



Richland County Transportation Penny Tax Program Audit

May 1, 2013 through May 31, 2018

Final Report
July 30, 2020

South Carolina Department of Revenue
300A Outlet Point Boulevard
Columbia, South Carolina 29210

I. INTRODUCTION

The South Carolina Department of Revenue's (Department) audit of the Richland County Transportation Penny Tax Program was conducted to ensure public accountability and transparency in collection and expenditure of Penny Tax revenue from May 1, 2013 through May 31, 2018. The audit was performed as a result of the South Carolina Supreme Court's March 2018 ruling that the Department has extensive administrative, oversight, and enforcement responsibilities in the Transportation Act and throughout Title 12 of the South Carolina Code of Laws.

II. SCOPE

The audit scope includes all Richland County Transportation Penny Tax expenditures from May 1, 2013 through May 31, 2018.

The Department began the audit by requesting that Richland County (County) provide documentation related to the Penny Tax Program, including policies and procedures, internal and external audits, contracts, general ledgers, invoices, journal entries, payment records, and other documents showing all dollars collected as well as all dollars expended. The Department also requested an itemized list of Penny Tax projects, including budgeted and expended amounts, as well as documentation related to Central Midlands Regional Transit Authority (CMRTA), Small Local Business Enterprise (SLBE), and Mentor-Mentee Program. Richland County Finance Director Stacey Hamm answered questions and provided supplemental documentation necessary for completion of the audit.

All information received by the Department was reviewed as follows:

- *Expenses on the general ledger were organized with supporting documentation;*
- *Expenses were assessed for eligibility or ineligibility based on audit authority; and*
- *Ineligible expenses were categorized with an explanation.*

The Department used the following authorities to assess the eligibility of all expenses:

Transportation Act permits Penny Tax revenue to be used for the capital costs of highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects.

Supreme Court determined that a proper expenditure of Penny Tax revenue must be tethered to a specific transportation-related capital project or the administration of a specific transportation-related capital project.

Circuit Court imposed Guidelines in April 2018 for determining whether Richland County's expenditures of Penny Tax revenue comply with South Carolina law. The Guidelines define "capital costs" as "capital" expenditures under Generally Accepted Accounting Principles (GAAP).

Governmental Accounting Standards Board (GASB) is the source of GAAP used by state and local governments.

III. BACKGROUND

The Transportation Act empowers counties to impose, pursuant to a referendum, a sales and use tax not to exceed 1% within its jurisdiction for a single project or for multiple projects for a specific period of time to collect a limited amount of money. The revenue is to be used “to provide funding for highways, roads, streets, bridges, mass transit systems, greenbelts, and other transportation-related projects including, but not limited to, drainage facilities relating to the highways, roads, streets, bridges, and other transportation related projects.”

In 2012, Richland County Council proposed a transportation Penny Tax not to exceed 22 years, at a maximum cost not to exceed \$1,037,900,000, to fund construction and improvement of roadways, bicycle and pedestrian pathways, greenways, and an expansion of the County bus service. County citizens voted to approve the referendum which mandated Council spend:

*\$656,020,644 on road, drainage, as well as bridge construction and improvements;
\$300,991,000 on the Midlands bus system; and
\$80,888,356 on pedestrian sidewalks, bike paths, intersections, and greenways.*

After enactment of the Richland County Transportation Penny Tax, the County contracted with a Program Development Team (PDT) to assist with the financial management, planning, design, and construction administration of the Penny Tax projects. The PDT is a joint venture led by M.B. Kahn Construction, ICA Engineering, and Brownstone Construction Group. Given its contractual relationship with the County and its responsibilities for Penny Tax projects, the Department reviewed the County’s contract with PDT as a part of this audit.

IV. SUMMARY OF AUDIT FINDINGS

Ineligible Expenses:

*Audit Expenses (\$71,275)
Richland County Operating Expenses (\$212,843)
Mentor-Mentee Program Fees (\$89,000)
Legal Expenses (\$800,124)
PDT Start-up Costs (\$1,813,297) PDT Recurring/Misc. Costs (\$909,660)
Public Relations Costs (\$993,868)
Small Local Business Enterprise (SLBE) (\$1,033,384)
Mill Creek Property-Mitigation Bank (\$6,673,654)
Local Road Resurfacing Program (\$0)
PDT Program Management Fees (\$19,964,294)
Subtotal: \$32,561,399*

*Amount Repaid by County to Penny Tax Fund from General Fund: \$1,484,889¹
Total: \$31,076,510*

*Central Midlands Regional Transit Authority (CMRTA) (\$1,395,163)
Grand Total: \$32,471,673*

¹ The County transferred funds from its General Fund to its Penny Tax Fund on two occasions. There were four transfers from the General Fund to the Penny Tax Fund on June 30, 2018 for \$350,000, \$124,515.70, \$10,000, and \$372.95. One million dollars was transferred on February 18, 2019.

V. FINDINGS OF INELIGIBLE EXPENSES PAID BY RICHLAND COUNTY

Audit Expenses (Preliminary \$71,275; Final \$71,275)

Richland County spent \$71,275 on audits by Cherry Bekaert and Elliott Davis. These audits did not directly benefit a specific transportation project. Audits (i.e. an accounting of government activities) are a normal cost of doing business; thus, the Penny Tax revenue spent on these audits cannot be classified as a capital cost. Therefore, they are ineligible under the Guidelines. Thus, the Penny Tax revenue spent on these audits cannot be classified as a capital cost.

Richland County Operating Expenses (Preliminary \$212,843; Final \$212,843)

During the audit period, the County spent \$212,843 of Penny Tax revenue to purchase computer software, Columbia sportswear, media ads, vehicles (three Ford Escapes and a Ford Explorer), cell phones, employee training (including meals and travel), and office supplies. These costs do not directly benefit a transportation project nor are the costs tethered to a project or the direct administration of a project.

Mentor-Mentee Program Fees (Preliminary \$260,000; Final \$89,000)

Richland County spent \$89,000 on the Mentor-Mentee Program fees. The Guidelines prohibit the use of Penny Tax funds on Mentor-Mentee Programs. These costs are also duplicative costs because, as the Supreme Court noted, the County pays both the mentor and the mentee for the same tasks. Thus, they are ineligible under both the Guidelines and the Supreme Court's decision. In addition, these costs do not directly benefit a transportation project. Finally, the Mentor-Mentee Program is not itself a transportation-related project; it is a job-training program.

Based on additional review and supplemental information obtained after the preliminary audit findings, the Department has determined some expenses that were originally deemed to be ineligible Mentor-Mentee Program fees were actually paid to Mr. Newman and Ms. James for easement and right-of-way work unrelated to the Mentor-Mentee Program. Legal and other professional fees incurred in connection with easement and right-of-ways are eligible direct costs under the Guidelines. Accordingly, the Department has adjusted its preliminary findings related to Mentor-Mentee Program fees by \$171,000.

Legal Expenses (Preliminary \$832,896; Final \$800,124)

Through May 2018, the County used \$473,813 of Penny Tax revenue to pay attorneys' fees during the pending Penny Tax litigation with the Department. The fees and costs incurred as a result of this litigation are not capital costs. Moreover, this litigation expense is not tethered to a project or the direct administration of a project. Litigation expenses do not directly benefit a project and are not necessary to put a project in its intended location and condition for use.

The County also spent \$326,311 on other legal fees related to a contract protest and a Request for Qualifications. Regarding the contract protest, an attorney's involvement in this dispute does not directly benefit any project and is not necessary to put a project into its intended location and condition for use. Regarding the procurement matter, the County has a fully functioning procurement and contracting office and also paid PDT to perform procurement work for all Penny Tax projects.

The County was late in remitting payment to the McNair Law Firm on four occasions. As a result, the McNair firm included the overdue fees on subsequent invoices. In the preliminary audit

findings, the Department inadvertently counted the unpaid fees twice because they appeared on multiple invoices. Thus, the original amount of ineligible legal fees has been reduced by \$32,773.

PDT Start-up Costs (Preliminary \$1,813,297; Final \$1,813,297) and PDT Recurring/Miscellaneous Costs (Preliminary \$1,018,844; Final \$909,660)

In July 2014, Richland County executed a Limited Notice to Proceed (LNTP) contract with the PDT, agreeing to pay start-up costs and other routine office expenses including coffee supplies, cups, lids, postage, tables, chairs, software, napkins, engineering supplies, office supplies, plumbing/toilet services, plants, cars (GMC Acadia and Chevy Silverado), insurance, Google Apps for Business, a Nikon Camera, an icemaker, an office lease, and a protection plan for refrigerator/microwave. Ineligible start-up costs under the LNTP total \$1,813,297.

In November 2014, the County then executed a Program Management Agreement with the PDT in which the County agreed to pay the PDT's recurring/miscellaneous costs, such as bookshelves, kitchen supplies, break room supplies, business cards, cell phones, carpet cleaning, custodial service, light bulbs, coffee, coasters, computers, computer allowances, computer stipends, electricity, and office chairs. The County also paid for the PDT's garbage services, HVAC repair, security cameras, intern program breakfasts, logo and decals, termite and pest control, recycling, plumbing, door lock repair, internet/telephone, vehicle allowances, and subscription to *The State* newspaper. Ineligible PDT recurring/miscellaneous costs total \$909,660.

The preliminary amount of \$1,018,844 is reduced by \$109,184 because the expense was classified incorrectly. This expense has been reclassified to ineligible PDT Program Management Fees, which has been increased by \$109,184.

The costs paid by the County to the PDT under these contracts are not capital costs. The items outlined above are not an exhaustive list of the excluded costs in this category, but illustrate that these "start-up costs" and recurring/miscellaneous costs are simply costs associated with the normal cost of doing business. Under the Guidelines, such costs are ineligible expenditures of Penny Tax revenue. In addition, these costs are neither reasonable nor necessary, particularly when the PDT is comprised of existing businesses with established, functioning offices.

Public Relations Costs (Preliminary \$993,868; Final \$993,868)

Through May 2018, Richland County has spent \$993,868 of Penny Tax revenue on public relations costs. This includes \$648,292 paid to Dennis Corporation, an entity separate from the PDT, to provide public relations services for the Dirt Road Paving Program. The cost of public relations is not a capital cost. The normal costs of doing business are ineligible capital costs under the Guidelines. Public relations services are a normal cost of doing business for the County, as evidenced by the fact the County has its own public information office. The Supreme Court specifically identified paying additional public relations firms – when a fully operational public information office exists within the County – as "dubious expenditures" of Penny Tax funds. Additionally, public relations efforts undertaken by Dennis Corporation on the County's behalf were duplicative of public relations work contracted to be performed by the PDT.

Small Local Business Enterprise (SLBE) (Preliminary \$1,219,830; Final \$1,033,384)

Richland County used \$1,033,384 in Penny Tax revenue to fund an entire government agency, the Small and Local Business Enterprise (SLBE), which is unrelated to the Richland County Transportation Penny Tax Program. The SLBE now exists as a program within the County's Office of Small Business Opportunity. Primary costs include:

*\$279,716 in salaries for agency staff;
\$213,083 to Comprehensive B Consulting Services to advise agency staff; and
\$279,903 to Tydings & Rosenberg LLP for professional services related to
administration.*

These expenditures are ineligible for three reasons. First, “ineligible costs” are all costs not tethered to a project or the direct administration of a project. The costs of the SLBE, its staff, and its third-party consultants are not tethered to a specific project nor the direct administration of a project. Second, these costs do not directly benefit a transportation project. Third, the Guidelines specifically state that county-wide programs and county support costs are ineligible costs.

The County does not dispute that costs of the SLBE, its staff, and its consultants were ineligible. Nevertheless, in its response to the preliminary report, the County contended the Department incorrectly double counted certain SLBE costs, thereby inflating the ineligible SLBE costs. Prior to the preliminary report, the County attempted to reclassify SLBE expenses from the Penny Tax Fund to an SLBE account that did not involve Penny Tax funds. Due to the County’s failure to reclassify the expenses correctly, extra entries were created for the Transportation Fund. Based on a review of supplemental information provided by Richland County, the Department has adjusted its preliminary findings related to the ineligible SLBE expenses by \$186,446.

Mill Creek Property - Mitigation Bank (Preliminary \$6,673,654; Final \$6,673,654)

Richland County used Penny Tax revenue to purchase the Mill Creek property and mitigation credits from a mitigation bank. The County’s share of the purchase price of the Mill Creek property and the cost of all mitigation credits not applied to Penny Tax projects must be refunded to the Penny Tax Fund. Mitigation credits actually used in connection with valid Penny Tax projects are eligible costs.

Information obtained from the County shows the value of the 1,786.35 acre Mill Creek property is \$2,511,400. The closing statement shows the County and Mill Creek Mitigation Holdings, LLC (MCMH) actually paid \$9,044,196 to buy the property. The County paid \$6,673,654 toward the purchase price of the land and MCMH paid the remainder. At the same time, through a series of transactions, the County purchased \$11 Million in mitigation credits from MCMH. Based on the Department’s audit, the County spent almost \$17 Million to obtain less than \$11 Million in mitigation credits necessary for eligible projects.

It is clear the County did not need all the mitigation credits it purchased. The County has sold off an unknown number of stream and wetland mitigation credits purchased from MCMH. Although it is not clear how many of the credits were sold during the audit period, the County should reimburse the Penny Tax Fund for the entire purchase price of each resold credit.

Furthermore, in a recently produced video, the County claims mitigation credits have been used for construction projects across the County, including the multi-million dollar China Jushi project. This project is not a transportation-related project. Credits purchased with Penny Tax funds should not have been used for the China Jushi project or any other project that is ineligible for Penny Tax funds.

Even though some Penny Tax projects required the use of mitigation credits, the cost of credits not used for transportation-related projects are ineligible. Similarly, the purchase of the Mill Creek property is not tethered to a specific transportation-related project or the direct administration of a

transportation-related project. Therefore, Penny Tax revenue for these purposes is ineligible under the Guidelines.

Local Road Resurfacing Program (Preliminary \$7,014,129; Final \$0)

According to the Guidelines, routine maintenance and repair is not a capital cost. The cost of a capital asset does not include ordinary repair cost to keep capital assets in operating condition. Only major additions, renovations, and other improvements which provide new uses or extend the useful life of an existing capital asset can be capitalized.

According to the PDT Monthly Progress Report, the type of work involved in road resurfacing includes “concrete pavement patching, cleaning and resealing of joints, and routing, cleaning and sealing of random cracks in pavements...and the milling, full depth patching, and/or resurfacing...” This is routine maintenance and repair work necessary to keep a road in operating condition that should have been paid out of the County’s General Fund. Consequently, the \$7,014,129 spent on resurfacing is not a proper Penny Tax expenditure.

Based on additional information provided by the County in response to the preliminary audit findings, the Department concludes these costs are eligible expenses. According to the County, “concrete pavement patching, cleaning and resealing of joints, and routing, cleaning and sealing of random cracks in pavements...and the milling, full depth patching, and/or resurfacing” is not routine maintenance. The County maintains that these roads were fully resurfaced and not merely repaired. Concrete and asphalt roads are resurfaced differently, but in either case, the entire or full depth of the road is replaced. Based on this explanation, the Department has determined these particular costs are permissible because these expenses extend the useful life of existing property for more than one year and therefore are capital costs according to the Guidelines.

PDT Program Management Fees (Preliminary \$19,855,110; Final \$19,964,294)

The PDT contract requires Richland County to pay the PDT \$30,100,000 (\$6,020,000 per year) to provide program management services, project controls/scheduling services, and public information and involvement services. The management fee funds the salaries for the 29 positions that perform the services, as well as the cost of an internship program (\$1,380,000). The 29 positions are employees of the entities that comprise PDT.

Some of the positions perform public relations services. Public relations is not necessary to place a project in its intended location and condition for use, meaning the cost of public relations is not a capital cost. Thus, the salaries for the Public Information Director, Assistant Public Information Director, Outreach Manager, Outreach Strategist, and Web Designer are ineligible to be paid with Penny Tax revenue. The internship program, Office Manager, and Secretary are similarly unnecessary and ineligible to be funded with Penny Tax revenue.

The salaries for other positions outlined below are duplicative and unreasonable because individual employees of the entities that comprise PDT are getting paid salaries to manage the work PDT is paid to perform. In other words, PDT is getting a management fee to manage itself:

1) Richland County pays the salaries of the Procurement Manager and Assistant Procurement Manager, and then pays PDT a percentage of the total cost of a project for proposal preparation and procurement services.

- 2) Richland County pays the salary of the Construction Manager, and then pays PDT a percentage of the total cost of a project for the construction services for roadway transportation projects.
- 3) Richland County pays the salary for a Right-of-Way Manager, and then pays PDT on a per parcel basis for right-of-way acquisitions, not to mention the separate costs of funding for the Mentor-Mentee Program.
- 4) Richland County pays the salary of a Project Utility Manager, and then the County pays the PDT 4.5% of the total cost of each project for utility relocation coordination.
- 5) Richland County pays the salary of a Senior Traffic Engineer, and then pays the PDT 4.5% or 6.5% of the total cost of a project for performing traffic studies.
- 6) The positions of Senior Estimator and Estimator, along with two Project Manager and four Assistant Project Manager positions, perform duties for which PDT receives both 4.5% and 6.5% of the total cost of every project.

The remaining positions are Principal, Program Manager, Deputy Program Manager, Program Administrator, Program Controls, Accountant Manager, and Accountant. These positions engage in administrative and managerial activities for specific transportation-related projects, but the compensation costs are duplicative of other payments to the PDT. The PDT, which is contractually responsible for the tasks performed by individuals filling these positions, already receives up to 11% of the total cost of each transportation project as payment for these activities.

The salaries are also duplicative because the County has paid non-PDT firms to perform the same activities. For example, the County pays the PDT to manage and provide public relations services for every transportation project, including the Dirt Road Paving Program. But the County hired Dennis Corporation and its subcontractors to manage the Dirt Road Paving Program and provide other services, including public relations. Dennis Corporation and its subcontractors received \$2,015 a month for customer service and \$5,508 for public outreach meetings connected with certain Dirt Road Paving projects.

There are other instances in which the County paid contractors outside of the PDT contract to perform work the PDT was already obligated to perform. For example, the County paid Holt Consulting Company, LLC (which then subcontracted with HDR Engineering, Inc., now known as ICA, one of the entities comprising the PDT) to provide engineering services for the widening of Clemson Road. These services include project management, environmental services/permitting, public coordination/public meetings, surveys and mapping, roadway design, utility coordination assistance, and geotechnical exploration and engineering services. Holt's services either overlapped with or were subsumed by services for which the County already paid the PDT. As a second example, the County paid Mead & Hunt, Inc. to provide services related to the widening of Shop Road while also paying the PDT for the same services, including public coordination/public meeting services, geotechnical investigations and engineering services, and project management services.

Moreover, the Department is concerned about an apparent conflict of interest with the PDT's change order process. During its audit, Cherry Bekaert noted that all change orders of subcontracts and vendor invoices are approved only by management of a PDT Partner. As a result, there is an

inherent conflict of interest due to the lack of a third party's involvement in the approval of change orders.

The PDT is made up of multiple entities in addition to the lead firms of MB Kahn, ICA Engineering, and Brownstone. All businesses in the PDT have performed work on Penny Tax projects, and they were paid for this work. In addition to the PDT management fee and the payments made for projects, the PDT receives a percentage of the total cost of each Penny Tax project. Thus, the higher a project costs, the higher the payment paid to the PDT. Although the Department did not examine each change order, "amounts paid in transactions involving conflicts of interest" are ineligible under the Guidelines.

To summarize, the County pays the salaries for 29 PDT employees, then pays PDT up to 11% of the total cost of each transportation project for services, and also pays PDT to manage itself while performing those services. In some cases, the County then hires non-PDT firms, paying for the same services a third time. Paying the PDT a flat management fee of up to 11% of the total cost of a project for the same activities is duplicative. Retaining non-PDT firms to perform the same activities is similarly duplicative. Therefore, the cost of the management fee through May 2018 (\$19,964,294) is an ineligible expense.

The amount of these ineligible Program Management Fees is increased by \$109,184, which reflects the reclassification of this expense from the PDT Recurring/Miscellaneous Costs.

VI. FINDINGS OF INELIGIBLE EXPENSES PAID BY CENTRAL MIDLANDS REGIONAL TRANSIT AUTHORITY (CMRTA)

In 2018, CMRTA operated with a staff of between 9 and 13 employees, paying more than \$1 Million in salary and benefits. CMRTA also contracts with a private transport operator, Transdev, to manage and run its public transportation services. The current contract between CMRTA and Transdev became effective in June 2015 and has a five-year term. Under this contract, CMRTA pays Transdev approximately \$13 Million annually. This includes paying the salary and benefits of Transdev's management team, including a General Manager who supervises CMRTA's day-to-day operations. Paying both an internal staff and an external team to manage and operate the CMRTA appears duplicative; however, the Department could not definitively determine whether these costs are ineligible under the Guidelines.

Transdev Start-up Costs (Preliminary \$18,671; Final \$0)

Transdev has operated CMRTA's "Fixed route services" and "Paratransit services" under different names since 2002, previously as Veolia. Despite this ongoing relationship, CMRTA paid Transdev \$18,671 in "Start-up Costs" as part of the contract initiated in June 2015.

Based on the review of additional information provided by CMRTA following the preliminary audit findings, the Department concludes these costs are eligible expenses. Transdev was awarded a new contract in May 2015, which included new contractual terms and additional responsibilities. In order to comply with these contractual terms and certain regulatory requirements, Transdev's bid proposal for the new contract included what Transdev labeled as "start-up costs," which included costs for pre-employment screening to comply with the FTA's DBE program and environmental assessment. It appears the six other bid proposals received by CMRTA for this contract also included similar "start-up costs," but were significantly higher than Transdev's bid. The Guidelines permit expenditures necessary to comply with state and federal requirements relating to the operation of a mass transit system, provided the expenses are reasonable and not

excessive. Based on the review of the information available, the Department has determined these particular “start-up costs” are permissible.

Transport Care Management Fee (Preliminary \$936,000; Final \$936,000)

Transport Care Services receives \$1,080,544 annually to operate the paratransit services. However, CMRTA also pays Transport Care a management fee of \$312,000 per year for paratransit operations. The total payment of \$936,000 to Transport Care is duplicative and ineligible under the Guidelines.

Public Relations Costs (Preliminary \$43,452; Final \$43,452)

The CMRTA spent \$43,452 on public relations and marketing provided by Chernoff Newman. The Supreme Court specifically identified paying additional public relations firms – when a fully operational public information office exists within the County – as “dubious expenditures” of Penny Tax funds. The same is true for the CMRTA. The CMRTA acknowledges its full-time staff of 11-13 employees perform a variety of functions, including “planning” and “marketing.” Thus, paying additional public relations firms to provide services already performed by CMRTA staff is a duplicative expenditure. Although the CMRTA contends certain Federal government programs allow for marketing expenses if the mass transit system intends to use federal funds, federal law does not control whether an expenditure of Penny Tax funds is permissible under state law. If anything, it demonstrates the CMRTA can use federal funds—rather than Penny Tax funds—to pay for any marketing costs. The CMRTA has conceded, prospectively, it has revenue sources other than Penny Tax funds it can use for marketing or public relations.

Legal Fees (Preliminary \$202,867; Final \$215,615)

CMRTA used \$215,615 in Penny Tax revenue to pay the cost of legal expenses related to the pending litigation between the Department and the County. Legal expenses are explicitly ineligible for payment with Penny Tax funds, according to the Guidelines.

Original amount increased \$12,748 based on documentation received by CMRTA stating actual amount paid.

Additionally, the Transdev contract requires payments to subcontractors for the following:

Lobbying (Preliminary: \$126,000; Final \$172,914)

CMRTA paid Transdev \$42,000 annually for a lobbyist, who is unnamed in the contract. CMRTA disputes (as of August 2019) the payments to Transdev for a lobbyist and is seeking repayment, stating that it did not want nor use a lobbyist. CMRTA did not identify the lobbyist. These expenses are unreasonable and ineligible under the Guidelines.

Based on supplemental documentation received from the CMRTA, the Department has adjusted its audit findings by \$46,914 to include additional lobbying services that were paid with Penny Tax funds. The CMRTA has advised the Department it agrees this cost is unreasonable and excessive. It has taken steps to recover these costs from Transdev since the lobbying expense was not explained in Transdev’s proposal, nor requested by CMRTA, and the lobbyist services were not provided by Campbell Consulting Group since the start of the Transdev contract.

Mystery Rider Program (Preliminary \$108,000; Final \$0)

CMRTA paid Influence Public Relations (Influence PR) \$36,000 to conduct a “Mystery Rider Program,” classified in the contract as “Marketing and Communications.” Public relations are ineligible under the Guidelines. The Guidelines also provide that costs associated with “establishment or support of programs to benefit constituents or persons” are ineligible.

Although these expenses were classified in the contract as “Marketing and Communications,” the CMRTA provided the Department additional information and documentation demonstrating the services provided under the “mystery rider program” are industry-standard quality assurance services. The reports generated by this program are reviewed by CMRTA staff and used for improving customer service and ensuring Transdev bus drivers are complying with their contractual obligations. These audit and quality assurance services are reasonable and tethered to the administration of this mass transit system. Accordingly, the Department agrees that \$36,000 are eligible expenses. Notably, the CMRTA has now expressed concern Influence Public Relations may not be the appropriate entity to provide Mystery Rider Services. The Department shares these concerns. The South Carolina Department of Transportation DBE Directory lists other vendors that appear to be better suited to provide data collection, quality assurance, performance monitoring, contract monitoring, mystery rider, secret shopper, and survey services type of work. Moreover, the Department questions the propriety of this expense in light of the fact the president of Influence Public Relations was a former director for the consulting group that provided the lobbying services for Transdev and/or the CMRTA that the Department has determined were ineligible uses of Penny Tax funds.

Promotional Expenses (Preliminary \$18,000; Final \$2,471)

CMRTA also paid Influence PR \$6,000 annually for “Promotional Expenses.” While the contract requires this payment, CMRTA advises that Transdev “never engaged [Influence PR] for [promotional expenses] and has since shifted the responsibility to an in-house employee.” Paying for services that were never received is clearly unreasonable. Therefore, these costs are ineligible under the Guidelines.

Based on documentation provided by CMRTA following the preliminary audit findings, the Department found that although the Transdev contract included itemized costs for Influence PR to provide “promotional expenses,” Transdev did not pay Influence PR the entire contracted amount because it ultimately shifted the responsibility to an in-house employee. Thus, the Department has adjusted its findings and reduced the amount of ineligible expenses in this category by \$15,529 since those amounts were never actually paid.

Disadvantaged Business Entity (DBE) Compliance (Preliminary \$18,000; Final \$24,711)

CMRTA paid Influence PR \$6,000 annually for conducting DBE compliance. Per CMRTA, the “DBE Compliance Office was to ensure Transdev[’s] compliance with the contract.” According to Transdev, however, Influence PR is not certified/approved to perform DBE compliance services “as of the proposed due date.”

Even assuming Influence PR now has a current certification, a public relations firm is not in a position to determine legal compliance with a contract; and CMRTA indicates Transdev did not use Influence PR for this service. CMRTA also indicates the responsibility for DBE compliance with the contract is now the responsibility of the Human Resources manager. Paying an uncertified entity to perform compliance reviews is unreasonable and ineligible according to the Guidelines.

In addition to the explanation above, the Department notes the CMRTA has a full-time staff of 11-13 employees that perform a variety of functions, including “contract oversight” and “regulatory compliance.” Thus, paying a public relations firm to provide services already performed by CMRTA staff is a duplicative and unnecessary expenditure. Based on supplemental documentation provided by CMRTA, the Department has adjusted its audit findings to increase the amount of ineligible expenses by \$6,711, which represents the actual amount paid for DBE compliance.

The CMRTA concedes payments made to Transdev for DBE compliance are unreasonable and not an eligible expense. Importantly, the CMRTA reviewed Transdev’s expenses and determined Transdev never engaged in a contract with Influence PR to provide DBE compliance.

VII. CONCLUSION

This audit identifies categories of Penny Tax expenditures the Department considers ineligible under the Transportation Act. The total amount spent in each category must be reimbursed to the Transportation Fund from the County’s General Fund. While the Department believes expenditures in some categories continue beyond the audit period and have not been reviewed, they are still ineligible and must be reimbursed from the County’s General Fund. The Department intends to bring the audit current in order to determine eligibility of those expenditures. Finally, going forward, CMRTA must take all necessary steps to ensure expenses which are ineligible for payment with Penny Tax funds are paid from other income sources.