation users in urban and rural Tennessee. Total passengers carried by public transit agencies per trip is divided by the previous year total, times 100. The department's Transportation Manager, Division of Multimodal Transportation Resources staff, and The Office of Strategic Planning proofread the Annual Transportation report for accuracy.

402.00 Bureau of Administration

Performance Standard

Increase seat belt usage in Tennessee by 2% annually.

Performance Measure

Percent of usage of seat belts in Tennessee.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
82%	83%	84%

This measurement is required by the National Highway Traffic Safety Administration and is used to determine the number of drivers who use the occupant restraint system and to determine the overall effectiveness of the seat belt law in Tennessee. This is a measure of the number of drivers using seatbelts as recorded by direct observation of seatbelt use in Tennessee. For data verification, the Program Manager for the survey grant reviews survey results prior to submission to the NHTSA. Results are also reviewed by NHTSA research staff for accuracy.

403.00 Bureau of Engineering

Performance Standards

1. The sum of the deck area for those bridges on the state system not classified as structurally deficient will be 94% or greater of the total deck area for all bridges.
2. Reduce the fatality rate by 2% annually on Tennessee roadways by expanding traffic safety information systems and other engineering efforts.

Performance Measures

1. Percent of bridge deck area on all bridges maintained by the department that is not structurally deficient.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
95%	94%	95%

This measures the effectiveness of state highway construction as it pertains to the replacement and rehabilitation of highway bridges. The goal is to maintain the overall condition and functional effectiveness of the state bridge population at acceptable levels through a program to replace or rehabilitate deficient bridges. Data to calculate this measure is housed in the Tennessee Roadway Information Management System database, which is updated based on information gathered in continuing highway bridge inspections. Bridge inspection data is independently reviewed before being entered into the TRIMS database. Once entered, data is also checked for accuracy using an edit check algorithm that checks for inconsistencies in the data.

2. Percent of reduction in fatality rate on Tennessee roadways.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
12%*	2%	2%

*FY 2009 fatality rate is based on preliminary calendar year 2008 data available as of June 1, 2009.

This measure is an assessment of how much the fatality rate on Tennessee's roads is reduced from one calendar year to the next. Data for this measure is derived from the Tennessee Uniform Crash Report supplied by the Tennessee Department of Safety and estimates of vehicle miles traveled supplied by the Tennessee Department of Transportation. Results are reviewed by the Tennessee Department of Safety's Statistics Division as well as the Governor's Highway Safety Office, Office of Strategic Planning, and the Strategic Highway Safety Plan Committee.

405.00 Bureau of Environment and Planning

Performance Standards

1. To increase the number of publicly accessible biofuels (B20 and/or E85) refueling pumps in Tennessee through funding, education, and marketing efforts of the state refueling infrastructure development program.
2. Eighty-five percent of research projects address the strategic emphasis areas that the department's leaders have identified as significantly affecting the Tennessee Department of Transportation's ability to meet the transportation needs of Tennessee and its citizens.

Performance Measures

1. Number of publicly accessible biofuels (B20 and/or E85) refueling pumps in Tennessee's Biofuel Green Island Corridor System.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
59	95	95

This measure tracks the number of biofuels pumps offering fuels to citizens, businesses, government agencies, and travelers. The department's Environmental Policy Office tracks new biofuel pumps that are established in the state. It collects information from grantees, federal agencies, organizations and others interested in biofuels, as well as with the state's fuel card administrator (FuelMan) to identify new or inactive pumps. There are no written procedures for collecting data and calculating and verifying the performance measure other than the Tennessee Department of Transportation Performance Measure Reference Guide developed by the Environmental Policy Office. As for data verification, the department continually monitors the number of fuel pumps and posts the most recent data to the state's website. Also, state employees and others outside of state government provide information on new stations and those stations having ceased selling biofuels. The department's Environmental Division Director, Chief of Planning and Environment, and Strategic Planning Office review the final results.

2. Percent of funded research projects that align with the agency strategic emphasis areas.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
92%	85%	90%

This measures the percent of new projects funded annually that align with the strategic emphasis areas outlined in the department's Strategic Direction. This measure is calculated by dividing the number of new research contracts within the strategic emphasis areas by the number of new research contracts procured by the department. The Research Office Manager collects and verifies accuracy of data. The Director of Long Range Planning reviews the data prior to submission to the Office of Strategic Planning.

412.00 Field Engineering

Performance Standards

1. International Roughness Index (IRI) rating on interstate pavement will be good or very good on 93% of pavement.
2. The average clearance time for all highway lane blockage incidents in urban HELP service areas should be within 90 minutes for 97% of the "HELP" Operator responses. Lanes closed for construction or maintenance activities are not included when calculating the measure.

Performance Measures

1. Percent of interstate mileage with in IRI pavement rating of good or very good.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
93%*	94%	94%

*FY 2009 IRI based on calendar year 2008 data.

This measures the irregularities in the roadway pavement surface that adversely affect vehicle ride quality on the Interstate Highway System. IRI results are collected by contractors, currently Mandli Communications, once per calendar year. Over 2,000 miles of interstate road segments are rated. An IRI rating of good or very good is greater than 94. The IRI rating is a nationally accepted method for rating interstate pavement. The Assistant Director of the Materials and Tests Division, responsible for pavement management, reviews the measure and conducts his own calculations on the raw data to verify the number provided by the Pavement Management System software.

2. Percent of highway lane blockage incidents in urban “HELP” service areas cleared within 90 minutes.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
97%	98%	98%

This measures the time duration of interstate highway closures with the goal to open roads that are closed by highway incidents within 90 minutes. Data for this measure is collected by Transportation Management Center operators and dispatchers who document an incident’s location, start time, and end time by communications with department HELP operators on the road and the visual surveillance of department’s SmartWay traffic cameras. Accuracy of data entry is verified by daily review of HELP incident data and real time observations of TMC traffic camera supervisors and operators along with HELP Program Managers and Supervisors. Final results are collected and verified by Transportation Management Center and the Office of Incident Management personnel.

418.00 Field Construction

Performance Standards

1. The percent of contracts completed by original contract completion date will be 78%.
2. The percent of contracts completed by original contract completion date plus department-approved time extensions will be 92%.

Performance Measures

1. The percent of contracts completed by original contract completion date.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
72%	78%	78%

This measure assesses the percent of construction projects completed by the original contact completion date and does not include project extensions that the department grants to contractors. Data is collected from the SiteManager Information System. Only contracts that are closed out during the quarter/year are measured. Management reviews the measure and appropriateness of the measure, targets, and results. Results are distributed to each region director and construction supervisor, as well as the Chief Engineer of Operations, for final review before reporting.

2. Percent of contracts completed by original contract date plus department-approved time extensions.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
88%	92%	92%

This measure shows the percent of construction projects completed on time with justified extensions to the original completion date. Data is collected quarterly from the SiteManager Information System. Only projects closed out during the state fiscal year are used to calculate results. Management reviews the measure and appropriateness of the measure, targets, and results. Results are distributed to each region director and construction supervisor, as well as the Chief Engineer of Operations, for final review before reporting.

419.00 Field Maintenance Operations

Performance Standard

The department's maintenance rating index related to maintaining roadways will be equal to or greater than 90.

Performance Measure

The condition level for combination of interstate and state maintained roads.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
90	90	90

The Maintenance Rating Index (MRI) is a statistical random sampling of the roadway network, which is intended to provide objective evaluation of the overall condition of the state highway network as it is related to highway maintenance. The MRI measures how well the department is performing highway maintenance activities such as pavement repair, mowing, litter removal,

sign repair, and the maintenance of pavement markings. Objective performance measures for each roadway characteristic determine whether a roadway segment has been maintained sufficiently to meet an established performance standard. Point weightings allow for setting priorities as to which characteristics are more important to the department, and the score for that segment reflects whether goals were met. Data is collected by field inspectors who are selected by the District Maintenance Supervisor. The Maintenance Rating Form (MRF), which is a paper form completed monthly in each district, is the original source document for this data. The MRF information is entered into the Maintenance Management System, where the scores are calculated automatically. For data verification, a third party consultant performs monthly quality assurance inspections on 10% of the segments inspected during that month. In-house scores and quality assurance scores are compared and analyzed by the Maintenance Budget Office staff in the central office to determine the accuracy of the ratings reported.

430.00 Equipment Purchases and Operations

Performance Standard

The mechanic efficiency rating will be at least 80%. The mechanic efficiency rating is based on hours billable for working on equipment.

Performance Measure

Percent of total mechanic available work hours spent on maintaining, servicing, or repairing all vehicles in the state system.

Actual (FY 2008-2009)	Estimate (FY 2009-2010)	Target (FY 2010-2011)
87%	88%	88%

This measure tracks how much time each work day a mechanic is actually working on a piece of mobile equipment. The data is collected at each of the 22 department garages and as of July, all garage work orders have been entered directly into Fleet Focus. Formerly, all repairs and services were recorded on garage work order forms and loaded into STARS with a monthly summary of mobile work hour percentages sent to each garage. Fleet Focus does not capture actual labor hours and has a labor time card function designed to capture the actual hours mechanics work on a job; however, the department is not currently using this function. The measure is calculated by the percent of total mechanic available work hours spent on maintaining, servicing, or repairing all vehicles in the state system. Time reported on garage repair work orders for each mechanic is divided by time in a workday. The number of mechanics at each garage is verified and the number of vehicles assigned to each garage as its primary maintenance location is reviewed. The Fleet Maintenance Coordinator monitors mechanic work loads and through the use of Fleet Focus, maintains the efficiency report. This report is based on the amount and type of mechanic work performed, which is collected from work orders entered into Fleet Focus.

Assessment of Prior Performance Measures

Fiscal Years 2006-07 and 2007-08 Measure	2006-07	2007-08	Was Goal Met?		Criteria/Explanation
	Result	Result	2006-07	2007-08	
Percent of the actuarial estimate provided for the department's insurance premiums each year.	100%	100%	Yes	Yes	Standard is to provide funds for insurance premiums as directed by F&A.
Percent of funds distributed for airport, waterway, and railway improvement projects.	100%	100%	Yes	Yes	Standard is to provide for the total distribution of Equity Funds as directed by statute.
Percent of expenditures for routine maintenance operations that are over or under budget.	1.50%	3%	Yes	No	Standard is for routine maintenance to be accomplished and expended with no more than a 2% deviation from the budget.
Percent of expenditures for contract maintenance operations that are over or under budget.	5.20%	6%	No	No	Standard is to let maintenance contracts and agreements to be accomplished and expended with no more than a 5% deviation from the budget.
Percent of department field construction payroll costs reallocated	100%	100%	Yes	Yes	Standard is to reallocate 100% of construction payroll costs to projects and other activities at region and district offices.
Percent of department field maintenance payroll costs reallocated.	100%	100%	Yes	Yes	Standard is to reallocate 100% of maintenance payroll costs to projects and other activities at region and district offices.
The condition level for the combination of interstate and state maintained roads.	89.70%	89.20%	Yes	Yes	Standard is maintenance rating index related to improving capacity and increasing safety will be 80 or greater.
Percent of appropriated funds allotted to counties.	100%	100%	Yes	Yes	Standard is to provide total distribution of funds to both the State-Aid and Bridge Grant services as directed by statute.
Number of Industrial Access projects advanced to construction.	13	12	Yes	Yes	Standard is to assist local governments in funding construction projects to provide access to new and expanding industries.
Percent of bridge deck area on interstate roads that is not structurally deficient.	96.30%	97%	Yes	Yes	Standard is the sum of the deck area for those bridges not classified as structurally deficient will be 95% or greater of the total deck area for all bridges.
Percent of available federal highway funds obligated.	100%	100%	Yes	Yes	Standard is to obligate 100% of available federal highway funds.

Fiscal Years 2006-07 and 2007-08 Measure	2006-07	2007-08	Was Goal Met?		Criteria/Explanation
	Result	Result	2006-07	2007-08	
Percent of current fiscal year local interstate connectors funds obligated.	100%	100%	Yes	Yes	Standard is to obligate 100% of local interstate connectors funds in the current fiscal year within funding limitations.
Number of county seats that have had construction funded to complete connections from county seats to the interstate system.	57	60	Yes	Yes	Standard is to provide funding for construction to connect all 95 county seats to interstate highway via a four-lane highway.
Number of county seats connected and open to traffic to the interstate system via a four-lane highway.	54	54	No	No	Standard is to connect all 95 county seats to the interstate highway system via a four-lane highway as directed by statute.
Percent of available capital improvement funds obligated.	100%	100%	Yes	Yes	Standard is to obligate 100% of capital improvement funds available each year.
Percent of bridge deck area on all bridges maintained by the department that is not functionally obsolete.	85%	85%	Yes	Yes	Standard is that the sum of the deck area for those bridges on the state system not classified as functionally obsolete will be 82% or greater.

**Performance Measures Overall Results
Fiscal Years 06-07 and 07-08**

	2006-07	2007-08	Total
Met Goal	14	13	27
<i>% Met Goal</i>	87.5%	81%	84%
Did Not Meet Goal	2	3	5
<i>% Did Not Meet Goal</i>	12.5%	19%	16%

Appendix 3
Finding Regarding TDOT Subrecipient Monitoring From the
State of Tennessee Single Audit Report for the Year Ended June 30, 2010

Finding Number	10-DOT-08
CFDA Number	20.205, 20.509
Program Name	Highway Planning and Construction, Formula Grants for Other Than Urbanized Areas
Federal Agency	Federal Highway Administration Federal Transit Administration
State Agency	Department of Transportation
Grant/Contract No.	N/A
Finding Type	Material Weakness and Noncompliance
Compliance Requirement	Subrecipient Monitoring
Questioned Costs	None

In some instances, the department did not comply with the Department of Finance and Administration’s subrecipient monitoring requirements, thereby increasing the risk of not detecting fraud, waste, abuse, and noncompliance by subrecipients

Finding

The Department of Transportation (DOT) did not always comply with the state’s subrecipient monitoring guidelines as described in the Department of Finance and Administration’s Policy 22, “Subrecipient Contract Monitoring,” and the *Tennessee Subrecipient Contract Monitoring Manual*. In our sample testwork on subrecipient monitoring activities, we noted the following deficiencies:

- program area staff did not complete risk assessment forms for 76% of the subrecipient contracts that we tested in our initial sample and did not complete 33% of the subrecipient contracts that we looked at in subsequent testwork;
- fiscal monitors did not properly complete subrecipient monitoring reviews for 60% of the contracts that we tested, and some programmatic reviews did not address all applicable compliance requirements; and
- the Fiscal Director II did not obtain subrecipient corrective action plans for 36% of the contracts that we tested.

In addition, when we reviewed Davis-Bacon Act compliance for the ARRA - Formula Grants for Other Than Urbanized Areas program, we found that program staff in the Division of

Multimodal Transportation Resources did not properly monitor for Davis-Bacon Act compliance for the two subrecipients with construction projects.

Policy 22, which establishes uniform monitoring of subrecipients by state agencies, states that all monitoring activities should address “[t]he applicable core monitoring areas, as defined by the OMB [Office of Management and Budget] Circular A-133 Compliance Supplement. Currently, these core areas include: activities allowed or unallowed; allowable costs/cost principles; cash management; Davis-Bacon Act; eligibility; equipment and real property management; matching, level of effort, and earmarking; period of availability of funds; procurement, suspension and debarment; program income; real property acquisition and relocation assistance; reporting; and special tests and provisions.” The *Tennessee Subrecipient Contract Monitoring Manual*, which provides Policy 22 implementation guidance, describes the following steps as a part of subrecipient monitoring:

- *Risk assessment and assignment* - When selecting and prioritizing contracts for monitoring each year, one of the factors that agencies should consider is the risk the subrecipient poses to the state. A risk assessment should be completed for each subrecipient on an annual basis in order to make this determination.
- *Monitoring cycle* - Agencies should indicate if their monitoring cycle is based on the state fiscal year (July 1-June 30) or the federal fiscal year (October 1-September 30). This cycle will dictate when the new monitoring year for the agency begins and ends, thereby defining the timeframe the agency has to complete the monitoring reviews.
- *Corrective action process* - Subrecipients are required to submit a corrective action plan outlining the steps that will be taken to correct any findings identified in monitoring reports. Agencies must have a process in place to review and approve these corrective action plans and, if needed, provide additional support to the subrecipient to assist them in developing solutions for correcting any monitoring report findings.

Based on our discussions with the External Audit Director, who is in charge of the department’s subrecipient monitoring efforts, the department’s subrecipient monitoring activities are divided between the Finance Office’s External Audit Section and the program areas. According to the External Audit Director, the program areas’ reviews are to include the following compliance requirements: activities allowed or unallowed, the Davis-Bacon Act, eligibility, reporting, special tests and provisions (if programmatic in nature), and Title VI (which is a department-specific requirement) while the remaining requirements are under the External Audit Director’s responsibility.

Some Program Area Staff Did Not Complete Risk Assessment Forms

We tested the department’s monitoring of 25 contracts, 5 involving American Recovery and Reinvestment Act of 2009 (ARRA) funds and 20 non-ARRA contracts. We found that

program area staff did not complete risk assessment forms for 19 of the 25 subrecipient contracts tested (76%, 4 ARRA and 15 non-ARRA). Based on our discussions with the External Audit Director, each program area is responsible for preparing a risk assessment form for each subrecipient and for preparing a list of all its subrecipient contracts including the assigned risk level resulting from completion of the risk assessment form. Each program area staff is supposed to send their subrecipient lists to the External Audit Director and maintain the individual risk assessment forms to support the assigned risk for the subrecipients.

Based on our review, we found that:

- Four of the ARRA contracts and three of the non-ARRA contracts without risk assessment forms were the responsibility of the Division of Multimodal Transportation Resources (DMTR). DMTR's Compliance Coordinator stated that although she did not prepare risk assessment forms for each subrecipient, she determined the risk level based on the following factors: whether ARRA funds were involved, if there were past monitoring findings, how long the subrecipient had been in the program, and if she received special input from the program managers or DMTR management. All of these factors appear to be relevant in the determination of the risk level, but the individual factors considered for each subrecipient were not documented on a risk assessment form.
- The remaining 12 non-ARRA contracts were the responsibility of the Office of Local Program Development. Staff of this office did not complete risk assessment forms for their subrecipients. According to the Transportation Coordinator for Local Program Development, she was not aware that the annual risk assessments were required. She stated that she labeled all ARRA contracts as high risk and all non-ARRA contracts as medium risk. Her labeling of the ARRA contracts as high risk appeared appropriate, but we could not evaluate the medium risk label for all non-ARRA contracts without preparation of an individual risk assessment form for each subrecipient.

In addition, we found that for the five ARRA contracts tested, the Compliance Coordinator for DMTR (responsible for four of the contracts) and the Grant Monitoring Manager for the Aeronautics Division (responsible for one of the contracts) incorrectly assigned a medium risk to the ARRA contracts and reported these contracts to the department's External Audit Section. Appendix 7 of the OMB Circular A-133 Compliance Supplement states that auditors "should consider all Type B programs and clusters with expenditures of ARRA awards to be programs of higher risk." Because the responsible coordinator and manager did not properly identify the subrecipients' contracts as high risk, the department could have failed to monitor. In these cases, because the External Audit Director was aware of the ARRA funding and the federal requirement, he treated all of the ARRA contracts as high risk when selecting the contracts for monitoring. According to the External Audit Director, the fiscal monitors are more likely to perform on-site visits for those contracts that are properly identified as high risk.

After we performed our initial sample testwork to determine the department's compliance with monitoring requirements, we performed additional testwork in the Division of Multimodal

Transportation Resources specific to the three not-for-profit agencies that participated in DMTR's Intercity Bus Service Demonstration Program. Based on our review, the Compliance Coordinator did not prepare a risk assessment form for one of the three subrecipient contracts tested (33%). As noted above, the Compliance Coordinator generally determined the risk level for each subrecipient based on a number of factors, but she did not document these considerations on an individual risk assessment form.

Monitors Did Not Properly Complete Subrecipient Monitoring Reviews

For 15 of the 25 subrecipient contracts tested (60%, one ARRA and 14 non-ARRA), the department's External Audit Section either failed to initiate (before September 30, 2010, the end of the department's annual monitoring cycle) a fiscal monitoring review or failed to determine whether the subrecipients' contracts met the department's expenditure threshold for staff to initiate monitoring activities. Based on our discussions with the External Audit Director, his staff had difficulty in completing the required fiscal reviews due to uncertainties as to when the contractors would expend the minimum level to require monitoring activities. In addition, fiscal monitors experienced difficulties tracking contract expenditures in Edison (the state's new accounting system). A Planning Analyst 5 at the Department of Finance and Administration's Office of Audit and Consulting Services (the office coordinates the state's subrecipient monitoring effort) stated that, while state departments and agencies face some issues outside their direct control, he would have expected DOT to have at least started the monitoring process on all contracts identified for review before the end of the monitoring cycle.

We also noted during our review that some program staff did not list all the required core monitoring areas in their programmatic review reports as discussed below.

- For one of the five ARRA contracts tested (20%), the Aeronautics Division's program staff did not address the subrecipient's compliance with the Davis-Bacon Act in its programmatic review report. The Aeronautics Grants Monitoring Manager stated that Davis-Bacon Act compliance was not monitored because she was unaware that this was a part of program monitoring activities.
- For 12 of the 20 non-ARRA contracts tested (60%), the Office of Local Program Development's program staff did not reference any of the core monitoring areas in its programmatic review reports. The Transportation Coordinator for the Office of Local Program Development stated that she was not familiar with the department's subrecipient monitoring policy.

When the department fails to fully complete subrecipient monitoring activities within the established timeframe that address all applicable compliance requirements, there is an increased risk of inappropriate expenditures, noncompliance with contract terms, and unmet program objectives.

Monitoring Staff Did Not Always Obtain Subrecipient Corrective Action Plans

We tested 25 subrecipient contracts that had monitoring findings in the prior fiscal year to determine if the department obtained corrective action plans addressing the monitoring report findings. For 9 of the 25 subrecipient contracts we tested (36%), the Fiscal Director 2 did not obtain corrective action plans from the subrecipients. Corrective action plans identify the subrecipients' methods and procedures for correcting the findings documented in the monitoring reports. The department requires subrecipients to submit corrective action plans addressing findings and questioned costs to the Fiscal Director 2 within 30 days of the report date. When the subrecipients failed to submit corrective action plans, the Fiscal Director 2 did not follow-up to obtain them. Therefore, the department had no assurance that the subrecipients had taken corrective action to address the findings.

Davis-Bacon Act Compliance for the ARRA - Formula Grants for Other Than Urbanized Areas Program Not Properly Monitored

Based on our Davis-Bacon Act compliance review of the program staff's subrecipient monitoring reports, DMTR's Compliance Coordinator did not take the necessary steps to determine whether the two ARRA-funded subrecipients responsible for construction projects under the Formula Grants for Other than Urbanized Areas program complied with the Davis-Bacon Act. Under the requirements of the Davis-Bacon Act, workers involved in federally funded construction projects are to be paid no less than the prevailing wage rates established by the United States Secretary of Labor. As noted above, the Davis-Bacon Act is one of the core monitoring areas which must be addressed by the department as a part of its subrecipient monitoring activities.

DMTR's Compliance Coordinator was responsible for ensuring subrecipients complied with Davis-Bacon; however, she did not include Davis-Bacon Act compliance as an area of review. In addition, we noted that the cover letters the Compliance Coordinator sent to the subrecipients with the monitoring reports stated that testing in the "areas of Procurement, Civil Rights, Eligibility, Inventory, special Postings and Emblems, and Reporting as outlined in Finance and Administration's Policy 22, Subrecipient Monitoring, and the Tennessee Subrecipient Manual" was performed. According to the Compliance Coordinator, the Davis-Bacon Act was covered with the following question on the subrecipient self-report form: "Does the agency obtain employment information such as man hours and payroll from vendors [*sic*] being paid with ARRA monies?" In addition, even though the Compliance Coordinator stated that she had verified that the subrecipients' invoices included payroll information and that the subrecipients were keeping files with the payroll data that had been collected, none of these activities addressed whether Davis-Bacon Act clauses were included in the construction contracts or whether certified payrolls indicating that workers were paid prevailing wage rates had been properly completed.

When monitoring staff fail to follow the established monitoring plan and do not exercise proper oversight of subrecipients, there is increased risk that fraud, waste, abuse, and noncompliance by subrecipients will occur and not be detected and handled appropriately and timely by the department.

Recommendation

The Commissioner and the Chief of Administration should ensure that External Audit and program area staff comply with the policies and procedures for fiscal and program monitoring activities in order to meet state and federal monitoring requirements. The Transportation Coordinator for the Office of Local Program Development, the Grant Monitoring Manager for the Aeronautics Division, and the Compliance Coordinator for DMTR should ensure that annual risk assessments and programmatic review reports are properly completed. If necessary, the program areas should be required to submit these forms and reports to the department's External Audit Section. The External Audit Director should take the necessary steps to ensure that the required fiscal monitoring reviews are completed timely, possibly adding extra contracts to the subrecipient monitoring sample or starting fiscal monitoring reviews earlier in the monitoring cycle. The Fiscal Director 2 should take the necessary steps to ensure that subrecipients submit the required corrective action plans in response to monitoring findings. The DMTR Compliance Coordinator should revise the program monitoring procedures to ensure that Davis-Bacon Act compliance is properly monitored for subrecipients that have construction contracts.

Management's Comment

We concur. The various program areas of the Department will take steps to ensure that an annual risk assessment is completed for all subrecipients and that risk factors are properly documented. The Finance Office will ensure that fiscal monitoring reviews are completed and that subrecipients submit required corrective action plans timely.