Office of Audit Services

Public Agency Review

Metropolitan Transportation Commission

CalPERS ID: 6361598907
Job Number: P11-025

August 2015

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August 28, 2015

CalPERS ID: 6361598907
Job Number: P11-025

Steve Heminger, Executive Director
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607-4707

Dear Mr. Heminger:

Enclosed is our final report on the results of the public agency review completed for the Metropolitan Transportation Commission (Agency). Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 4. Although CalPERS reviewed and considered your Agency's responses, the information and contentions provided did not change our findings. CalPERS acknowledges in reference to Finding 1, that an updated salary schedule and resolution was provided as an appendix to the Agency's response. We forwarded this additional documentation to the appropriate CalPERS program area for review.

In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your Agency. We appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, Chief
Office of Audit Services

Enclosure

cc: Commissioners, Metropolitan Transportation Commission
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
Carene Carolan, Chief, MAMD, CalPERS

METROPOLITAN TRANSPORTATION COMMISSION

TABLE OF CONTENTS

SUBJECT PAGE

Results in Brief 1

Scope 1

Office of Audit Services Review Results 3

- 1: Pay Schedule 3
- 2: Part-time Membership 6
- 3: Retired Annuitants 7
- 4: Membership Enrollment 8

Conclusion 13

Objectives ..... Appendix A

Agency's Written Response ..... Appendix B

METROPOLITAN TRANSPORTATION COMMISSION

RESULTS IN BRIEF

The primary objective of our review was to determine whether the Metropolitan Transportation Commission (Agency) complied with applicable sections of the California Government Code (Government Code), California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page three of this report.

- Pay schedule did not meet all the Government Code and CCR requirements and reported payrates did not meet the definition of compensation earnable.
- Part-time employee was not enrolled in CalPERS when membership eligibility requirement was met.
- Retired annuitant was not reinstated upon exceeding the 960 hour threshold.
- Eligible employees were not enrolled in CalPERS membership.

OAS recommends the Agency comply with applicable sections of the Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

SCOPE

The Agency was formed in 1970 to provide comprehensive regional transportation planning for the nine counties that comprise the San Francisco Bay Area. Resolutions and employment agreements outline all Agency employees' salaries and benefits and state the terms of employment agreed upon between the Agency and its employees.

The Agency contracted with CalPERS effective March 1, 1972 to provide retirement benefits for local miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees' Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for Fiscal Year 2010-11, OAS reviewed the Agency's payroll reporting and member enrollment processes related to the Agency's retirement contract with CalPERS. The review was limited to the examination of sampled employees, records, and pay periods from January 1, 2009 through December 31, 2011. The on-site fieldwork for this review was conducted from February 6, 2012 through February 10, 2012. Subsequent to the on-site field work, we expanded the scope of review to include the review of the 2007 and 2008 Agreements for Management and Administrative Services between the Agency and

the Local Government Services Authority (LGS). The review objectives and a summary of the procedures performed are listed in Appendix A.

METROPOLITAN TRANSPORTATION COMMISSION

OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: The Agency's pay schedule did not meet all the Government Code and CCR requirements and reported payrates did not meet the definition of compensation earnable.

Condition:

The Agency reported compensation that did not meet the definition of compensation earnable in Government Code Section 20636. Only compensation earnable as defined under Government Code Section 20636 and corresponding regulations can be reported to CalPERS and considered in calculating retirement benefits. Payrate is defined as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to a publicly available pay schedules. Payrate for a member who is not in a group or class is subject to the limitations in Government Code Section 20636 (e)(2). Government Code Section 20636(d) also requires that payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

A. The Agency did not provide any pay schedules that met all of the Government Code and CCR requirements. Specifically, the pay schedules were not duly approved and adopted by the Agency's governing body in accordance with the requirements of applicable public meetings laws. Additionally, the pay schedules did not identify all position titles, time bases, and referenced another document in lieu of disclosing certain payrates and did not indicate the effective or revision dates. The pay schedules listed salary grades on a matrix but it did not associate each payrate with a position. In order to identify a payrate for a position, a second document was required to associate the salary grade with each position. As a result, pay amounts did not meet the definition of payrate under Government Code Section 20636 and the pay schedule did not meet the CCR Section 570.5 requirements.

   For the purposes of determining the amount of compensation earnable, a member's payrate is limited to the amount identified on a publicly available pay schedule. Per CCR Section 570.5, a pay schedule, among other things, must:

   - Be duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
   - Identify the position title for every employee position;

- Show the payrate as a single amount or multiple amounts within a range for each identified position;
- Indicate the time base such as hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- Be posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicate an effective date and date of any revisions;
- Be retained by the employer and available for public inspection for not less than five years; and
- Not reference another document in lieu of disclosing the payrate.

Pay amounts reported for positions that do not comply with the payrate definition and pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1). There are no exceptions included in Government Code Section 20636(b)(1). When an employer does not meet the requirements for a publicly available salary schedule, CalPERS, in its sole discretion, may determine an amount that will be considered to be payrate as detailed in CCR Section 570.5.

B. The positions of Executive Director and General Counsel were not listed on a publicly available pay schedule. The Agency provided employment contracts for both positions; however, contracts do not meet the definition of publicly available pay schedule set forth in Government Code Section 20636 (b), 20636 (d), and CCR Section 570.5. OAS found no other publicly available documents that were available for public scrutiny that included the payrates for these positions. Therefore, OAS determined that the compensation reported for these positions did not meet the definition of payrate, did not meet the requirement in Government Code Section 20636(d), did not meet the requirements of CCR section 570.5, and therefore may not be considered when retirement benefits are calculated.

   Additionally, these two contracted positions received several pay increases during the scope of the review. OAS reviewed each of these increases to determine whether the increases met the definition of payrate and whether these additional amounts should have been reported. OAS concluded that the compensations reported for these pay increases did not meet the definition of compensation earnable, because the Agency was unable to provide publicly available documents that approved the pay increases. Pay amounts reported for positions that do not comply with the pay schedule requirements cannot be used to calculate retirement benefits because the amounts do not meet the definition of payrate under Government Code Section 20636(b)(1).

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Recommendation:

The Agency should ensure reported payrates are set forth in a publicly available pay schedule and that pay schedules meet the other requirements of payrate under Government Code Section 20636 and CCR Section 570.5. Government Code Section 20636(d) also requires that payrate and special compensation schedules, ordinances, or similar documents must be public records available for public scrutiny.

The Agency should ensure that payrates and earnings are correctly reported to CalPERS in accordance with the relevant statutes, regulations and approved pay schedules.

The Agency should work with CalPERS Employer Account Management Division (EAMD) to make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20636
CCR: § 570.5

METROPOLITAN TRANSPORTATION COMMISSION

2: The Agency did not enroll an eligible part-time employee as required.

Condition:

The Agency did not enroll a part-time employee who worked a total of 1,032 hours in the pay period ended June 11, 2010. Government Code Section 20305 requires employees who complete 1,000 hours within a fiscal year to be enrolled into membership effective not later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed. Government Code Section 20283 provides in pertinent part that any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer knows or can reasonably be expected to have known of that eligibility shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars ($500) per member as a reimbursement to this system's current year budget.

Recommendation:

The Agency should monitor the hours worked by part-time employees and ensure employees are enrolled when membership eligibility requirements are met.

The Agency should work with EAMD to make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160. The Agency should also work with EAMD to assess whether Government Code Section 20283 will apply.

Criteria:

Government Codes: § 20044, § 20160, § 20283, § 20305

METROPOLITAN TRANSPORTATION COMMISSION

3: The Agency unlawfully employed a retired annuitant.

Condition:

The Agency did not reinstate a retired annuitant who exceeded the 960-hour threshold for hours worked in Fiscal Year 2010-11. Specifically, the retired annuitant worked a total of 973 hours, and was not reinstated in CalPERS membership. The Government Code limits the number of hours a retired person can work to no more than 960 hours each fiscal year.

Government Code Section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. The Government Code states that any retired member employed in violation of this article shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law, pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment plus interest thereon, and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

The Government Code also states that any public employer that employs a retired member in violation of this article shall pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

Recommendation:

The Agency should monitor the hours worked and payrate of retired annuitants in order to ensure the Agency complies with applicable working after retirement statutes contained in the Government Codes.

OAS recommends the Agency work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action to address this finding.

Criteria:

Government Code: § 20160, § 21202, § 21220, § 21221, § 21224

4: The Agency did not enroll eligible employees into CalPERS membership.

Condition:

The Agency did not enroll, report compensation earnable, or submit contributions for certain common-law employees. OAS identified two individuals assigned to provide services for the Agency under an employment agreement with a temporary agency, Local Government Services (LGS), that were actually common-law employees of the Agency. OAS determined in applying the common-law employment test that these individuals were under the control of the Agency and therefore, common-law employees of the Agency for the reasons discussed below. As a result, the Agency should have reported these individuals to CalPERS for retirement purposes. Government Code Section 20283 provides that any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer knows or can reasonably be expected to have known of that eligibility shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars ($500) per member as a reimbursement to this system's current year budget.

Government Code Section 20460 provides in relevant part that any public agency may participate in and make all or part of its employees members of this system by contract. Government Code Section 20022 defines a contracting agency as any public agency that has elected to have all or any part of its employees become members of this system and that has contracted with the Board for that purpose. Government Code 20028 defines an employee as any person in the employ of any contracting agency. Management and control of CalPERS is vested in the CalPERS Board of Administration (Board) as provided in Government Code Section 20120. Each member and each person retired is subject to the PERL and the rules adopted by the Board pursuant to Government Code Section 20122. Government Code Section 20125 provides that the Board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

For the purposes of the PERL and for programs administered by the Board, the standard used for determining whether an individual is the employee of another entity is the California common-law employment test as set forth in the California Supreme Court case titled *Tieberg v. Unemployment Ins. App. Bd*., (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)*, (2004) 32 Cal. 4th 491, and which was adopted by the Board in two precedential decisions, *In the Matter of Lee Neidengard*, Precedential Decision No. 05-01, effective April 22, 2005, and *In the Matter of Galt Services Authority*, Precedential Decision No. 08-01, effective October 22, 2008.

In applying the California common-law employment test, the most important factor in determining whether an individual performs services for another employer is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Other factors to be taken into consideration under the common-law employment test are as follows:

- Whether or not the one performing services is engaged in a distinct occupation or business.
- The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision.
- The skill required in the particular occupation.
- Whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
- The length of time for which the services are to be performed.
- The method of payment, whether by the time or by the job.
- Whether or not the work is a part of the regular business of the principal.
- Whether or not the parties believe they are creating the relationship of employer-employee.

OAS reviewed the services provided by the individuals assigned by LGS in the positions of Regional Transportation Coordinator and Revenue Auditor and determined these individuals performed services as common-law employees of the Agency rather than of LGS. As such, OAS determined the Agency did not enroll eligible employees in membership.

Our review included information obtained from the employment relationship questionnaires, the management services agreement between LGS and MTC, individual employment agreements, personnel action forms, and other information related to two individuals. The facts outlined below support a finding of common-law employment with the Agency for the sampled individuals:

- In the event that the Agency, in its sole discretion, at any time during the term of this agreement, desires the reassignment of any such persons, LGS shall reassign such person or persons.
- The Agency has the sole discretion to determine if the services performed by LGS are satisfactory to the Agency.

- The Executive Director of LGS will not reassign any of the LGS staff without first consulting with the Agency.
- Although the individual is paid by LGS, LGS bills MTC for the work performed by invoice using an hourly rate that includes the individual's salary and all benefits. It also appears that MTC agreed to pay LGS a flat fee over and above the cost of this individual's salary and benefits. In a document entitled "Agreement for Management and Administrative Services" (Agreement) dated June 29, 2007, in Exhibit A, it states that the amounts stated, ". . . includes overhead charges and insurance costs at a flat rate of $17,402 per position . . ."
- Pursuant to the Agreement, reimbursed compensation is intended to include the costs of contributions to any pensions and/or annuities for which LGS may be obligated for individuals providing services on its behalf or may otherwise be contractually obligated.
- The Agency reserves the right to review the recommended candidate's resume, qualifications, experience, education and references prior to assignment.
- The Agency reserves the right to review with the assigned staff the proposed work plan including project deliverables, deadlines, and actual performance towards achieving the assigned work plan.
- LGS shall assign the individuals to serve in the Agency's positions that require performing the functions and duties specified in the Agency's job descriptions for those positions and such other legally permissible and proper duties and functions as the Agency may, from time to time assign.
- Individuals providing services through LGS are assigned to provide these services and shall be available to perform the services during the Agency's normal workweek.
- Individuals providing services through LGS are assigned to provide these services and will meet regularly and as often as necessary with the Agency's Executive Director or his designated Agency staff for the purpose of consulting with them about the scope of work he or she performs.
- The individuals are also required to meet with other Agency staff, members of the public, and attend Agency and other meetings as necessary. Such individuals providing services through LGS are required to perform Agency services at the Agency's offices in Oakland.

In addition to the above characteristics shared by both individuals, OAS noted the following specific facts, employment details, and responsibilities ascribed to the positions, further supporting a finding that the individuals were common-law employees of the Agency. Pertinent information identified for each of the individuals reviewed is as follows:

Regional Transportation Funding Coordinator

The Regional Transportation Funding Coordinator served as program administrator for non-transit elements of Regional Measure 2 (RM2), a voter-approved measure that provides funds for congestion relief projects in the Bay Area Bridge corridors. The individual also managed several local street and road coordination elements, conducted complex financial analysis, monitored transportation programs as necessary, produced and presented reports on transportation programs as necessary, and performed various analyses to support Programming and Allocation Section functions as needed. The facts outlined below support a finding of common-law employment with the Agency:

- The individual began providing services for the Agency on October 1, 2008.
- The services are performed at Agency locations.
- The Individual is required to attend Agency meetings that relate to the scope of the project.
- The position requires a full-time employee.
- The individual is required to do the work personally.
- The Agency controls how the individual does the work.
- The manager or lead of the Agency directs the individual and provides LGS with performance information so that LGS can complete the performance appraisal.
- The Agency provides the individual with office space, office equipment, stationery, and e-mail.
- The individual may be required to attend training that is applicable to the project. Training is paid for by the Agency.
- The work performed by this individual is considered to be the work of MTC.

Revenue Auditor

The Revenue Auditor performed daily functions related to toll bridge revenue operations such as: monitored daily reconciliation and audit of revenue for toll collectors for the seven Bay Area Bridges; evaluated and analyzed variances for toll revenue; interpreted and reconciled daily reports; reported any cash and electronic toll variances and lane equipment malfunctions; monitored daily reports from bridge operations; prepared a variety of reports including daily reports, daily collection summaries, weekly and monthly bridge statistics, and reconciliations; worked with audit staff on testing and implementation of new toll collection systems; undertook other specific assignments as required; and worked closely and cooperatively with the Agency's Finance section, bridge personnel, and other Agency staff. The facts outlined below support a finding of common-law employment with the Agency:

- The individual began providing services for the Agency on June 11, 2012.
- The services are performed at Agency locations.

- The individual is required to attend Agency meetings that relate to the project.
- The position requires a full-time employee.
- The individual is required to do the work personally.
- The Agency controls how the individual does the work.
- The manager or lead of the Agency directs the individual and provides LGS with performance information so that LGS can complete the performance appraisal.
- The Agency provides the individual with office space, office equipment, stationary, and an e-mail account.
- The individual may be required to attend training that is applicable to the project. Training is paid for by the Agency.
- The work performed by this individual is considered to be the work of MTC.

OAS determined that the control over the individuals was with the Agency and after considering the secondary factors, OAS concluded the Agency was the common-law employer of these individuals. The contract for both employees state a term of full-time, continuous employment in excess of six months. Therefore, the Agency should have enrolled, reported compensation earnable, and submitted contributions for both employees beginning the first day of their employment with the Agency.

Recommendation:

The Agency should immediately ensure that all common-law employees are enrolled and reported to CalPERS.

The Agency should work with EAMD to assess the impact of the membership enrollment issue and make the necessary adjustments to all active and retired member accounts pursuant to Government Code Section 20160. In each of the sampled Fiscal Years 2008-09 through 2011-12, MTC had between eight and 17 individuals providing services through LGS. EAMD should also work with the Agency to determine whether any of the other individuals providing services through LGS for the Agency are the common-law employees of the Agency and should make any necessary corrections required as a result of those determinations. The Agency should also work with EAMD to assess whether Government Code Section 20283 will apply.

Criteria:

Government Codes: § 20028, § 20056, § 20125, § 20160, § 20283, § 20502

METROPOLITAN TRANSPORTATION COMMISSION

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives outlined in Appendix A. The procedures performed provide reasonable, but not absolute, assurance that the Agency complied with the specific provisions of the PERL and CalPERS contract except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, of California Code of Regulations.

Respectfully submitted,

Original signed by Beliz Chappuie

BELIZ CHAPPUIE, CPA, MBA
Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
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APPENDIX A

OBJECTIVES

METROPOLITAN TRANSPORTATION COMMISSION

OBJECTIVES

The objectives of this review were limited to determine whether the Agency complied with:

- Applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the CCR.
- Reporting and enrollment procedures prescribed in the Agency's retirement contract with CalPERS.

This review did not include an assessment as to whether the Agency is a "public agency," and expresses no opinion or finding with respect to whether the Agency is a public agency or whether its employees are employed by a public agency.

METHODOLOGY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

✓ Reviewed:
- o Provisions of the contract and contract amendments between the Agency and CalPERS
- o Correspondence files maintained at CalPERS
- o Agency Board minutes and Agency Board resolutions
- o Agency written labor policies and agreements
- o Agency salary, wage, and benefit agreements including applicable resolutions
- o Agency personnel records and employee time records
- o Agency payroll information including Contribution Detail Transaction History reports
- o Documents related to employee payrate, special compensation, and benefits
- o Various other relevant documents

✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.

✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the Agency's governing body in accordance with requirements of applicable public meetings laws.

- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when unlawful employment occurs.
- ✓ Reviewed the Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entity organizational structure to determine whether employees of the affiliated entity qualified for CalPERS membership and were enrolled as required.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide additional service credits for unused sick leave.

APPENDIX B

AGENCY'S WRITTEN RESPONSE

Note: The Agency provided an attachment to the response that was intentionally omitted from this appendix.

METROPOLITAN
TRANSPORTATION
COMMISSION

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Amy Rein Worth
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Steve Heminger
Executive Director

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July 30, 2015

Ms. Young Hamilton, Acting Chief
California Public Employees' Retirement System
Office of Audit Services
400 "Q" Street
Sacramento, CA 95811

Re: Response to Draft Report on Compliance Review CalPERS ID: 6361598907

Dear Ms. Hamilton:

The Metropolitan Transportation Commission (MTC) is in receipt of the Office of Audit Service's (OAS) May 2013 draft report relating to the contract between MTC and the California Public Employees' Retirement System (CalPERS). MTC welcomes the opportunity to respond to the draft report.

For the first three findings, MTC will implement the recommendations connected to these three findings and already has taken steps to do so.

As to the fourth finding, we disagree and present further information for OAS to consider before issuing the final report.

FINDINGS, RECOMMENDATIONS, AND MTC'S RESPONSE

Finding No. 1: The Agency pay schedule did not meet all the Government Code and CCR requirements

Recommendation:

The Agency should ensure reported payrates are set forth in a publicly available pay schedule and that pay schedules meet the other requirements of payrate under Government Code Section 20636 and CCR Section 570.5. Government Code Section 20636(d) also requires that payrate and special compensation schedules, ordinances, or similar documents must be public records available for public scrutiny. The Agency should ensure that payrates and earnings are correctly reported to CalPERS in accordance with the relevant statutes, regulations and approved pay schedules. The Agency should work with CalPERS Employer Account Management Division (EAMD) to make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160.

MTC response:

Finding 1A. MTC maintained duly approved pay schedules that listed the pay grade and salary steps for each pay grade. The pay schedules are public documents. However, in order to resolve this matter, MTC has added information to these schedules. The revised pay schedules include the following: position title for every employee position, pay rate for each position and time base for each pay rate position. This information is all contained in a single board approved document. We believe the new schedule meets code requirements and will resolve this finding. Attachment 1 is the board approved document which includes the resolution and the pay schedule. The link to the pay schedule is: http://jobs.mtc.ca.gov/SalarySchedules/list.html.

Finding 1B. MTC maintained duly approved written contracts that listed the pay for the current Executive Director and General Counsel. The contracts are public documents. However, in order to resolve this matter, MTC developed an appropriate resolution for approval by the MTC Commission. The resolution includes the pay schedule for the Executive Director and General Counsel as required by CCR Title 2, Section 570.5. The information included in the resolution includes: position title, pay rate and time base. This information is all contained in a single board approved document. There was also another resolution that approved the pay schedules for the two positions for the last three years. We believe the new resolution meets the audit requirement and will resolve this finding. A copy of the board approved resolution and pay schedule is included in Attachment 1. The link to the pay schedule is:
http://jobs.mtc.ca.gov/SalarySchedules/list.html.

Finding No. 2: The Agency did not enroll an eligible part-time employee as required

Recommendation:

The Agency should monitor the hours worked by part-time employees and ensure employees are enrolled when membership eligibility requirements are met. The Agency should work with EAMD to make adjustments, if necessary, to any impacted active and retired member accounts pursuant to Government Code Section 20160. The Agency should also work with EAMD to assess whether Government Code Section 20283 will apply.

MTC response:

MTC monitors the hours worked by part-time employees to ensure that they are enrolled in CalPERS when eligibility requirements are met. In this instance, MTC tracked hours based on a calendar rather than a fiscal year, whereas CalPERS used a fiscal year, resulting in one employee exceeding the 1,000 hour limit. While this is a singular event, MTC will avoid a repeat of the error in the future by running and monitoring a Time History report from our Ceridian HR/Payroll system. The report will be run to cover hours worked by all part-time employees. MTC will take appropriate action should a part time employee exceed 1,000 hours in a single fiscal year. MTC will work with PERS on any corrective action that is required for this one employee.

Finding No. 3: The Agency unlawfully employed a retired annuitant

Recommendation:

Agency should monitor the hours worked by retired annuitants in order to ensure the Agency complies with applicable working after retirement statutes contained in the Government Codes. OAS recommends the Agency work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action to address this finding.

MTC response:

MTC monitors the hours worked by retired annuitants to ensure that they do not exceed limitations on number of hours worked. In this instance, MTC tracked hours based on a calendar rather than a fiscal year, whereas CalPERS used a fiscal year, resulting in one retired annuitant exceeding the 960 hour threshold. MTC will run a Time History report from our Ceridian HR/Payroll system for retired annuitants to prevent a repeat in the future. The report will be run and monitored on a monthly basis by fiscal year to monitor hours worked and ensure they do not exceed the 960 hour threshold. We will notify the employee(s) and supervisor of the accumulated hours worked and that the 960 threshold is not breached without the employee and PERS being informed. MTC will work with PERS on any corrective action that is required for this one employee.

Finding No. 4: The Agency did not enroll eligible employees into CalPERS membership

Recommendation:

The Agency should immediately ensure that all common law employees are enrolled and reported to CalPERS. The Agency should work with EAMD to assess the impact of the membership enrollment issue and make the necessary adjustments to all active and retired member accounts pursuant to Government Code Section 20160. In each of the sampled fiscal years 2008-09 through 2011-12, MTC had between eight and 17 individuals providing services through LGS. EAMD should also work with the Agency to determine whether any of the other individuals that providing services through LGS for the Agency are the common law employees of the agency and should make any necessary corrections required as a result of those determinations. The Agency should also work with EAMD to assess whether Government Code Section 20283 will apply.

MTC response:

MTC disagrees with the conclusion that MTC was required to offer the LGS employees CalPERS membership and to report benefit earnings through MTC's payroll. The LGS employees were in fact provided CalPERS membership and benefit earnings were reported by LGS throughout the employees' assignment to MTC.

MTC response: (continued)

MTC has a valid contract with LGS to provide project-based staffing for specific assignments. LGS is not a "temporary agency" as suggested in the report but rather a Joint Powers Authority (JPA) that provides various governmental services, including temporary staffing, exclusively to government agencies. As part of the LGS/MTC agreement:

- LGS meets the criteria for membership in CalPERS
- LGS has a valid contract with CalPERS to provide retirement services
- LGS directly provides CalPERS membership to all employees
- All LGS employees assigned to MTC were provided immediate CalPERS membership
- LGS reports the appropriate benefit earnings, including salary and service credits to CalPERS

MTC did not fail to enroll "an employee into membership when he or she becomes eligible or within 90 days thereof ..." specifically because MTC was certain as part of our LGS agreement that the employees assigned to MTC were offered immediate PERS membership through the LGS agreement with CalPERS and that LGS employees maintained their PERS benefits throughout their relationship with MTC.

By contracting with LGS, a valid CalPERS contract agency, MTC was assured that the employees would receive CalPERS retirement benefits. If there is a question about LGS administration of PERS membership benefits, that issue should be addressed with LGS, not transferred to MTC. We respectfully request that this finding be removed.

If you have any questions about MTC's responses to the draft audit, please do not hesitate to contact me or one of my staff that have been working with you during the audit process: Robin James, Human Resource Manager, at 510-817-5740 (rjames@mtc.ca.gov) or Eva Sun, Principal Finance Director at 510-817-5795 (esun@mtc.ca.gov).

Original signed by Steve Heminger

Steve Heminger
Executive Director

cc: Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Chief, EAMD, CalPERS
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Alix Bockelman, Deputy Executive Director, Policy, MTC
Mamie Lai, Director, Administrative & Technology Services and EEO Officer, MTC
Eva Sun, Finance, Principal Finance Director, MTC
Robin James, Human Resource Manager, MTC

Attachment
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