

Agency Agreements Audit

Report #: 2022-18

Executive Summary

Audit Objective and Scope

Our audit focused on evaluating the design of the current operating structure and key controls related to developing, executing, and monitoring of Agreements. This included current agreements in force as well as past agreements for which commitments were already fulfilled at the time of audit.

The audit objective was to:

- Review and evaluate the processes for developing, administering, and managing Agreements to determine if they adhere to applicable policies, regulations, and industry best practices.

Audit Results

There is one Finding related to guidance and training for agreement managers and one Observation related to lack clarity of roles and responsibilities for agreements.

We identified the following primary control weakness as a Finding:

- Finding 1: Inadequate design of control activities specific to the planning and development of Agency Agreements (Rating: 4C)

Additionally we identified the following deficiencies that should be considered to strengthen agency controls as an observation:

- Observation 1: Inconsistent practices and understanding at the divisional level

Conclusion

Our audit found that while agreement processes are documented, there are opportunities to improve processes to better align with applicable policies, regulations, and industry best practices.

Overall, the agency's "decentralized operational structure"¹ has resulted in inadequate design of control activities that (1) would clearly establish requirements of a competent Agreement Manager (AM) and (2) subsequent monitoring and tracking of AMs to provide the mandatory training for proper accountability and oversight.

As such, the combination of these conditions has resulted in a "limited assurance" that AMs

¹ GAO Standards of Internal Control – Control Environment: Management establishes the organizational structure necessary to enable the entity to plan, execute, control, and assess the organization in achieving its objectives. Management develops the overall responsibilities from the entity's objectives that enable the entity to achieve its objectives and address related risks.

are provided the necessary training to ensure Agency Agreements (AA) are developed and managed with proper terms and conditions, in compliance with state and federal regulations.

Audit Results

The following table summarizes the analysis performed during Field Work and the associated exceptions (if any):

| Criteria | Attribute Tested | Results | Finding or Observation |
|---|---|--|---|
| Policy 604 Section 2.8.2 GAO Standards for Internal Controls | Identify assigned Agreement Managers | Complete list does not exist. | Finding 1: “Inadequate design of control activities specific to the development and management of Agency Agreements (4C)” |
| Policy 604 Section 2.8 | Adequate Training is provided to Agreement Managers | Training does not currently take place specific to Agreements. | |
| PCA ‘Contract Management Guidelines’ | Control Self-Assessment Survey of 65 Agreement Managers | Policies and Guidelines for administration do not exist as intended. | |
| PCAM Section III | Control Self-Assessment Survey of 65 Agreement Managers | Inconsistent understanding of documentary controls, risk reporting/issue escalation and monitoring controls. | Observation 1: Inconsistent Practices at the Divisional Level |

Positive Practices

During the audit, we observed additional positive practices and continuous improvement. Specifically, PCA-Agreements maintains an agreements database, which includes a variety of Agency Agreements including interlocal, intergovernmental, and 3rd party agreements.

Moreover, as part of its Procurement Workshop training series, agreements staff held an agency-wide training, covering various topics from its enabling authority and responsibility, and on-going efforts towards improving earlier collaboration with stakeholders. Lastly, PCA-management has rolled out its revised “Agreement Initiation Form” (mandatory); and previewed a soft launch of its “commitment tracking tool.”²

² Monitoring and tracking tool, which would allow PMs to track key commitments and will include functionalities such as tracking performance issues, past due dates, and notifications. This is in line with Strategic Goal 2.1.

Background

RCW Chapter 39.34 provides Sound Transit the general authority to enter into agreements with other governmental and quasi-governmental agencies in the ordinary course of its operations. Under this arrangement, “contractual agreements” are formed with various entities including: public or private rail entity, utilities for relocation purposes, and nonprofit organizations. This structure requires accountability oversight in ensuring public funds are safeguarded and contractual obligations are managed in accordance with applicable laws and requirements.

The agency’s Procurement, Contracts, and Agreements division, specifically the Agency Agreement Section assists agreement managers, as needed, through the agreement development process and ensures collaboration and concurrence among internal stakeholders.

After the agreement is executed, the day-to-day management of the agreements is designated to divisional agreement managers. This arrangement is similar to the decentralized procurement structure for other agency contracts and requires agreement managers and their respective teams to ensure contractual obligations are met in compliance with all applicable state, federal, and industry requirements.

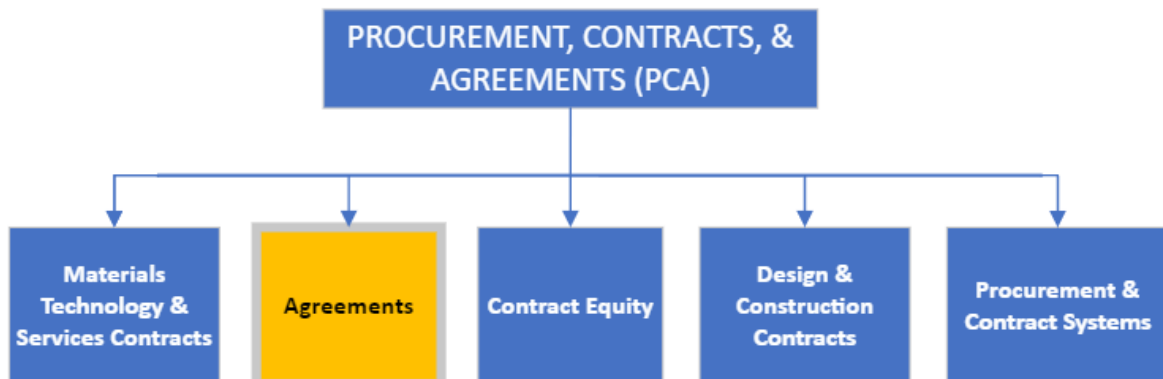


Figure 1: Procurement, Contracts and Agreements Organizational Chart. Retrieved from: Agency Organizational Chart.

The agency can engage in a variety of agreement ‘types,’ including interlocal, intergovernmental, and third-party agreements. Currently, there are several Agreement types, which can range from Interlocal Agreements (ILA)s, Funding Agreement, to Memorandum of Understanding (MOU)s. Examples of significant agency agreements include the following:

- Sound Transit and King County for the Operations and Maintenance of The Link Light Rail System (April 2019)
- ST Express Bus Service Operations and Maintenance (2019)
- Amended and Restated Agreement for Regional Fare Coordination System (One Regional Card for All, ORCA)
- King County Transit Security and Law Enforcement Services

As of November 2022, agency agreements were valued at approximately \$2.4 billion (B) since the inception of the agency, accounting for ~27% in relation to Procurement Methods (e.g., IFBs, etc.).³

Further, many agreements have been identified as eligible for federally awarded funds. The total federal drawdowns for those agreements were estimated at \$313 million (M), of which a majority were from FTA related grants. As a recipient of federal funds, ST’s management practices for agency agreements must comply with all federal requirements.

Audit Results

Agency Policy 604 Section 2.8 authorizes routine collaboration between PCA and agency departments (e.g., Legal, Finance, etc.) through the agency’s concurrence model, allowing the AA Division to adopt a “consultative role” in the development and administration of Agency Agreements. AMs are responsible for executing many of the key responsibilities including determination of agreement type, identification of appropriate language and terms, etc.

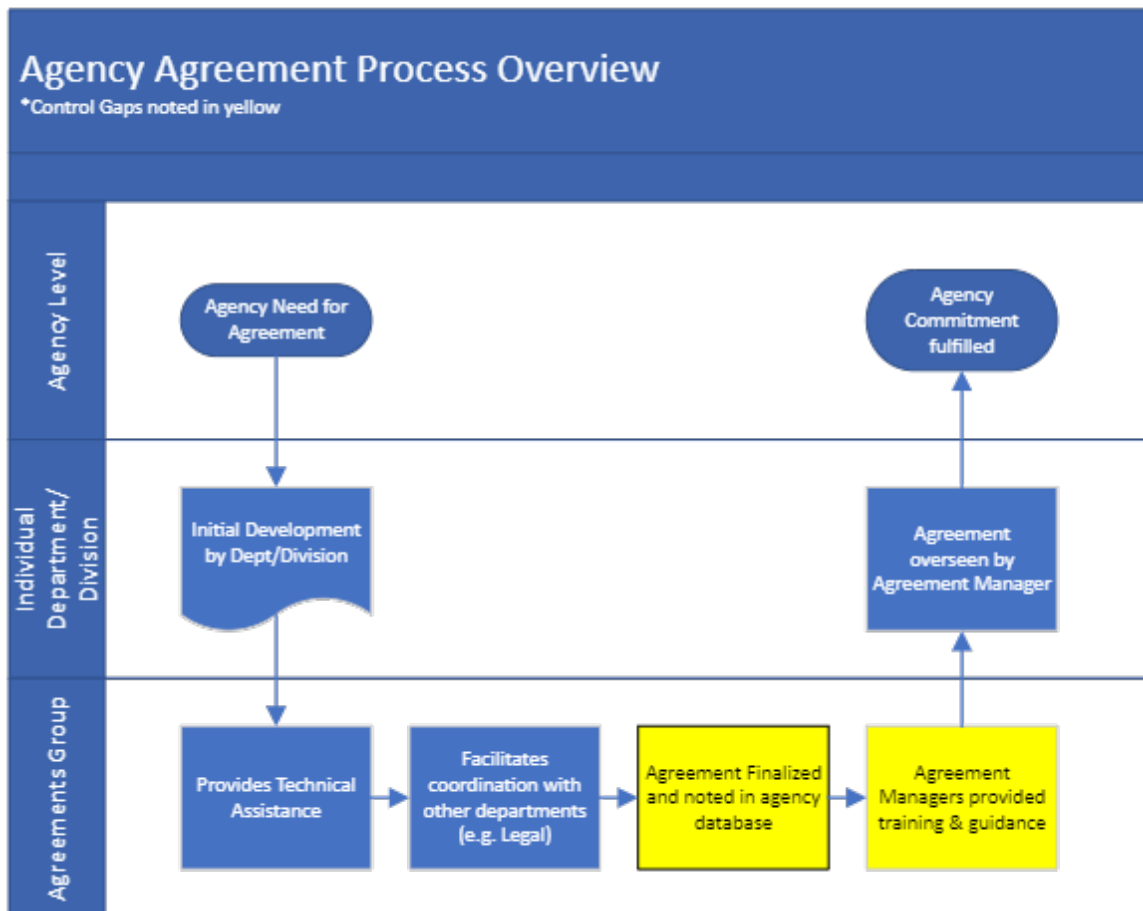


Figure 2. Agency Agreement Process Overview (with control gaps in yellow). Prepared by: Audit Division.

³ Total awards of \$2.4B inclusive of active and inactive agreements.

Overall, the decentralized operational structure has resulted in inadequate design of control activities that (1) would clearly establish requirements of a competent AM; and (2) subsequent monitoring and tracking of AMs to provide the mandatory training for proper accountability and oversight.

These conditions have resulted in a “limited assurance” that AMs are provided the requisite training to ensure proper development and management of Agency Agreements consistent with applicable industry standards and in compliance with state and federal regulations.

Finding 1: Inadequate design of control activities specific to the development and management of Agency Agreements (4C)

Per the PCAM, the role of the AA on any agreement includes providing an agreement type recommendation, agreement document drafting, strategy development, negotiations, editing, and acquiring signatures, as necessary.

Additionally, the AA is responsible for facilitating collaboration and concurrence across the agency, ensuring that draft agreements are distributed to internal stakeholders such as the Legal department for review, comment, and feedback at appropriate times in the development process prior to execution.

Based on our review of agency criteria and the audit procedures applied, we observed that controls surrounding roles and responsibilities for the Agency Agreements process can be improved. Specific conditions we observed are as follows:

1. Lack of visibility into delegated Agreement Managers at a given time,
2. Inadequate training to ensure all Agreement Managers are competent in developing and administering agency agreements,
3. Policy requirements surrounding Agreement development and Management is not clear in its applicability to agency agreements.

Therefore, while the PCAM provides a general procedural framework for the agreement formation process, it lacks the specificity needed to guide agreement managers through the steps in ensuring compliance.

We recommend the Executive Council, in consultation with Procurement, Contracts and Agreements, re-evaluate the existing **operational structure** and related policies (e.g., Policy 604, PCAM, etc.) tailored to meet ST’s needs commensurate to its resources.

Note: Additional details regarding the finding, observation and recommendations were provided to the primary stakeholders and are available upon request.

Additionally, to strengthen internal controls, we also recommend Procurement, Contracts and Agreements Section to re-examine their responsibilities for defining the agreement procedures, and then ensure that adequate education and training is provided to all agency departments and divisions.

Trainings should emphasize, but not be limited to management's expectations for agreements managers regarding the development and implementation of agency-wide policies for the proper oversight of "federalized agency agreements"

Standards & Methodology

Standards

We conducted this performance audit in accordance with our charter and Generally Accepted Government Auditing Standards (GAGAS or "Yellow Book") issued by the United States Government Accountability Office (GAO) and with the International Standards for the Professional Practice of Internal Auditing" The Institute of Internal Auditors' (IIA) International Professional Practices Framework (IPPF or "Red Book") which includes the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the International Standards for the Professional Practice of Internal Auditing (the Standards), and the Definition of Internal Auditing.

These 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.

Additionally, the Audit Division is also committed to following safety oversight standards set forth by the Federal Transit Administration (FTA), Federal Railroad Administration (FRA); as well as all other relevant requirements or standards for auditing.

Audit Processes

Our audits are risk-based and focus on the areas with the highest potential risk impacts or likelihood at the time of observation. Each audit starts by examining the current processes in place relative to (1) Laws or Regulatory Requirements, (2) Agency Policies and Procedures and (3) Industry Best Practices.

During the "Planning" phase, we assess the engagement-specific conditions and risk, which informs the engagement objectives and scope. At this time, relevant controls to mitigate these risks are also identified.

The audit "Field Work" phase then examines the design of the identified controls to determine if the intent meets the regulations, policies, etc. If the controls are designed to adequately mitigate the risk (control environment), we move on to assess the degree to which the controls are mitigating the risk (control activities).

Any areas identified where the control environment or activities do not adequately mitigate the identified risk are identified as an exception. Exceptions are then defined as Findings if they are significant or Observations if they are an opportunity for improvement.

All Findings are risk-rated based on potential likelihood and impact based on attributes outlined in our risk rating process.

Diversity, Equity, and Inclusion Review

During this engagement, we sought to understand how Diversity, Equity and Inclusion have been incorporated into Sound Transit's Agreements function. Each division of Sound Transit is responsible for creating and implementing Diversity, Equity, and Inclusion goals as part of the agency's 2021-2022 agency Goal Cascading process.

Goals for the Agreements department for 2022 included:

- Help to increase diversity in the workforce of Sound Transit's contracting partners and increase access and opportunities for SBE/DBE partners by identifying actions Agency Agreements can take to streamline the processes for developing and administering new agreements with nonprofit and government partners that provide apprenticeship and other training programs for ST, to be included in the PCD action plan.

Audit met with the Director of Contract Equity to check in on the status of these goals and found that overall steps have been taken to implement new processes, programs, and initiatives for the contracting function, but that implementation has not carried over to the Agreements function of PCD.

Considering these factors, we recommend that Sound Transit continue to develop its resources for DEI in procurement and carry these through to apply to the agreements function while working with third parties to ensure DEI is considered in all procurements, regardless of procurement type.

Appendix A

Sound Transit's Title VI notice of rights

Sound Transit conducts Title VI equity analyses for service and fare decisions to ensure they are made as equitably as possible.

More information on Sound Transit's Title VI notice of rights and the procedures to file a complaint may be obtained by:

- Phone: 888-889-6368; TTY Relay 711;
- Email: stdiscriminationcomplaint@soundtransit.org;
- Mailing to Sound Transit, Attn: Customer Service, 401 S. Jackson St. Seattle, Washington 98104-2826; or
- Visiting our offices located at 401 S. Jackson St. Seattle, Washington 98104.

A complaint may be filed directly with the Federal Transit Administration Office of Civil Rights, Attention: Complaint Team, East Building, 5th Floor – TCR, 1200 New Jersey Avenue, SE, Washington, DC 20590 or call 888-446-4511.

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Appendix B

Management's Response

Prepared by: Procurement, Contracts and Agreements Division

Date: 02/28/23

Audit: Agency Agreements Audit #2022-18

Management Response:

Management agrees with the audit report finding.

Finding 1: Inadequate design of control activities specific to the planning and development of Agency Agreements (Rating 4C).

Management Response / Action Plan:

Procurements, Contracts and Agreements (PCA) agrees with the conclusion in the audit report that Sound Transit's decentralized operational structure and delegations of authority for agency agreements provides limited assurance that agreement managers are provided the necessary training to ensure agreements are managed properly post execution.

It is important to note that "agreement manager" is not a job title in Sound Transit. It is a functional role assigned to a Sound Transit employee by their department leadership when that department generates a new agreement.

PCA agrees with the recommendation in the audit report for a multi-pronged, agency level approach to the training of agreement managers. PCA views the following activities as actions it can take to help. PCA believes these activities will also help address the audit observations of inconsistent practices and understanding at the divisional level.

- 1) PCA to review existing Contract Management training for vendor contracts to determine if modifications are necessary to incorporate agency agreements into the training scope, and make any necessary modifications as identified.
- 2) Propose revisions to agency Policy 604 to require PCA Contract Management training for agreement managers and to authorize PCA to reject/remove/replace agreement managers who have not taken the training.
- 3) Suggest updates to PCPP-16 "Third Party Agreements" to move the procedures for agreements invoice review from PCPP-07 "Progress Payments and Invoices" into PCPP-16 and for PSO to provide associated process training for agreement managers.

Timeline for corrective action:

- 1) Complete review of Contract Management training by 6/30/23; complete modifications as needed by 12/31/23.
- 2) During the next round of agency revisions to Policy 604 anticipated to occur during 2023.
- 3) During current PSO led effort to reimagine PCPP-16.