

FTA

FEDERAL TRANSIT ADMINISTRATION

Sacramento Regional Transit District
Disadvantaged Business Enterprise (DBE) Program
Compliance Review

Final Report
December 2020



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology – This report details the results of a compliance review of the Sacramento Regional Transit District's (SacRT's) Disadvantaged Business Enterprise (DBE) program implementation. The compliance review examined this agency's DBE program procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and SacRT. In addition, the following entities were interviewed as part of this review: SacRT officials; the Sacramento Asian Pacific Chamber of Commerce; the Sacramento Black Chamber of Commerce; the Sacramento Hispanic Chamber of Commerce; the U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, Small Business Transportation Resource Center, Southwest Region; prime and subcontractors; and other stakeholders. The two-day review included interviews, assessments of data collection systems, and review of program and contract documents.

SacRT's DBE Program includes the following positive program elements:

Positive Program Elements

- **DBE Liaison Officer** – SacRT's DBE Liaison Officer was experienced and knowledgeable and received positive comments on his performance from interested parties.
- **Public Participation** – SacRT did a good job coordinating and partnering with small and disadvantaged advocacy groups, DBE firms, and small businesses in the implementation of its DBE Program.
- **Prompt Payment** – SacRT required prime contractors to confirm DBE subcontractors were paid in accordance with prompt payment requirements before prime contractors received payment on all invoices and before project closeout.
- **Legal Remedies** – SacRT included substantial legal remedies and other enforcements in its DBE Program and related agreements.

The Program has the following deficiencies:

Deficiencies

- **DBE Program Plan** – SacRT’s DBE Program Plan was out of date and in some cases did not reflect actual practice (i.e., procedures related to Transit Vehicle Manufacturer procurements).
- **DBE Policy Statement** – SacRT did not fully document that it distributed its policy statement as indicated in its policy statement.
- **DBE Liaison Officer** – SacRT’s DBELO lacked the resources necessary to effectively manage and administer SacRT’s DBE Program.
- **Written Procedures** – Although SacRT’s written procedures described at a high level how elements of its DBE Program were carried out, detailed written procedures for several critical DBE Program functions (i.e., goal development, Semi-Annual Uniform Report generation, and monitoring) were lacking.
- **DBE Financial Institutions** – SacRT did not identify the availability of DBE Financial Institutions, as required.
- **Overconcentration** – SacRT did not have adequate procedures in place to analyze overconcentration.
- **Goal Calculation** – SacRT submitted its FY 2018–20 goal late. SacRT’s goal calculation included an alternative Step 2 goal adjustment that created a higher overall goal than SacRT could reasonably attain under its recent past and current circumstances. SacRT did not obtain explicit approval from FTA for its alternative Step 2 adjustment, as required.
- **Race-Neutral DBE Participation** – SacRT did not provide documentation confirming its implementation of efforts to foster small business participation by structuring contracts to facilitate competition by small businesses.
- **Good Faith Efforts** – Although SacRT stated in its DBE Program Plan that bidders must submit Good Faith Efforts as a matter of responsiveness, bidders were allowed to submit Good Faith Efforts as a matter of responsibility.
- **Recordkeeping and Enforcements** – SacRT submitted Semi-Annual Uniform Reports late. SacRT’s monitoring procedures were inadequate, and its bidders list did not contain all required data elements.

SacRT’s DBE participation has decreased over the past three fiscal years: SacRT’s reported DBE participation data reflects 4 percent, 2.1 percent, and 0.0 percent attainment in FY 2017, FY 2018, and FY 2019, respectively. According to SacRT’s management, a number of factors contribute to its history of low DBE participation including insufficient DBE Program management resources and the administration of a race-neutral only program through FY 2017. These issues notwithstanding, this report highlights several steps to help ensure the DBE program is implemented in good faith.

1. General Information

This chapter provides basic information concerning this compliance review of the Sacramento Regional Transit District (SacRT). Information on SacRT, the review team, and the dates of the review are presented below.

Recipient:	Sacramento Regional Transit District
City/State:	Sacramento, CA
Recipient ID:	1659
Executive Official:	Henry Li
On-site Liaison:	Fernando Barcena
Dates of On-site Visit:	January 7–10, 2020
Review Team Members:	Donald Lucas, Lead Reviewer Khalique Davis, Reviewer Melanie Potts, Reviewer

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2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub recipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (25), October 1, 2018, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

SacRT is a recipient of federal transit funds identified in 49 CFR §26.3(a)(2) and awards more than \$250,000 in FTA funds during the Federal fiscal year. Hence, SacRT is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in SacRT's DBE program and were the basis for this compliance review.

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3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of recipients and sub recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a compliance review of SacRT's DBE Program is necessary.

The primary purpose of the compliance review is to determine the extent SacRT has implemented 49 CFR Part 26, as represented in its DBE Program Plan. This compliance review is intended to be a fact-finding process to: (1) assess SacRT's DBE Program Plan and its implementation; (2) make recommendations regarding corrective actions deemed necessary and appropriate; and (3) provide technical assistance.

This compliance review is not solely designed to investigate discrimination against individual DBE firms or complainants; or to adjudicate these issues on behalf of any party.

3.2 Objectives

The objectives of DOT's DBE regulations, as specified in 49 CFR Part 26, are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE Program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of federally-assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE Program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- Determine whether SacRT is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of SacRT's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies; and document the compliance status of each component.

- Gather information and data regarding the operation of SacRT's DBE Program Plan from a variety of sources, including DBE program managers, other SacRT management personnel, DBEs, prime contractors, and other stakeholders.

4. Background Information

The purpose of this section is to provide an understanding of SacRT's operations and scale. The section highlights SacRT's services, budget, and the history of its DBE program.

4.1 Introduction to SacRT and Organizational Structure

SacRT was created by the California State Legislature in 1971 and began bus transit operations in April 1973. It constructs, operates, and maintains a comprehensive transit system that is authorized to provide service within approximately 400 square miles in Sacramento County, with a service area population of approximately 1.5 million people. In 2019, SacRT provided an average of 75,000 trips per weekday, an average of 29,000 trips on Saturdays, and an average of 20,000 trips on Sundays.

The SacRT Board of Directors consists of four members from the City of Sacramento, three members from the County of Sacramento, and one member each from the cities of Rancho Cordova, Citrus Heights, Elk Grove, and Folsom. SacRT's transit system is led by a General Manager and Chief Executive Officer who oversees the following divisions: Operations and Maintenance; Safety, Security & Customer Service; Planning & Engineering; Integrated Services & Strategic Initiatives; and Finance & Procurement. SacRT directly operates a fleet of 192 40-foot buses and 52 shuttle buses (68 FTA funded) that provide fixed-route service on a network of 66 routes. In 2019, SacRT began the conversion to an electric bus fleet, with 15 electric buses now in service. SacRT maintains a network of seven bus-only transit centers. Bus service is provided weekdays from 4:59 a.m. to 11:13 p.m., Saturdays from 5:41 a.m. to 11:11 p.m., and Sundays from 5:45 a.m. to 10:12 p.m.

SacRT also operates a light rail system of 43 miles with 52 stations or stops. 24 of SacRT's light rail stations provide fixed-route bus connections. Rail service is provided with 97 rail cars. Rail service operates from 3:49 a.m. to 12:59 a.m. on weekdays, from 4:26 a.m. to 12:59 a.m. on Saturdays, and from 4:49 a.m. to 10:59 p.m. on Sundays.

The basic adult fare for bus and light rail service is \$2.50. A reduced fare of \$1.25 is offered to seniors, persons with disabilities, and Medicare cardholders. SacRT's new Ryde Free Pass is offered to K-12 students for free fare. SacRT also offers daily and monthly passes and pre-paid ticket books. All of SacRT's standard pass options, including single ride tickets, are available on the ZipPass mobile application. SacRT monthly pass options and fares for 8 partner agencies in the region are available on the Connect Card.

SacRT operates 120 vehicles to provide ADA and non-ADA demand-response paratransit service. Complementary paratransit service is available to origins and destinations within a 3/4-mile radius of SacRT's bus routes or light rail stations during regular fixed-route service hours.

On February 12, 2018, SacRT launched a microtransit pilot called "SmaRT Ride," an on-demand public transit service similar to Uber or Lyft. SacRT's continued SmaRT Ride service operates in nine zones in the Sacramento area. Customers can use a smartphone application to request a ride that will pick them up and drop them off wherever they wish to travel within the service boundaries. SmaRT Ride customers can also request rides online or by calling SacRT.

SacRT's administrative offices, primary bus operations and maintenance facility, Metro Heavy Repair Facility, and light maintenance satellite facility are located in Sacramento. Light bus maintenance occurs at the Community Bus Services facility in McClellan.

SacRT passes formula grant funds to subrecipients, including the cities of Sacramento, Citrus Heights, Placerville, Elk Grove, and Roseville; the Sacramento Area Council of Governments; and El Dorado Transit, the Yolo County Transit District, and the Yuba-Sutter Transit Authority.

4.2 Budget and FTA-Assisted Projects

SacRT's budget comprises local, state, and federal funds, as well as revenue from fares and other sources. In FY 2018 and FY 2019 SacRT's budget was as follows:

SacRT Operating Budget	FY 2018–19	FY 2019–20
Revenue	(Dollars in thousands)	
Fare Revenue	\$27,2760	\$27,942
Contracted Services	\$6,420	\$6,379
State & Local	\$93,339	\$98,161
Federal	\$37,060	\$32,307
Other Revenue	\$5,006	\$4,228
Subtotal	\$169,101	\$169,017
Operating Reserve	(\$9,172)	—
Total Operating Revenue	\$159,929	\$169,017
Expenditures		
Salaries & Benefits	\$109,150	\$114,449
Professional Services	\$22,331	\$23,990
Materials and Supplies	\$9,309	\$10,347
Utilities	\$6,994	\$7,029
Insurance & Liability	\$9,300	\$9,183
Other	\$2,845	\$4,019
Subtotal	\$159,929	\$169,017
Reserve	\$9,172	—
Total Operating Expenditures	\$169,101	\$169,017

SacRT Capital Budget	FY 2018–19	FY 2019–20
Revenue		
Federal	\$203,740,000	\$84,531,180
State	\$164,642,628	\$94,153,131
Local	\$79,602,620	\$9,147,510
TBD	\$583,673,631	\$90,173,688
Total Capital Revenue	\$1,031,658,879	\$278,005,509
Expenditures		
Equipment Program	\$3,372,637	\$150,000
Program Development	\$458,347,501	—
Facilities Program	\$7,392,905	\$412,500
Fleet Program	\$31,703,237	\$126,914,501
Infrastructure Program	\$5,769,848	\$53,744,577
Other Programs	\$355,089	\$39,500
Planning/Studies	\$564,043	\$300,000
System Expansion	—	\$4,518,242
Transit Security & Safety	\$3,911,245	—
Transit Technologies Program	\$1,118,383	\$91,926,189
Subrecipient Programs	\$519,123,991	—
Total Capital Expenditures	\$1,031,658,879	\$278,005,509

SACRT has several FTA-assisted projects currently underway, including, but not limited to:

- Light Rail Station Low-Floor Conversions: Engineering and Design work to modify light rail stations to enable level-boarding after new low-floor light rail vehicles are purchased and placed into revenue service.
- Expansion Light Rail Vehicles: Purchase new expansion low-floor light rail vehicles, which will allow SacRT to increase service frequencies on its Gold Line between Sunrise Station and Historic Folsom Station from 30 minutes to 15 minutes.
- Gold Line Side Track: This project will enable increased service frequencies on the Gold Line between the Sunrise and Historic Folsom light rail stations. Existing double track will be extended approximately 1 mile to just beyond Hazel Station and an additional passing track (side track) will be added from Parkshore to Bidwell (approximately 3/4 mile).
- General Construction Management Support Services: Multi-year engineering and construction project contract.

4.3 DBE Program

SacRT's DBELO is responsible for monitoring and enforcing the DBE program to ensure compliance with appropriate federal and state laws and regulations. The DBELO has direct access to the General Manager/CEO. The DBELO was dedicated fully to the management and administration of SacRT's DBE Program. The DBELO did not have staff dedicated to assisting in the management and administration of the DBE Program but was supported by SacRT finance, procurement, grant administration, and communications staff.

FTA determined SacRT to be one of the 50 largest transit agencies receiving federal financial assistance from the U.S. Department of Transportation (DOT). As a condition of receiving this assistance, SacRT is responsible for complying with the regulations set forth in 49 CFR Part 26. Accordingly, SacRT developed a DBE Policy Statement that outlined its goals and mission for the program and a DBE Program Plan that described its efforts pursuant to compliance with the regulations. SacRT submitted its most recent DBE Program Plan, dated April 19, 2019, to FTA on April 22, 2019. FTA concurred with SacRT's DBE Program Plan on August 15, 2019.

SacRT's FY 2018–20 overall DBE goal is 8.38 percent (6.97 percent race conscious and 1.41 percent race-neutral). Prior to FY 2018, SacRT's goal was all race-neutral; however, FTA approved SacRT's use of race-conscious measures in the attainment of its FY 2018–20 overall goal based on the results of a 2014 disparity study conducted by the California Department of Transportation. SacRT did not meet its goal in FY 2018 or FY 2019, achieving 2.07 percent and 0 percent, respectively. In FY 2018, SacRT implemented its first procurement with contract goals. The procurement was for its Downtown Streetcar Project and included a 13 percent race-conscious goal. SacRT determined all bids submitted in response to the Downtown Streetcar Project procurement solicitation to be too high and the procurement was not awarded.

Technical assistance was provided to SacRT during this compliance review on goal setting, shortfall analyses and corrective action plans, and monitoring its DBE Program, including monitoring its subrecipients for compliance. SacRT was further advised to allocate more resources to assist in managing and administering its DBE Program. Specifically, SacRT was encouraged to consider adding new staff to assist the DBELO function, better organize and align existing staff to support the DBELO in his responsibilities, and research and implement current technologies to help automate critical DBE Program functions. SacRT was also advised to develop detailed procedures with staff assignments and timelines for each major DBE Program element (i.e., goal setting, goal management, semi-annual uniform reporting, and monitoring).

SacRT was a non-certifying member of the California Unified Certification Program (CUCP).

5. Scope and Methodology

5.1 Scope

Implementation of the following FTA-specified DBE Program components are reviewed in this report:

- A DBE Program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement that expresses a commitment to the SacRT DBE Program, states its objectives, and outlines responsibilities for implementation (49 CFR §26.23)
- Designation of a DBE liaison officer and support staff as necessary to administer the program and a description of the authority, responsibility, and duties of the officer and the staff (49 CFR §26.25)
- Efforts made to use DBE financial institutions by SacRT as well as by prime contractors, if such institutions exist (49 CFR §26.27)
- A DBE directory including addresses, phone numbers, and types of work performed, made available to the public and updated at least annually (49 CFR §26.31)
- Determination that overconcentration does (or does not) exist and efforts to address this problem, if necessary (49 CFR §26.33)
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE Program (49 CFR §26.35)
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts and proper mechanisms to implement the DBE goal (49 CFR §§26.43–26.53)
- A shortfall analysis and corrective action plan when SacRT did not achieve its DBE goal (49 CFR §26.47)
- A process that ensures transit vehicle manufacturers (TVMs) comply with DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include SacRT seeking FTA approval to establish a project-specific goal for vehicle purchases (49 CFR §26.49).
- A non-discrimination and a prompt payment clause included in all FTA-assisted contracts and a prompt payment verification process (49 CFR §§26.7, 26.13, and 26.29)
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, and the proper supporting documentation (49 CFR §§26.65–26.71).
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, an interstate certification review process, and a certification appeals process (49 CFR §§26.83 and 26.86).
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies (49 CFR §26.13). The DBE Program must also include monitoring and enforcement mechanisms to ensure DBEs actually perform the work committed to DBEs at contract

award (49 CFR §26.37). Reporting must include information on payments made to DBE firms (49 CFR §§26.11 and 26.55).

5.2 Methodology

The initial step of this compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's Transit Award Management System (TrAMS) and other sources. After reviewing this information, potential dates for the site visit were coordinated with FTA and SacRT.

The FTA Office of Civil Rights sent a notification letter to SacRT that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas to be covered during the on-site visit. The letter also informed SacRT of staff and other parties whom the review team would interview.

Before conducting the on-site visit, SacRT was asked to provide the following documents:

- Most current DBE Program plan
- DBE goal methodology submissions
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years
- A Memorandum of Understanding or similar documents indicating SacRT's participation in the Unified Certification Program (UCP)
- A list of FTA-assisted contracts awarded during the current and previous fiscal years
- A list of DBE firms that have worked on FTA-assisted projects sponsored by SacRT
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by SacRT
- Procedures for monitoring all DBE program participants to ensure compliance with the DBE requirements, including but not limited to, a prompt payment verification process, a process for ensuring work committed to DBEs is actually performed by DBEs, and any DBE complaints against the agency or its prime contractors during a specified time period.

The on-site review of SacRT's DBE Program took place from January 7–10, 2020. The review began with an opening conference, held at 9 a.m. on Tuesday, January 7, at the SacRT offices at 1400 29th Street, Sacramento, CA 95816. The following people attended the meeting:

Sacramento Regional Transit District

Henry Li, General Manager/CEO
Fernando Barcena, Disadvantaged Business Enterprise Liaison Officer
Juliette Terry, Senior Manager, Procurement
Brent Bernegger, Chief Financial Officer
Lisa Hinz, VP, Security, Safety & Customer Satisfaction
Laura Ham, VP, Planning & Engineering
Jamie Adelman, AVP, Finance and Treasury
Sandy Bobek, AVP, Technology, Innovation & Performance
Jack Hutchinson, Internal Auditor

Melissa Noble, Senior Attorney
Olga Sanchez-Ochoa, General Counsel
Devra Selenis, Chief Communications Officer
Shelly Valenton, VP, Integrative Services & Strategic Initiatives

Federal Transit Administration

John Day, Program Manager, Policy and Technical Assistance, FTA Headquarters
Guljed Birce, Equal Opportunity Specialist, FTA Headquarters
Scott Pichon, Equal Opportunity Specialist, FTA Headquarters
Lynette Little, Regional Civil Rights Officer, FTA Region 9
Giusseppe Dizon, Program Management Specialist, FTA Region 9

The DMP Group

Donald Lucas, Lead Reviewer
Khalique Davis, Reviewer
Melanie Potts, Reviewer

Following the opening conference, the review team examined SacRT's DBE Program Plan and other documents submitted by SacRT's DBE Liaison Officer (DBELO). The team then conducted interviews with SacRT regarding DBE Program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from its diversity, procurement, and finance offices. A sample of contracts was then selected and reviewed for their DBE elements. Additional interviews with prime contractors, subcontractors, and interested parties were also conducted.

The exit conference took place at 1:00 p.m. at the SacRT office. Attending the conference were:

Sacramento Regional Transit District

Henry Li, General Manager/CEO
Fernando Barcena, Disadvantaged Business Enterprise Liaison Officer
Juliette Terry, Senior Manager, Procurement
Brent Bernegger, Chief Financial Officer
Lisa Hinz, VP, Security, Safety & Customer Satisfaction
Laura Ham, VP, Planning & Engineering
Jamie Adelman, AVP, Finance and Treasury
Sandy Bobek, AVP, Technology, Innovation & Performance
Jack Hutchinson, Internal Auditor
Melissa Noble, Senior Attorney
Olga Sanchez-Ochoa, General Counsel
Devra Selenis, Chief Communications Officer
Shelly Valenton, VP, Integrative Services & Strategic Initiatives

Federal Transit Administration

John Day, Program Manager, Policy and Technical Assistance, FTA Headquarters

Scott Pichon, Equal Opportunity Specialist, FTA Headquarters

Lynette Little, Regional Civil Rights Officer, FTA Region 9

Giusseppe Dizon, Program Management Specialist, FTA Region 9

The DMP Group

Donald Lucas, Lead Reviewer

Khalique Davis, Reviewer

Melanie Potts, Reviewer

5.3 Stakeholder Interviews

This section discusses information gathered during interviews with community representatives, stakeholder groups, and contractors regarding SacRT's DBE program. During this DBE compliance review, the review team attempted to contact nine DBE firms, four non-DBE prime contractors, and four minority and/or woman-owned business advocacy organizations (other interested parties) between January 3, 2020 and February 10, 2020. The purpose of the interviews was to get feedback from SacRT DBE Program stakeholders concerning SacRT's FTA-assisted DBE Program, actual experiences, positive program elements, and any issues, concerns, and complaints. The following is a description of the interview questions asked of each interviewee and a summary of the interview results.

Disadvantaged Business Enterprises

Nine DBEs awarded FTA-assisted SacRT prime contracts or subcontracts since 2017 were selected to be interviewed during this compliance review. Three of the DBE firms were interviewed. Interviewees were asked the following questions:

1. *How were you solicited for this project?*
2. *What type of equipment was required for scope of work performed?*
3. *Do you own this equipment? If leased/borrowed, identify company and arrangement.*
4. *Does the prime lease/lend equipment to you?*
5. *Has SacRT conducted any on-site monitoring regarding your firm's participation on the contract?*
6. *Has your firm subcontracted any work on this project? If yes, what work was subcontracted? What is the name of the subcontractor? What is the amount of the subcontracted work?*
7. *Was retainage being withheld?*
8. *How was retainage addressed in your subcontract? If retainage was withheld, what is the rate of retainage? Is SacRT withholding retainage from the prime? What is your firm's understanding of when you will be paid the retainage amount withheld?*
9. *Has your original contract amount changed (additions or deletions)? If so, explain.*
10. *Have these changes been documented in writing?*
11. *Are there any disputes regarding work performance or payment? If so, describe.*
12. *Does the prime pay you through third party/joint checks?*
13. *Have you experienced any issues while working on this contract? Prompt payment? Retaliation, etc.? If yes, how was the issue resolved?*

- 14. How many FTA-assisted projects has your firm worked on with SacRT? Estimated number of how many projects and the amounts of projects?*
- 15. How many years has your firm been certified?*
- 16. Has your firm expanded its business since becoming certified?*
- 17. How many years has your firm been working on SacRT's FTA-assisted contracts?*

The DBEs interviewed reported they responded to procurement solicitations, attended pre-bid meetings, and/or responded to notification from a prime contractor. There was no need for the use of leased equipment for any of the DBEs. One DBE reported SacRT had conducted on-site visits to the work site. SacRT had also audited the invoices and reviewed the contractor payments. None of the DBEs interviewed subcontracted out any of their work, had retainage held, or reported any issues with prompt payment from prime contractors or SacRT. The DBEs were all established businesses in operation for several years. They previously worked on other SacRT contracts that may have been funded with FTA dollars. One of the firms had expanded its business capabilities since becoming certified and accordingly added North American Industry Classification System (NAICS) codes to its DBE firm profile. The DBEs generally reported having a positive experience working with SacRT.

Prime Contractors

Four non-DBE prime contractors were selected to be interviewed during this compliance review. One of the four non-DBE prime contractor were interviewed. The prime contractor was asked the following questions:

- 1. How does the prime solicit DBE work?*
- 2. Has the prime had any work performance issues with DBEs?*
- 3. Has the prime substituted a DBE with another non-DBE subcontractor?*
- 4. Does the prime lease/lend equipment to DBEs?*
- 5. Has SacRT conducted any on-site monitoring regarding DBE participation on the contract?*
- 6. How soon does the prime pay the subcontractor after receipt of payment from SacRT?*
- 7. Is the prime withholding retainage from DBEs on this project? If yes, what percentage?*
- 8. At what point will that retainage be reduced and/or returned to the DBEs?*
- 9. How is DBE work considered when submitting change order requests?*
- 10. Has the prime made any joint check payments DBE?*

One prime contractor was interviewed who had solicited DBE subcontractors previously worked with, through SacRT and known individuals in the area. The contractor was aware of SacRT's DBE participation goal. There were no issues with any of the work performed by the DBEs. A substitution was made for one of the DBEs that retired. There was a significant unexpected delay between the issuance of the contract and the execution of the work, which was not the fault of the prime contractor or the subcontractor. There was no need for the leasing or lending of equipment. There was no recollection of SacRT visiting the work site. SacRT did review the certified payments. Subcontractors were paid within 45 days or less, as needed. Retainage was not withheld, and no joint payments were made.

Interested Parties

Four stakeholder organizations were contacted for interviews to gain insight into how SacRT works with external organizations and the minority and women-owned business community. The organizations contacted were:

- Sacramento Asian Pacific Chamber of Commerce
- Sacramento Black Chamber of Commerce
- Sacramento Hispanic Chamber of Commerce
- U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, Small Business Transportation Resource Center, Southwest Region

The interview questions included:

1. *Is your organization familiar with SacRT's DBE Program?*
2. *Have you been requested to participate in the development of, or comment on, SacRT's DBE goal?*
3. *Is your organization made aware of contracting/subcontracting opportunities on SacRT's contracts? If so, how?*
4. *How often is your organization contacted to provide referrals for SacRT's contracting opportunities?*
5. *Does your organization participate in any outreach activities organized by SacRT?*
6. *What is your organization's view of the effectiveness of SacRT's DBE Program?*
7. *Are you aware of any concern(s) about SacRT's DBE Program from members?*
8. *Do you have any suggestions for SacRT to improve their DBE Program?*
9. *Have any members of your organization ever worked on an FTA-assisted project for SacRT?*

Two stakeholders responded to the interview request. The organizations were familiar with SacRT's DBE Program. SacRT provided them a copy of its most recent goals. The stakeholders did not participate in the development of the goals. One interviewee expressed interest in how the goals were developed and was concerned they were lower than what could be expected for the Sacramento Region. A few times a year, SacRT sends the organizations information about contracting opportunities. Neither organization received requests to provide referrals. SacRT had spoken to organization members on multiple occasions. A member of one of the organizations had previously participated on a SacRT FTA-funded contract. There was an interest in receiving more advance notice about contracting opportunities and more regular communication from SacRT about the agency's DBE Program. The organizations attributed SacRT's lack of communication and availability to insufficient resources devoted to working with DBEs and the stakeholder community."

6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology sections above. Included in each area is an overview of the relevant regulations and a discussion of the regulations as they apply to SacRT's DBE Program. Each area also includes corrective actions, if needed, and a timetable to correct deficiencies for each of the requirements and subrequirements.

FTA reports findings in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting and are expressed as follows:

- A statement concerning the policy or practice in question at the time of the review,
- A statement concerning the DBE requirements that are unsatisfied or potentially unsatisfied, and
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The purpose of the recommendations is to ensure effective DBE Programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

6.1 DBE Program Plan

Requirement (49 CFR §26.21)

Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE Program. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

Discussion

During this compliance review, deficiencies were found with this requirement. DOT DBE regulations required SacRT to develop and submit a DBE Program Plan that complies with 49 CFR Part 26 requirements and to update its plan when it made significant changes to its program. SacRT submitted its most recent DBE Program Plan, dated April 19, 2019, to FTA on April 22, 2019. FTA concurred with this plan on August 15, 2019. However, in its concurrence letter FTA required SacRT to address the following issues:

1. *Per 49 CFR §26.65, please verify business size in the program's small business element (49 CFR §26.39).*
2. *Per 49 CFR §26.49(a)(4), please provide a statement of the organization's commitment to send to FTA Transit Vehicle Manufacturer purchase information within 30 days of making an award.*

3. *Per 49 CFR §26.89(a)(3), please update USDOT's address that certification appeals be sent to as follows: 1200 New Jersey Avenue SE., Washington, DC 20590-0001.*
4. *Per 49 CFR §26.89(c), please address that certification appeals be sent to USDOT within 90 days of the decision being issued.*

During the site visit, SacRT provided a draft DBE Program Plan update that satisfactorily addressed FTA's comments above, with the exception of comment 2. However, at the time of the site visit, SacRT had not submitted its updated plan to FTA. Although SacRT addressed the pre-award transit vehicle manufacturer (TVM) certification requirement in its updated plan, it did not address the post-award TVM reporting requirement, as required by FTA. In addition, SacRT's procedures for verifying that TVMs were eligible to participate in FTA-funded procurements included collecting pre-award certifications from prospective awardees and verifying those certifications by checking FTA's eligible TVM list located on FTA's website. SacRT did not include its TVM certification verification process in the TVM procurement procedures in its updated DBE Program Plan. In all cases, SacRT's DBE Program Plan should reflect actual practice.

Additionally, SacRT's draft updated DBE Program Plan contained an outdated organization chart, broken hyperlinks to the California Unified Certification Program (CUCP) DBE Directory and other DBE certification information, and conflicting dates in its DBE goal development timeline (details provided in Section 6.8[A] of this report). During the site visit, SacRT was advised to make these corrections before submitting its next DBE Program Plan to FTA.

49 CFR §26.21(c) states, "You are not eligible to receive DOT financial assistance unless DOT has approved your DBE Program and you are in compliance with it and this part." SacRT's DBE Program Plan included its current DBE Policy Statement, which included as one of its objectives, "To create a level playing field on which DBEs can complete fairly for DOT-assisted contracts." During the site visit, the review team reviewed the procurement file and contract for SacRT's 51183 General Engineering for Construction Management project. The contract included a DBE clause that referenced the out-of-date DBE Program objective to create "maximum opportunity" for DBEs, which is inconsistent with the current DBE Program objective to create a "level playing field."

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit the following to the FTA Office of Civil Rights:

- An updated DBE Program Plan that addresses all required elements and reflects current practice.
- Confirmation that it has reviewed its active contracts and confirmed that all references to creating "maximum opportunity" as a DBE Program objective have been replaced with "level playing field."

6.2 DBE Policy Statement

Basic Requirement (49 CFR §26.23)

Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

Discussion

During this compliance review, a deficiency was found with this requirement. SacRT's DBE Policy Statement contained all the required elements and was signed by SacRT's current General Manager and Chief Executive Officer (General Manager/CEO) on April 19, 2019. SacRT's DBE Program Plan stated,

SacRT will disseminate this policy statement to the Sacramento Regional Transit District Board of Directors and all areas of the SacRT organization. This policy statement will also be disseminated to members of the DBE and non-DBE business community that perform or are interested in performing work on SacRT DOT-assisted contracts, and to local business chambers, and local business associations (both DBE and non-DBE), and minority and women's organizations.

During the review, SacRT did not provide documentation confirming distribution of its DBE Policy as stated. The review team recommended SacRT include the statement on its vendor registration webpage and in solicitation documents, as well as document the distribution of its DBE Policy Statement so it is more readily able to confirm compliance with 49 CFR §26.23 requirements.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights documentation confirming the distribution of its DBE Policy Statement as stated in its policy.

6.3 DBE Liaison Officer

Requirement (49 CFR §26.25)

Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

Discussion

During this compliance review, deficiencies were found with this requirement. FTA also made an advisory comment regarding this requirement. Although SacRT adequately designated a qualified DBELO who had the requisite access to the General Manager/CEO, the DBELO was not effectively resourced to sufficiently manage and administer SacRT's DBE Program, as required. This is supported by a recent series of late DBE Program-related submissions, including the most recent DBE Program Plan and related corrective actions, the most recent

DBE Goal Methodology and related corrective actions, and late Semi-Annual Uniform Reports (i.e., June 2017, December 2017, June 2018, and December 2019).

During the site visit, the review team emphasized that in addition to considering hiring and/or allocating new staff to assist the DBELO, SacRT must better integrate DBE Program implementation and compliance into its planning and administration processes. For example, the DBELO's office should be more involved in the development of specifications for new and updated technologies (i.e., information management systems), when contemplated by SacRT, to ensure DBE Program needs are considered, included, and met. The DBELO's office should also be more involved in working with procurement and other staff (e.g., engineering and project management) when structuring FTA-funded procurements, as well as grant administration staff in the oversight of SacRT subrecipients.

SacRT must also better document how the DBELO's office coordinates with other functional groups within the agency by developing standard operating procedures (SOPs) that describe in detail staff responsibilities and timelines for distinct DBE Program deliverables and processes. For example, SacRT was advised to develop written SOPs for its DBE goal development process, how Semi-Annual Uniform Reports are produced, and how subrecipients are monitored for compliance. Other useful written SOPs would detail the process for structuring procurements and contracts to foster small business and DBE participation and how to do outreach to the DBE and non-DBE business community. Although SacRT demonstrated it was doing these activities, it was not always clear how it was doing them. Written SOPs will help SacRT staff better understand, align with, and be accountable for the good faith implementation of its DBE Program. SacRT was advised to use and adapt all existing procedures into a set of written procedures that address in detail the major elements of its DBE Program. SacRT was further advised to begin with developing written procedures for DBE goal setting.

The review team observed that SacRT could benefit from making new tools (i.e., technologies) available to its DBELO that would help automate and normalize several of the DBELO's tasks. For example, during the site visit the DBELO demonstrated a manual and unnecessarily complicated process for preparing Semi-Annual Uniform Reports. The process was time consuming and subject to error and inaccuracy. Moreover, the process is unlikely to be easily and effectively transferred to a successor DBELO or other program staff.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights a plan with timelines for allocating more resources to support the DBELO function.

Advisory Comment

It is recommended that SacRT research and implement new technologies as a resource to assist the DBELO's office in the management and administration of its DBE Program.

6.4 DBE Financial Institutions

Requirement (49 CFR §26.27)

Recipients must investigate the existence of DBE financial institutions and make efforts to use them. Recipients must also encourage prime contractors to use these DBE financial institutions.

Discussion

During this compliance review, deficiencies were found with this requirement. In its DBE Program Plan, SacRT stated, “The SacRT DBELO has made the effort to identify such institutions through a search of the California UCP DBE directory maintained by Caltrans. To date, the SacRT DBELO has not identified any certified DBE Financial Institutions in the CUCP database.” SacRT later stated that it searched the Federal Reserve’s listing of minority-owned banks for DBE financial institutions in the State of California, but “the Federal Reserve . . . does not code for financial institutions that are economically disadvantaged. None of the Federal Reserve current listing of minority and women owned financial institution firms located in California are listed in the CUCP database of DBE firms.”

During the site visit, the review team explained that 49 CFR §26.27 does not require DBE financial institutions to be DBE certified and that they simply need to be owned by a socially and economically disadvantaged individual(s), as defined by 49 CFR §26.5, as follows:

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

During the site visit, the review team informed SacRT that the Federal Reserve's list of minority banks was no longer easily accessed on its website and that another source for researching minority-owned banks was the Federal Deposit Insurance Corporation (FDIC) website (<https://www.fdic.gov/regulations/resources/minority/mdi.html>). The review team visited the FDIC website and identified several minority-owned banks in the State of California.

SacRT further stated in its DBE Program Plan that it would "make reasonable efforts to use these institutions, and to encourage prime contractors on DOT assisted contract[s] to make use of these institutions." SacRT was advised to document its efforts in this regard.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights documentation that it researched the availability of DBE financial institutions, considered using those that it found, and encouraged prime contractors on its FTA-assisted contracts to make use of those that it found.

6.5 DBE Directory

Requirement (49 CFR §26.31)

A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding this requirement. SacRT was a non-certifying member of the CUCP and did not maintain a DBE Directory.

SacRT included hyperlinks to the CUCP from its DBE Program Plan posted on its website. The hyperlinks were not current and no longer linked to the CUCP DBE directory.

Advisory Comment

SacRT was advised to update the broken hyperlinks to the CUCP DBE directory in its DBE Program Plan with functioning hyperlinks.

6.6 Overconcentration**Requirement (49 CFR §26.33)**

The recipient must determine if overconcentration of DBE firms exists and address the problem, if necessary.

Discussion

During this compliance review, deficiencies were found with this requirement. SacRT stated in its DBE Program Plan that it “has not identified that overconcentration exists in the types of work that DBEs perform on SacRT contracts.” During the site visit, SacRT explained that it based its determination on evaluations it conducted every three years during its goal-setting process. However, it was unclear, based on discussion on site with SacRT, exactly what SacRT’s measure was for making its determination. SacRT did not define what triggered a determination of overconcentration, nor did its evaluation process appear to be based on any quantifiable or other normative measure.

The review team provided technical assistance, recommending SacRT establish a quantifiable threshold (e.g., 75 percent) that is applied when evaluating DBE utilization by NAICS code. If, for any NAICS code, the percentage of DBE utilization exceeded the established threshold, then a determination of overconcentration could be made.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail how it defines overconcentration and determines its occurrence.

6.7 Business Development Programs

Requirement (49 CFR §26.35)

The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT does not operate a business development program.

6.8 Determining/Meeting Goals

A) Calculation

Requirement (49 CFR §26.45)

To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

Discussion

During this compliance review, deficiencies were found with this requirement. FTA also made advisory comments regarding this requirement.

SacRT's most recent DBE Goal Methodology was due on August 1, 2017 for the triennial period FY 2018–20 but was submitted late. On August 2, 2017 the FTA Region 9 Regional Civil Rights Officer (RCRO) notified SacRT that FTA had not received the FY 2018–20 goal and inquired as to when the goal would be submitted. In response, SacRT requested an extension until September 1, 2017 citing staff shortages for the delay. FTA approved the extension. On September 1, 2017 SacRT requested a second extension citing continued staff shortages. FTA approved this second request, but SacRT did not submit its FY 2018–20 Goal Methodology until February 3, 2018. In response to SacRT's goal submission, in a letter dated March 17, 2018, FTA required SacRT to address the following elements of its goal methodology and submit an updated goal by April 20, 2018:

FTA Reviewer Comments

Sacramento Regional Transit District

- NAICS codes are unclear. SIX digit codes are best practice as this breaks larger contracts down into smaller DBE opportunities. Example-Construction is a very large category.*
- Projects are not described so it is difficult to determine if contracts can be broken down into smaller opportunities. Please describe the projects in a short summary.*
- Not seeing required evidence of web posting.*
- No meeting with DBEs to provide opportunities for DBEs to learn about how the goal was set and provide feedback or comments. Public participation is very weak and could*

be an indicator of why participation has been so low. I would suggest you hold several meetings with DBEs, provide FTA with a list of those invited, those that attended and any comments or adjustments made. Please do not provide sign up sheets but provide a short overall summary of these steps taken and the results.

-Median of overall performance for the prior three years was not used properly. It appears that an average of work type was used for RN/RC split calculation.

-Overall goal-while 8.38% represents a solid number and it is an improvement to see the disparity study used to implement RC contract goal setting, the base number and adjustment may not be accurate. Projects are not broken down by six digit codes, and the adjustment and RC split is not based on the median of past participation. Please take another look at these two steps and revise.

SacRT submitted its revised FY 2018–20 DBE Goal Methodology late on April 23, 2018. FTA concurred with SacRT's revised goal on May 10, 2018. SacRT's FY 2018–20 overall DBE goal was 8.38 percent (6.97 percent race-conscious and 1.41 percent race-neutral).

Although SacRT's goal-setting methodology substantially complied with recommended best practices, SacRT included in its Step 2 goal adjustment a methodology that was a departure from best practice and effectively artificially inflated the relative availability of DBEs by a factor of prior DBE underutilization. SacRT explained its methodology in its FY 2018–20 DBE Goal Methodology as follows:

The volume of work that DBEs performed in SacRT's DOT-assisted contracting program for the 3 year time period October 1, 2014 through September 30, 2017 was analyzed... Once the utilization of DBE firms was determined, it was compared to the relative availability of DBE firms in the SacRT relevant market area to analyze disparity. The analysis shows the percentage of contract dollars, percentage of relative availability of firms, and the disparity ratio that compares the two percentages. The percentage of contract dollars (utilization of firms) was divided by the percentage of relative availability of firms to create a Firm Disparity Ratio. A Firm Disparity Ratio below 0.8 indicates a substantial level of disparity demonstrating adverse or disparate impact. The relative availability of DBE firms is adjusted only if the disparity ratio is below 0.8. A disparity ratio greater than 0.8 indicates that an adjustment of firm availability is not needed. This disparity analysis methodology was approved by FTA in two disparity studies conducted by SacRT in 1993 and 2000.

In SacRT's FY 2018–20 Goal Methodology, this approach resulted in the following calculation and determination:

The adjustment to the relative availability of firms in the Construction category was derived by multiplying the relative availability of Construction firms, 220, by the difference between 0.8 and the disparity ratio of 0.0 and adding that number to the relative availability number as follows:

$$(220 \times [.80 - .0]) + 220 = 396.$$

$$(220 \times .8) + 220 = 396$$

$$176 + 220 = 396$$

The adjustment to the relative availability of firms in the Services category was derived by multiplying the relative availability of Services firms, 512 by the difference between

0.8 and the disparity ratio of .11 and adding that number to the relative availability number as follows:

$$(512 \times [.80 - .11]) + 512 = 865.$$

$$(512 \times .69) + 512 = 865$$

$$353 + 512 = 865$$

Effectively, this series of calculations means that SacRT identified 220 certified DBEs in the construction category and 512 certified DBEs in the services category that were ready, willing, and able to perform on FTA-funded projects anticipated for FY 2018–20, and that there should (or would) be 396 and 865 DBEs in these respective categories but for the effects of past underutilization due to discrimination. SacRT then based its Step 2 adjustment and resulting overall goal on what it has rationalized the relative availability should be rather than what the relative availability actually is. If all other elements of SacRT's DBE Program (e.g., outreach and information sharing, new certifications, business development, contracting opportunities, and effective use of race-neutral/race-conscious measures) remain the same and are not in some way proportionately increased, SacRT's ability to achieve its goal(s) is unlikely.

During the review, the review team expressed that basing the Step 2 adjustment on past underutilization and not actual past performance requires a robust DBE Program capable of producing and developing new DBE certified firms. For example, in the case of the construction category, the difference between the actual number of ready, willing, and able DBEs (220) and the adjusted number of DBEs (396) is 176 firms that are not yet DBE certified to perform work in the construction category. If SacRT had the DBE Program "apparatus" to recruit and certify 176 new firms in the next three years (or sooner); if it could "engineer" a highly effective complement of race-neutral, race-conscious, and small business element measures; and/or if it had significant and steady eligible contracting opportunities, then perhaps it could attain an overall goal based on its methodology. However, SacRT's recent DBE Program past performance does not suggest that it has the requisite program elements and circumstances in place to realistically attain its goals using its current Step 2 approach. SacRT has not met its overall goal in any fiscal year from 2015 through 2019.

Accordingly, when developing future goals, SacRT should avoid making Step 2 adjustments based on prior DBE underutilization as it has in the past. SacRT was further advised that if it chooses to make a Step 2 adjustment in future goal-setting methodologies, it should base its adjustment on past performance. Developing attainable goals and making a genuine effort to implement all elements of its DBE Program in good faith will likely result in helping to correct prior underutilization due to discrimination.

It was noted that in FY 2019, SacRT first began using race-conscious means for goal attainment. In the coming years, SacRT should monitor the effects of race-conscious means on its overall goal attainment in conjunction with other efforts to obtain the maximum feasible portion of its overall goal through race-neutral means. For its FY 2021–23 goal, SacRT may consider not making a Step 2 adjustment, instead annually measuring its performance and then revising its goal as necessary or when developing subsequent triennial goals.

The review team also discussed SacRT's use of its bidders list when setting DBE goals. In its DBE Program Plan, SacRT stated, "This bidders list will be used to help calculate SacRT's overall DBE goals." However, nowhere in SacRT's FY 2018–20 DBE Goal Methodology does it explain how the bidders list is used. During the site visit, SacRT explained that it used its

bidders list in its Step 2 goal adjustment as a factor of utilization. Nevertheless, after considerable discussion, it was unclear to the review team exactly how SacRT's bidders list factored into its overall goal calculation. Ultimately, the review team provided technical assistance on how the bidders list is typically used as a Step 1 dataset because of its potential to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek SacRT contracting opportunities. Although there was some disagreement on the part of SacRT on the utility of the bidders list compared to that of CUCP and U.S. Census data, SacRT was encouraged to test the resulting goal produced when using its bidders list compared to the goal produced when using the CUCP and U.S. Census data when calculating its FY 2021–23 goal. Although setting reasonable goals is only one factor in goal attainment, because SacRT has not met its DBE goal since 2015 using its current methodology, SacRT was encouraged to use its bidders list in its next goal calculation to see if the calculation results in a more attainable overall DBE goal.

In the DBE goal calculation section of its DBE Program Plan, SacRT stated the following:

The DBELO will complete the process of collecting and reviewing all pertinent information, preparing the triennial DBE goals, and soliciting public input by April 1 for submission to the FTA by August 1.

Several paragraphs later in the same section, SacRT stated the following:

SacRT will issue this notice by June 1 each year that the Three Year Overall DBE Goal is due. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

SacRT cannot complete soliciting public input by April 1 if it is accepting comments after June 1. During the site visit, SacRT acknowledged that this former language was likely included in a previous version of its DBE Program Plan and not updated. SacRT indicated it would update the language to remove any conflicts in its next DBE Program Plan update.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit the following to the FTA Office of Civil Rights:

- A detailed plan with staff roles and responsibilities and timelines for developing its FY 2021–23 DBE goal that ensures the goal's timely submission (due August 1, 2020).
- An updated DBE Program Plan that clearly explains procedures for using its bidders list that conform to 49 CFR §26.45(c)(2) and DOT DBE goal-setting guidance found at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

Advisory Comments

Although SacRT should make every effort to submit future goals on time, if, in the future, SacRT anticipates the need to request an extension beyond the August 1 deadline for any reason, SacRT is advised to communicate its request to the FTA Region 9 RCRO in advance of the deadline. In addition, SacRT should correct the language in its DBE Program Plan that states soliciting public comment will be completed by April 1 if, in fact, public comments are accepted after that date.

SacRT is advised to only use past underutilization as a factor in its Step 2 adjustment if it has the resources to correct the disparities it identifies. If past underutilization is used as a factor in its Step 2 adjustment in the future, SacRT is advised to thoroughly explain in its goal methodology submission how it intends to increase the number of DBE firms in its market area for the period covered by the goal.

B) Public Participation**Requirement (49 CFR §26.45)**

In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

Discussion

During this compliance review, no deficiencies were found with this requirement. Advisory comments, however, are made regarding this requirement. SacRT stated the following in its most recent DBE Program Plan:

Before establishing the overall three year goal, SacRT will consult with local business chambers including local minority and ethnic chambers of commerce, small and local business associations (both DBE and non-DBE), and minority and women's organizations, general contractor groups, community organizations, elected public officials other public agencies and DBEs. to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and SacRT efforts to establish a level playing field for the participation of DBEs.

SacRT will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rational[e] are available for inspection during normal business hours at SacRT's principal office for 30 days following the date of the notice, and informing the public that SacRT and DOT will accept comments on the goals for 30 days from the date of the notice. The Notice will be posted on SacRT's website. The notice will also be published in minority- focus publications. SacRT will issue this notice by June 1 each year that the Three-Year Overall DBE Goal is due. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

According to an FTA in-review letter dated March 19, 2018, SacRT's initial FY 2018–20 Goal Methodology submission did not include a sufficient description of how it met the public participation requirement. The letter included the following comment:

No meeting with DBEs to provide opportunities for DBEs to learn about how the goal was set and provide feedback or comments. Public participation is very weak and could be an indicator of why participation has been so low. I would suggest you hold several meetings with DBEs, provide FTA with a list of those invited, those that attended and any comments or adjustments made. Please do not provide sign-up sheets but provide a short overall summary of these steps taken and the results.

In response, SacRT provided a list of seven meetings held by SacRT in the months of March and April 2018, detailed descriptions of the comments and feedback received from meeting participants, a list of 43 firms invited to the meetings, and a list of 33 firms that attended the meetings. In addition, SacRT provided a detailed report of the comments received from participants during the meetings. It was observed that although the meeting notices and meeting agendas provided included topics to be discussed during the meetings, none of the notices and agendas provided mentioned SacRT's FY 2018–20 Goal Methodology. SacRT also provided copies of its FY 2018–20 DBE Goal Methodology notice that was posted on its website (screenshot provided). Although SacRT stated in its DBE Program Plan that "The notice will also be published in minority-focus publications," it did not provide documentation confirming it did so.

Advisory Comments

For future goal methodologies, SacRT should provide documentation (e.g., meeting agendas, invitations, and/or presentations) that explicitly shows the DBE Goal Methodology as a topic of discussion. SacRT's DBE Program Plan and DBE Goal Methodology should only include those methods of public participation and DBE goal notification that it actually implements.

C) Race-Neutral DBE Participation

Requirement (49 CFR §26.51)

The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR §26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

Discussion

During this compliance review, a deficiency was found with this requirement. FTA also made advisory comments regarding this requirement. SacRT stated in its DBE Program Plan that it "will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation." SacRT also listed the following race-neutral measures in its DBE Program Plan:

1. *Configuring large contracts into smaller contracts when feasible, when to do so would make contracts more accessible to small businesses, and would not impose significant additional cost, delay or risk to SacRT;*

2. *Identifying components of the work that have subcontracting opportunities and searching in the CUCP DBE database for the availability of DBEs in project related NAICS and work-codes and sending out direct project notices to those identified DBEs.*
3. *Assisting in overcoming limitations in bonding and financing by such means as, when permissible, reducing bonding requirements and/or eliminating the impact of surety costs from bids when bonding statutes allow for discretion;*
4. *Refer DBEs to partner agencies including Small Business Development Centers (SBDC), the Small Business Administration (SBA) to help DBEs, and other small businesses, obtain bonding and financing;*
5. *Providing technical assistance in orienting DBEs and small businesses to public contract procedures, and facilitating introductions to SacRT's and other DOT recipients' contracting activities;*
6. *Providing outreach and communications programs on contract procedures and specific contract opportunities to ensure the inclusion of DBEs and other small businesses, on SacRT mailing lists for bidders;*
7. *Disseminating to potential prime bidders lists of potential DBE and small business subcontractors; and provision of information in languages other than English, where appropriate;*
8. *Ensuring notification of the availability of the California UCP DBE Database to the widest feasible universe of potential prime contractors;*
9. *Partnering with agencies, including SBDCs to provide small business development assistance or to make referrals to, to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media by referrals to partner agencies including SBDCs.*
10. *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation*
11. *Prime bidders will be encouraged to consider subcontractors for components of the work that they might otherwise perform with their own forces, including DBEs, subcontractors, in preparing their bids.*
12. *Actively marketing DBEs, to prime contractors to assist DBEs in establishing business relationships.*

Prior to FY 2019, SacRT's DBE goals were entirely race-neutral. During the site visit, SacRT provided several examples of its race-neutral measures implementation, including but not limited to the following:

- The Connecting Point – a panel discussion and workshop held in coordination with the California Department of General Services to provide contracting information to small and disadvantaged businesses. Topics covered during the event included *How To Do Business with Local Government*, *eProcurement*, *Business Resources Panel*, *Bonding and Insurance*, and *Social Media & Marketing Online*.
- Presentation to DBEs and small businesses on the *Owner Controlled Insurance Program*.

- Participation and attendance at over 30 small and disadvantaged business workshops and mixers organized in conjunction with the Sacramento Hispanic Chamber of Commerce, Sacramento Black Chamber of Commerce, and Sacramento Asian Pacific Chamber of Commerce.
- Teaming with the Sacramento Asian Pacific Chamber of Commerce on the *2017 Business Development Program* workshop, which provided education to construction contractors, suppliers, and professional services providers to assist with growing small business capacity. Program topics included *Fundamentals of Bonding & Obtaining Surety Credit*, *Access to Working Capital & Alternative Methods of Funding*, “Google Yourself” – *Expectations and Resume Building*, *Legal – Contract Clauses*, *Wells Fargo Works for Small Business*, and *Estimating*.
- Participation in the 2018 *Let’s Grow Together Business Development Program* workshop, which provided education to construction contractors, suppliers, and professional services providers to assist with the growth of their firms’ capacity. Topics covered included *Fundamentals of Bonding*, *Bid Opportunities (SacRT)*, *Alternative Methods of Funding*, *Wells Fargo Works for Small Business*, *Estimating*, *Access to Traditional Working Capital*, *Legal – Contract Clauses*, and *Project Management*.
- Multi-Ethnic Chambers SacRT-Hosted Small Business Mixer and *How To Do Business With SacRT* workshop where an Upcoming Procurement Look-Ahead Spread Sheet was distributed and reviewed.
- *Meet the Buyers How To Do Business With SacRT* workshop where an upcoming Procurement Look-Ahead Spread Sheet was distributed and reviewed. The event included a Business Exhibitors Conference.

Additional examples of SacRT’s race-neutral measures are enumerated and described in the *Enhanced Race Neutral Measures* section of SacRT’s most recent DBE Program Plan.

The review team recommended SacRT review the list of race-neutral measures in its DBE Program Plan and update the list to include only those measures it actually implements.

SacRT’s race-neutral measures were consistent with those described in 49 CFR §26.51(b)(1-9), except for the first measure in its list, which is more appropriately categorized as a measure to foster small business participation as described in 49 CFR §26.39. This and other measures (listed below) collectively make up SacRT’s Small Business Element, which in its entirety is considered by the regulation to be a race-neutral measure. U.S. DOT 49 CFR §26.39 states the following:

(a) Your DBE Program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE Program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

- (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).*
- (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.*
- (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.*
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.*
- (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.*

The distinction between the race-neutral measures described in 49 CFR §26.51 and the Small Business Element measures described in 49 CFR §26.39 is that the former measures are generally characterized by efforts to distribute information about contracting opportunities, develop and increase the capacity of small and disadvantaged businesses, and provide resources to help small and disadvantaged business compete for FTA-funded contracting opportunities. The measures associated with the Small Business Element are generally characterized by efforts to structure contracts to facilitate competition by small businesses.

SacRT's Small Business Element measures were as follows:

- 1. Identify race-neutral small business set-asides for prime contracts under a stated amount.*
- 2. Configuring large contracts into smaller contracts when feasible, when to do so would make contracts more accessible to small businesses, and would not impose significant additional cost, delay or risk to SacRT.*
- 3. Identifying components of the work that have subcontracting opportunities and searching in the California Department of General Services (DGS) SBE database for the availability of SBEs in project related NAICS and work-codes and sending out direct project notices to those identified SBEs.*
- 4. Assisting in overcoming limitations in bonding and financing by such means as, when permissible, reducing bonding requirements and/or eliminating the impact of surety costs from bids when bonding statutes allow for discretion;*
- 5. Refer SBEs to partner agencies including Small Business Development Centers (SBDC), the Small Business Administration (SBA) to help SBEs, obtain bonding and financing;*
- 6. Providing technical assistance in orienting SBEs to public contract procedures, and facilitating introductions to SacRT's and other DOT recipients' contracting activities;*

7. *Providing outreach and communications programs on contract procedures and specific contract opportunities to ensure the inclusion of SBEs, on SacRT mailing lists for bidders;*
8. *Disseminating to potential prime bidders lists of potential SBE subcontractors; and provision of information in languages other than English, where appropriate;*
9. *Ensuring notification of the availability of the California DGS SBE Database to the widest feasible universe of potential prime contractors;*
10. *Partnering with agencies, including SBDCs to provide small business development assistance or to make referrals to help SBEs, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency. Assisting SBEs, to develop their capability to utilize emerging technology and conduct business through electronic media by referrals to partner agencies including SBDCs.*
11. *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate SBE, participation. Prime bidders will be encouraged to consider subcontractors for components of the work that they might otherwise perform with their own forces, including SBEs subcontractors, in preparing their bids*
12. *Advertises contracting opportunities through various outlets, minority-based publications and trade publications as well as on SacRT's website.*
13. *Encouraging prime contractors and consultants to use SBEs, as subcontractors.*

Measures 1 through 3 above are most consistent with efforts to foster small business participation. Measures 4 through 13 above can be included in SacRT's Small Business Element, but these measures are not efforts to structure contracts to facilitate competition by small businesses. In addition, during the site visit it was learned that SacRT also used small business preference points on some procurements. The use of small business preference points on contracts should be included in SacRT's Small Business Element.

SacRT did not provide documentation confirming it implemented any measure in its Small Business Element that structured contracts to facilitate competition by small businesses.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit an updated DBE Program Plan that identifies the Small Business Element measures that structure contracts to facilitate competition by small businesses that it can and will implement. In addition, SacRT must submit a detailed description of how it will implement the measures it includes in its updated plan.

Advisory Comments

It is an effective practice to include all measures related to business development assistance, technical assistance, and information dissemination in its list of race-neutral measures, per 49 CFR §26.51; and to include all efforts to structure contracts to foster small business participation as elements of its Small Business Element, per 49 CFR §26.39.

D) Race-Conscious DBE Participation

Requirement (49 CFR §26.51)

The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

Discussion

During this compliance review, no deficiencies were found with this requirement. In FY 2018, SacRT received approval from FTA to use race-conscious measures, as needed, to attain its overall DBE goal. SacRT has since used contract goals on two FTA-funded projects, the Downtown Riverfront Streetcar Project and the General Construction Management Services Project. The Downtown Riverfront Streetcar Project was cancelled due to all the bids being too high. The General Construction Management Services Project has been awarded to the construction management company; however, actual contract goals will be included on a task order basis. At the time of the site visit, no task orders had been issued.

E) Good Faith Efforts

Requirement (49 CFR §26.53)

The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract; a description of the work each DBE will perform; the dollar amount of DBE participation; written commitment to use DBE submitted in response to the contract goal; written confirmation from each DBE listed; or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

Discussion

During this compliance review, a deficiency was found with this requirement. SacRT's GFE requirements were described in its DBE Program Plan, complied with 49 CFR §26.53(b)(2)(i-vi) requirements, and were included in all solicitation documents through Appendix I of its General Contract Provisions. However, a GFE review of SacRT's Downtown Streetcar Project procurement revealed SacRT was not following its own GFE procedures as described in its DBE Program Plan. In its plan, SacRT stated the following under the heading "Information to be Submitted: 26.53(b)":

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information with its bid/offer or no later than 5 days after the due date of the bid or offer (DBE Commitments Form; DBE Good Faith Efforts Checklist Form (Attachment 2)):

- 1. The names and addresses of DBE firms that will participate in the contract;*
- 2. A description of the work that each DBE will perform;*

3. *The dollar amount of the participation of each DBE firm participating;*
4. *Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;*
5. *Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor commitment and*
6. *If the contract goal is not met, evidence of good faith efforts will be required to be submitted to SacRT. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.*

The following section contained the heading “Evaluation of Good Faith Efforts: 26.53(a) & (c)” and stated the following:

SacRT treats bidder/offers’ compliance with good faith efforts’ requirements as a matter of responsiveness.

As stated in 49 CFR §26.53(b)(3)(i)(A-B), GFEs must be submitted as a matter of responsiveness (at the time of initial bid submission) or as a matter of responsibility (no later than five days after bid opening). As illustrated above, SacRT essentially restates the options for GFE submission provided in the regulation under the heading “Information to be Submitted: 26.53(b)” and subsequently establishes which option it will require (i.e., submitted as a matter of responsiveness) under the heading “Evaluation of Good Faith Efforts: 26.53(a) & (c).” A review of the GFEs submitted with SacRT’s Downtown Streetcar Project showed that the bid opening was January 11, 2019, and the prime submitted the GFEs on January 16, 2019. This was consistent with GFEs being submitted as a matter of responsibility and not as matter of responsiveness, as required by SacRT is in its DBE Program Plan.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights confirmation on how it will require GFEs to be submitted by bidders on future FTA-funded procurements for which there are DBE contract goals. SacRT’s DBE Program Plan must reflect actual practice.

F) Protecting Against Termination for Convenience

Requirements (49 CFR §§26.53 and 26.13)

Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontract with its own forces or those of an affiliate, or reducing the scope of DBE contract) without the transit agency’s prior written consent. Failure to obtain written consent is a material breach of contract.

Discussion

During this compliance review, no deficiencies were found with this requirement. In the Good Faith Efforts section of its DBE Program Plan, SacRT stated:

SacRT will include in each prime contract a provision stating:

- A. That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains SacRT's written consent as provided in this paragraph (f); and*
- B. That, unless SacRT's consent is provided under 49 CFR Section 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.*

SacRT may provide such written consent only if SacRT agrees, for reasons stated in SacRT's concurrence document, that the prime contractor has good cause to terminate the DBE firm.

In addition, Appendix I to SacRT's General Contract Provisions included the following language:

(1)(i) SacRT must require that a prime contractor not terminate a DBE subcontractor listed with the bid to participate in the contract (or an approved substitute DBE firm) without SacRT's prior written consent. This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work, originally designated for a DBE subcontractor, with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) SacRT must include in each prime contract a provision stating:

- (A) That the Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains SacRT's written consent as provided in this paragraph (f); and*
- (B) That, unless SacRT's consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. If the contractor fails or refuses to comply in the time specified, SacRT's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.*

(2) SacRT may provide such written consent only if SacRT agrees, for reasons stated in SacRT's concurrence document, that the prime contractor has good cause to terminate the DBE firm.

A review of five procurements (2018094 Downtown Streetcar Project, 51183 General Engineering for Construction Management, 2015029 Creative Bus [TVM], 2016102 Creative Bus [TVM], and 17-01-0010 Gillig Buses [TVM]) confirmed that SacRT's FTA-assisted contracts included the required protections against termination for convenience.

G) Counting DBE Participation

Requirement (49 CFR §26.55)

The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidders are only counting work performed by the DBE's own forces in accordance with the DBE requirements.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT included a detailed description of how it counted DBE participation consistent with and responsive to the requirements described in 49 CFR §26.55 in both its DBE Program Plan and in Appendix I of its General Contract Provisions. SacRT counted DBE participation using a combination of methods, including conducting Commercially Useful Function reviews; completing its DBE Form 3 DBE Commercially Useful Function Report; reviewing Inspector Daily Reports; reviewing prime contractor invoices; reviewing DBE and small business enterprise (SBE) monthly utilization reports; attending monthly project progress meetings; and reviewing DBE payment reports. SacRT provided several examples of each of these methods prior to and during the site visit.

H) Quotas

Requirements (49 CFR §26.43)

The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

Discussion

During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, SacRT stated that it did not use quotas in any way in the administration of its DBE Program. A review of several recent contracts, along with interviews with SacRT staff, confirmed that SacRT did not use quotas.

6.9 Shortfall Analysis and Corrective Action Plan

Requirement (49 CFR §26.47)

The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

Discussion

During this compliance review, no deficiencies were found with this requirement. Advisory comments, however, are made regarding this requirement. SacRT is an FTA "Top 50 Recipient" and, therefore, is required to submit a shortfall analysis and corrective action plan for each year it does not meet its DBE goal. SacRT did not meet its DBE goal in FY 2017, FY 2018, or FY

2019. As required, SacRT submitted the shortfall analyses and corrective action plans to FTA within 90 days after the end of each fiscal year for which it had a shortfall.

In response to SacRT's FY 2017 shortfall, FTA required SacRT to implement corrective action to bring its shortfall analysis for that year into compliance. In a letter dated March 27, 2017, FTA required SacRT to "provide the specific reasons for your agency's shortfall over the past fiscal year. This description must include a detailed analysis of why your agency failed to achieve its overall goal." In its letter, FTA required that SacRT implement the corrective action within 30 days of the date of its letter, or by April 27, 2017. SacRT submitted documentation confirming the corrective action on May 17, 2017.

After revising its FY 2017 shortfall analysis, all three of SacRT's shortfall analyses complied with the requirements in 49 CFR §26.47(c)(1-3). In addition, all of SacRT's shortfall analyses contained a discussion on the effectiveness of its race-neutral measures.

SacRT attributed its shortfall in FY 2018 essentially to the fact that its DBE goal was 100 percent race-neutral and implied that the DBELO's collateral duties further contributed to SacRT's shortfall by preventing the DBELO from being able to adequately manage the attainment of the DBE goal. In its corrective action plan, SacRT stated that it had recently received approval from FTA to use race-conscious measures in the attainment of its goals. Accordingly, SacRT indicated that the implementation of race-conscious measures would help it attain its goal in FY 2019. As further corrective action, SacRT stated, "As of August 1, 2018 the SacRT DBELO has no collateral duties. The SacRT DBELO will devote 100% of his time performing the duties of DBELO to implement the FTA approved Race-and-Gender Conscious DBE Program and to attempt to achieve the Annual 8.38% approved DBE Goal for FFYs 2018–2020."

SacRT attributed its shortfall in FY 2019 to its Downtown Streetcar Project not being awarded. According to SacRT, the project was not awarded because all of the bids received were too high. This was the first project for which SacRT was going to use contract goals, and when it was not awarded, it adversely affected SacRT's ability to meet its goal. The corrective action plan for FY 2019 was to essentially rely on upcoming projects that presented opportunities to use contract goals to help meet its overall DBE goal.

In the absence of any new or modified race-neutral approaches to goal attainment in SacRT's FY 2018 and FY 2019 corrective action plans, the review team reminded SacRT that it must continue efforts to attain the maximum feasible portion of its DBE goal through race-conscious means. SacRT should not abandon race-neutral measures in the attainment of its DBE goals. The review team pointed out that in its DBE Program Plan SacRT identified measures to foster small business participation that included the use of small business set-asides and unbundling of large contracts. In addition, SacRT was already using small business preference points in some of its procurements. SacRT should consider using these and other race-neutral measures in addition to the use of race-conscious measures as corrective actions for future shortfalls.

SacRT should also annually evaluate the likelihood of attaining its goals based on the circumstances at the time and for the foreseeable future. If at any time SacRT determines that meeting future goals is unlikely, it should consider requesting FTA approval for goal revisions as corrective action.

Advisory Comments

It is an effective practice to consider and include both race-neutral and race-conscious corrective actions when developing corrective actions to DBE goal shortfalls. It is also an effective practice to consider goal revisions when appropriate and as approved by FTA.

6.10 Transit Vehicle Manufacturers (TVMs)

Requirement (49 CFR §26.49)

The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with DBE regulations before accepting bids on FTA-assisted vehicle purchases. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the DBE requirements (DBE plan and annual overall DBE goal). Certified TVMs are listed on the FTA website and a recipient should ascertain that the TVM is on the list prior to permitting a bid or proposal.

Discussion

During this compliance review, no deficiencies were found with this requirement. The review team reviewed the procurement files and FTA TVM award reporting records for the most recent three SacRT TVM procurements: 2015029 Creative Bus, 2016102 Creative Bus, and 17-01-0010 Gillig Buses. The procurement files for all three of the procurements contained pre-award certifications signed by each TVM and a screenshot printout of FTA's Eligible Transit Vehicle Manufacturer's List, confirming the TVMs were eligible for award. The review team also confirmed with FTA that SacRT reported all three TVM awards, as required. The three awards were reported as follows:

	Award Date	Report Date
2015029 Creative Bus	2/26/2018	3/5/2018
2016102 Creative Bus	12/11/2017	12/15/2017
17-01-0010 Gillig Buses	1/23/2017	2/3/2017

As reported in Section 6.1, the TVM procedures in SacRT's DBE Program Plan did not address all requirements or reflect SacRT's actual practice. Although in practice SacRT complied with all TVM requirements, its DBE Program Plan required updating.

6.11 Required Contract Provisions and Enforcement

A) Contract Assurance

Requirements (49 CFR §26.13)

Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include non-discrimination clauses detailed by the DBE regulations.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT included the required contract assurance described in 49 CFR §26.13(b) in all contracts reviewed on site (2018094 Downtown Streetcar Project, 51183 General Engineering for Construction Management, 2015029 Creative Bus, 2016102 Creative Bus, and 17-01-0010 Gillig Buses).

B) Prompt Payment

Requirements (49 CFR §26.29)

The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding this requirement. As described in its DBE Program Plan, SacRT maintained and enforced two prompt payment and retainage standards pursuant to compliance with California Public Contract Code (CPC) Sections 10262 and 10262.5 and U.S. DOT regulations described in 49 CFR §26.29. For State of California Public Works projects funded with or without federal aid, SacRT required prime contractors to pay subcontractors within seven days. For all Non-Public Works contracts, SacRT required prime contractors to pay subcontractors and release retainage within 30 days. SacRT enforced its prompt payment requirements by requiring prime contractors to submit with their invoices (also referred to by SacRT as "application for payment") reports summarizing DBE activity and payments and stating release of retention. Each application for payment had to include an unconditional waiver and release upon payment executed by the subcontractors that were due payment from the previous payment. Failure by prime contractors to submit such unconditional waivers with a payment application were grounds to reject the payment application. In addition, upon contract completion, prime contractors had to submit a *Final Report – Utilization of Disadvantaged Enterprises* and obtain SacRT approval prior to officially closing the contract.

SacRT's prompt payment clause describing these requirements was included in its General Contract Provisions and included in all contracts. During the site visit, payment applications were reviewed for adherence to SacRT's procedures in its DBE Program Plan and compliance with the prompt payment requirements in 49 CFR §26.29. Prime contractor payment applications reviewed included the required Disadvantaged Business Enterprise Payment forms and Unconditional Waivers.

The review team noted that the prompt payment clause in SacRT's DBE Program Plan and in its General Contract Provisions did not specifically state that retainage be paid within 7 or 30 days, depending on whether the contract was for a Public Works or Non-Public Works project. In practice, SacRT applied the same prompt payment requirements to retainage payments; however, its prompt payment clause omitted the 7-day and 30-day payment requirements.

Advisory Comment

SacRT should update the prompt payment clause in its DBE Program Plan and General Contract Provisions to specifically state that prime contractors must pay subcontractors retainage within 7 or 30 days, as applicable.

C) Legal Remedies**Requirements (49 CFR §26.37)**

Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

Discussion

During this compliance review, no deficiencies were found with this requirement. An advisory comment, however, is made regarding this requirement. SacRT included adequate legal remedies (e.g., liquidated damages, withholding payments, responsibility determinations, contract termination, and breach of contract actions) in its DBE Program Plan and in its most current version of Appendix I of its General Contract Provisions. However, the most current version of its General Contract Provisions Appendix I was included in some, but not all the contracts reviewed on site (2018094 Downtown Streetcar Project, 51183 General Engineering for Construction Management, 2015029 Creative Bus, 2016102 Creative Bus, and 17-01-0010 Gillig Buses).

Advisory Comment

SacRT should include the legal remedies included in its current General Contract Provisions Appendix I in all future FTA-funded contracts.

6.12 Certification Standards**Requirements (49 CFR §§26.67- 26.71)**

The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT is a non-certifying member of the CUCP.

6.13 Certification Procedures

A) Onsite Visits and Document Review

Requirements (49 CFR §26.83)

The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT is a non-certifying member of the CUCP.

B) Annual Affidavit

Requirement (49 CFR §26.83)

DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT is a non-certifying member of the CUCP.

C) Interstate Certification

Requirement (49 CFR §26.85)

The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR §§26.85(c)-(g).

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT is a non-certifying member of the CUCP.

D) Certification Appeals

Requirements (49 CFR §26.86)

The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

Discussion

During this compliance review, no deficiencies were found with this requirement. SacRT is a non-certifying member of the CUCP.

6.14 Record Keeping and Enforcements

A) Semi-Annual Uniform Reports

Requirements (49 CFR §26.11)

The recipient must provide data about its DBE program to FTA on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA electronic grants management system, unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the DOT Office of Civil Rights by January 1st of each year.)

Discussion

SacRT submitted its June 2017, December 2017, June 2018, and December 2019 Semi-Annual Uniform Reports late. SacRT's June 2019 and December 2019 Semi-Annual Uniform Reports contained inaccuracies in Section C: Payments on Ongoing Contracts. The June 2019 report was submitted on May 31, 2019. FTA marked the report "Incorrect/Incomplete" on June 12, 2019, and returned the report to SacRT for correction. The December 2019 report was submitted on December 4, 2019. FTA marked the report "Incorrect/Incomplete" on the same day and returned the report to SacRT for correction. At the time of the site visit, SacRT had not yet taken corrective action on the June 2019 and December 2019 reports. During the site visit, SacRT explained that it was unaware that the reports had been returned for correction. The review team advised SacRT to work with the Region 9 RCRO to correct the reports. On February 4, 2019, TrAMS reported that SacRT submitted the corrected reports.

Although SacRT had instances of untimely Semi-Annual Uniform Reports, with the exception of the June 2019 and December 2019 reports, SacRT's reports were determined to be accurate. In fact, the errors in the June 2019 and December 2019 reports had to do with SacRT's misinterpretation of what should be entered in field 18C of the Uniform Report. The number SacRT reported was not wrong, but it was reported in the wrong field. During the site visit, support for the June and December 2018 and 2019 Semi-Annual Uniform Reports was reviewed, and the reports were determined to be accurate. Although SacRT demonstrated that it complied with recordkeeping requirements and was able to produce and submit accurate reports, SacRT's process for compiling the information necessary for accurate reporting was overly manual and complex and, therefore, susceptible to error. Moreover, SacRT's process was largely undocumented. These factors make it unlikely that staff members other than the current DBELO could produce the required reports. Should the current DBELO be replaced for any reason, SacRT's ability to submit accurate and timely reports could be diminished. Accordingly, SacRT must develop written procedures for Semi-Annual DBE reporting. SacRT was also advised to work with other relevant resources within the agency (i.e., finance, project management, program management, and information technology) to identify a more automated and simpler way to produce the information required for its Semi-Annual Uniform Reports.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes or incorporates by reference detailed procedures for completing Semi-Annual Uniform Reports. The procedures must (1) identify the staff positions responsible for providing and compiling the information used for the Semi-Annual Uniform Report; (2) include a detailed description of the reports from the various internal systems, spreadsheets, and forms (manual and electronic) and how they are used to prepare the Semi-Annual Uniform Report; (3) describe in detail how and when required information is collected and determined accurate and reportable; and (4) include a detailed description with timelines of how SacRT will ensure timely submission of all future Semi-Annual Uniform Reports.

B) Bidders List**Requirements (49 CFR §26.11)**

The recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion

SacRT's bidders list did not include all required elements. SacRT's bidders list was missing age of firm and gross receipts. SacRT had recently implemented a new online vendor registration application that contained the ability to collect all required information. However, it had not been fully operationalized to ensure the collection of said information.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit to the FTA Office of Civil Rights an updated bidders list that includes all required elements, as available, and confirmation that its online vendor registration application captures all required information for future registrants.

C) Monitoring**Requirement (49 CFR §26.37)**

The recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as closeout reviews for contracts.

Discussion

SacRT's procedures for monitoring its DBE Program and DBE Program stakeholder compliance were described in its most recent DBE Program Plan and were generally sufficient. However, because of the distributed way SacRT conducts monitoring of its DBE Program, its DBELO should develop and/or compile detailed procedures for each program element SacRT monitors into a comprehensive monitoring SOP that describes in greater detail how and when DBE

Program monitoring occurs and who within the agency is responsible for what monitoring activities, all of which should be actively monitored by the DBELO's office.

SacRT's monitoring procedures included procedures for monitoring its FTA-funded projects for DBE Program compliance and procedures for monitoring its subrecipients for DBE Program compliance. In its DBE Program Plan, SacRT stated, "SacRT will monitor and provide written certification on the DBE Project Compliance Review Checklist form (Attachment 2) for every contract/project entered into by SacRT and Subrecipients on which DBEs are participating, ensuring the DBEs are in fact performing the work." Although SacRT provided several examples of collecting DBE Monthly Payment Reports, Commercially Useful Function Reports, Certified Payroll Reports, SBE Utilization Monthly Reports, Unconditional Waiver Releases, Construction Progress Meeting Minutes, and Inspector Daily Reports to demonstrate its monitoring activities, it did not provide an example of a completed DBE Project Compliance Review Checklist (PCRC).

Although SacRT did not have many recent construction projects, it did submit monitoring documentation for its Civil, Track, Systems and Stations Construction - SSCP2 (2015) and South Sacramento Corridor Phase 2, Aerial Structures (2014) projects. No completed PCRCs were included in the information provided. A blank PCRC was provided and determined to be a useful monitoring tool, but it was limited in that its focus was on monitoring construction projects with contract goals. SacRT must update its PCRC to expand the DBE Program elements it monitors for compliance. For example, the PCRC did not document that prime contractors complied with contract assurance requirements in contracts between the prime and its subcontractors, nor did it document that it confirmed the DBE requirements associated with TVM procurements were met. If enhanced and used as stated in its DBE Program Plan, the PCRC could be an effective tool for tracking the many monitoring activities and forms required and used by SacRT. The PCRC would also enable the DBELO to monitor and ensure the various SacRT stakeholders responsible for monitoring the enforcement of program compliance are satisfactorily doing so.

During the site visit, the review team reviewed a list of ongoing FTA-assisted contracts with DBE participation. This list included the names of prime contractors and DBE subcontractors working on each ongoing SacRT contract. The review team searched the CUCP for all DBE subcontractors included on SacRT's ongoing FTA-assisted contract list to confirm their DBE status and discovered three of the DBE subcontractors listed were not in the CUCP. For the WO #26 BMF2 Maintenance Bay Build Out project (P.O. number 4500044725), SacRT listed the prime contractor as Kimley-Horn Associates, Inc. and eight DBE subcontractors. One of the DBE subcontractors, B & C Transit Consultants, could not be found in the CUCP. For the WO #20: Horn LRT Station FD project (P.O. number 4500042276), SacRT listed the prime contractor as PSOMAS and four DBE subcontractors. Two of the DBE subcontractors, W-TRANS and EXARO Technologies Corporation, could not be found in the CUCP. SacRT assisted in the CUCP search for these three contractors, suggesting different search criteria to enter into the CUCP DBE search application, with no success. After the site visit, SacRT provided the following email response:

W-Trans is Whitlock & Weinberger Transportation Inc. (see attached CUCP cert)

EXARO is no longer certified. Attached is email with Caltrans UCP representative [Name Removed]. She also called me in regards to my not finding EXARO on DOT list of de-certified firms. She stated that Certified DBEs can chose to remove themselves from the

program in which case the firm would not be listed on DOT's list of de-certified firms. [Name Removed] did not provide me a date when EXARO voluntarily opted out of the program. They were certified (cert.# 35751) at the time they were listed on the proposal for General Engineering Services CN 2016072. The screen shot showing EXARO certified on attached pdf is from a copy of the CUCP DBE Directory that I downloaded and filed on 6/2/17.

B & C Transit is no longer certified with CA UCP. They are also not listed in DOT's list of de-certified firms. I similarly found their certification on a copy of CUCP directory I previously downloaded and filed (Screen shot pdf attached). I also found them listed in Texas UCP (attached).

SacRT provided subrecipient monitoring procedures in Attachment 6 of its DBE Program Plan that primarily addressed subrecipient monitoring procedures associated with DBE participation reported by subrecipients. These procedures described the DBELO's procedures for interacting with SacRT subrecipient project managers and subrecipients to obtain the required DBE participation information for inclusion in SacRT's Semi-Annual Uniform Reports. In addition, SacRT provided the *Sacramento Regional Transit District Federal Grant Program Subrecipient Monitoring, Management, and Administration Plan* dated August 2, 2018. These procedures were used by SacRT subrecipient project managers to conduct subrecipient oversight in several areas, including DBE. Regarding DBE, these procedures stated the following:

Disadvantaged Business Enterprise (DBE): The subrecipient must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT- assisted contracts. Subrecipients also must create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

Written DBE Programs are required of FTA subrecipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in a Federal fiscal year. Subrecipients are required to follow their approved DBE Programs, and such programs need to be updated when significant changes occur.

Subrecipients must have a contract clause that requires primes to pay subcontractors for satisfactory performance of their contract work no later than 30 days from receipt of payment for such work from the subrecipient. Subrecipients must have a process to monitor contractors for compliance with applicable DBE requirements.

All subrecipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. The subrecipient is required to include a provision in its bid specifications requiring the certification from TVMs as a condition of permission to bid.

Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that have been approved or has not been disapproved, at the time of solicitation are eligible to bid per 49 CFR Part 26.49(a)(1). Subrecipients must go to FTA's website at http://www.fta.dot.gov/12326_5626.html and confirm and document to file confirmation that the TVM is on the FTA certified list of TVMs Eligible to Bid on Federally Funded

Transit Agency Contracts[.] Pursuant to 49 CFR §26.49(a)(4), within 30 days of making an award to purchase transit vehicles, all subrecipients must send RT, the Direct Recipient, a letter on agency letterhead stating the name of the successful TVM bidder and the total dollar value of the contract. RT must in turn send to the RCRO, the subrecipient's letter and verification of confirmation that the TVM is on the FTA certified list of TVMs Eligible to Bid on Federally Funded Transit Agency Contracts.

The review team noted that the procedures did not include a checklist to make it easy for subrecipient project managers to track subrecipient compliance. Accordingly, SacRT should consider adding these oversight items to the PCRC for tracking purposes by subrecipient project managers and the DBELO's office. SacRT should also consider third-party software applications that can help streamline, manage, and better coordinate distributed DBE Program monitoring activities. Such applications could replace the PCRC and help to automate other program management tasks.

Completed subrecipient monitoring reports were stored on a SacRT shared network drive to which the DBELO had access. During the site visit, it was discovered that no monitoring reports had been uploaded to the shared drive since 2011, indicating that the process for documenting subrecipient oversight had not occurred in years. In addition, after subrecipient monitoring reports were uploaded, there did not appear to be a process in place for the DBELO to review those reports and follow up on findings of deficiency either directly with the subrecipient or in conjunction with the SacRT subrecipient project manager.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, SacRT must submit the following to the FTA Office of Civil Rights:

- An updated DBE Program Plan that includes or incorporates by reference detailed monitoring procedures for tracking and ensuring compliance with the requirements in 49 CFR §§26.11, 26.13, 26.29, 26.37, 26.49, and 26.55. To the extent possible, the procedures can be compiled from existing procedures, as appropriate, into one set of procedures. The procedures must (1) identify the staff positions involved in and responsible for monitoring compliance in the aforementioned regulations; (2) describe in detail how and when monitoring occurs; (3) include a detailed description of the monitoring tools, reports, and systems (manual and electronic) and how they are used; (4) include a process for confirming work counted towards DBE goal attainment is performed by certified DBEs; (5) include or incorporate by reference how subrecipients are monitored for compliance with the aforementioned regulations, as applicable; and (6) describe in detail how subrecipient findings of DBE Program deficiency are corrected.
- An updated DBE Program Plan that includes or incorporates by reference an updated DBE PCRC or other such instrument that documents SacRT's monitoring for compliance with the requirements in 49 CFR §§26.11, 26.13, 26.29, 26.37, 26.49, and 26.55. The PCRC or other such instrument must also document subrecipient compliance with the same requirements, as applicable.
- A current subrecipient oversight schedule.

Advisory Comment

It is suggested that SacRT research the utility and feasibility of third-party DBE Program management and compliance information systems for use in the administration, management, and monitoring of its DBE Program.

7. Summary of Findings

Item	Requirement of 49 CFR Part 26.	Ref.	Review Finding(s) D or ND	Finding	Corrective Action(s)	Response Days/*
1.	Program Plan	26.21	D	SacRT's DBE Program Plan was out of date (e.g., organization chart and broken hyperlinks to important resources) and did not adequately address all required elements (i.e., Transit Vehicle Manufacturer (TVM) procurement and award requirements). In some cases, SacRT's DBE Program Plan was inconsistent with actual program implementation (i.e., TVM procurement and award requirements and DBE Program objectives).	SacRT must submit the following to the FTA Office of Civil Rights: <ul style="list-style-type: none"> An updated DBE Program Plan that addresses all required elements and reflects current practice. Confirmation that it has reviewed its active contracts and confirmed that all references to creating "maximum opportunity" as a DBE Program objective have been replaced with "level playing field." 	60
2.	Policy Statement	26.23	ND			
3.	DBE Liaison Officer	26.25	D	SacRT did not provide the resources necessary to support the DBELO in the administration and implementation of the DBE Program.	SacRT must submit to the FTA Office of Civil Rights a plan with timelines for allocating more resources to support the DBELO function.	60
			AC	It is recommended that SacRT research and implement new		

				technologies as a resource to assist the DBELO's office in the management and administration of its DBE Program.		
4.	Financial Institutions	26.27	D	SacRT did not identify the availability of DBE financial institutions, as required.	SacRT must submit to the FTA Office of Civil Rights documentation that it researched the availability of DBE financial institutions, considered using those that it found, and encouraged prime contractors on its FTA-assisted contracts to make use of those that it found.	60
5.	DBE Directory	26.31	AC	SacRT was advised to update the broken hyperlinks to the CUCP DBE directory in its DBE Program Plan with functioning hyperlinks.		
6.	Overconcentration	26.33	D	SacRT did not have adequate procedures in place to analyze occurrences of overconcentration.	SacRT must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail how it defines overconcentration and determines its occurrence.	60
7.	Business Development Programs	26.35	ND			
8. Determining / Meeting Goals						

8.a	Calculation	26.45	D	SacRT submitted its FY 2018–20 goal late. SacRT's did not use its bidders list in accordance with DBE regulations and DBE goal-setting best practices.	SacRT must submit the following to the FTA Office of Civil Rights: <ul style="list-style-type: none"> • A detailed plan with staff roles and responsibilities and timelines for developing its FY 2021–23 DBE goal that ensures the goal's timely submission (due August 1, 2020). • An updated DBE Program Plan that clearly explains procedures for using its bidders list that conform to 49 CFR §26.45(c)(2) and DOT DBE goal-setting guidance found at https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise. 	60
			AC	Although SacRT should make every effort to submit future goals on time, if, in the future, SacRT anticipates the need to request an extension beyond		

			AC	<p>the August 1 deadline for any reason, SacRT is advised to communicate its request to the FTA Region 9 RCRO in advance of the deadline. In addition, SacRT should correct the language in its DBE Program Plan that states soliciting public comment will be completed by April 1 if, in fact, public comments are accepted after that date.</p> <p>SacRT is advised to only use past underutilization as a factor in its Step 2 adjustment if it has the resources to correct the disparities it identifies. If past underutilization is used as a factor in its Step 2 adjustment in the future, SacRT is advised to thoroughly explain in its goal methodology submission how it intends to increase the number of DBE firms in its market area for the period covered by the goal.</p>		
8.b	Public Participation	26.45	AC	For future goal methodologies, SacRT should provide documentation (e.g., meeting agendas, invitations, and/or presentations) that explicitly shows the DBE Goal Methodology as a topic of discussion. SacRT's DBE		

				Program Plan and DBE Goal Methodology should only include those methods of public participation and DBE goal notification that it actually implements.		
8.c	Race-Neutral	26.51	D	SacRT did not provide documentation confirming implementation of efforts to foster small business participation by structuring contracts to facilitate competition by small businesses.	SacRT must submit an updated DBE Program Plan that identifies the Small Business Element measures that structure contracts to facilitate competition by small businesses that it can and will implement. In addition, SacRT must submit a detailed description of how it will implement the measures it includes in its updated plan.	60
			AC	It is an effective practice to include all measures related to business development assistance, technical assistance, and information dissemination in its list of race-neutral measures, per 49 CFR §26.51; and to include all efforts to structure contracts to foster small business participation as elements of its Small Business Element, per 49 CFR §26.39.		
8.d	Race-Conscious	26.51	ND			

8.e	Good Faith Efforts	26.53	D	SacRT stated in its DBE Program Plan that it required good faith efforts to be submitted as a matter of responsiveness. However, in practice it allowed bidders to submit GFEs as a matter of responsibility.	SacRT must submit to the FTA Office of Civil Rights confirmation on how it will require GFEs to be submitted by bidders on future FTA-funded procurements for which there are DBE contract goals. SacRT's DBE Program Plan must reflect actual practice.	60
8.f	Counting DBE Participation	26.55	ND			
8.g	Protecting Against Termination for Convenience	26.53	ND			
8.h	Quotas	26.43	ND			
9.	Shortfall Analysis and Corrective Action Plan	26.47	AC	It is an effective practice to consider and include both race-neutral and race-conscious corrective actions when developing corrective actions to DBE goal shortfalls. It is also an effective practice to consider goal revisions when appropriate and as approved by FTA.		
10.	TVM	26.49	ND			
11.Required Contract Provisions and Enforcement						
11.a	Contract Assurance	26.13	ND			
11.b	Prompt Payment	26.29	AC	SacRT should update the prompt payment clause in its		

				DBE Program Plan and General Contract Provisions to specifically state that prime contractors must pay subcontractors retainage within 7 or 30 days, as applicable.		
11.c	Legal Remedies	26.37	AC	SacRT should include the legal remedies included in its current General Contract Provisions Appendix I in all future FTA-funded contracts.		
12. Certification Standards		26.67 - 26.71	ND			
13. Certification Procedures						
13.a	Onsite Visit	26.83	ND			
13.b	Annual Affidavit	26.83	ND			
13.c	Interstate Certification	26.85	ND			
13.d	Certification Appeals	26.86	ND			
14. Record Keeping and Enforcements						
14.a	Semi-Annual Uniform Reports	26.11	D	SacRT submitted Semi-Annual Uniform Reports late.	SacRT must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes or incorporates by reference detailed procedures for completing Semi-Annual Uniform Reports. The procedures must (1) identify	60

					the staff positions responsible for providing and compiling the information used for the Semi-Annual Uniform Report; (2) include a detailed description of the reports from the various internal systems, spreadsheets, and forms (manual and electronic) and how they are used to prepare the Semi-Annual Uniform Report; (3) describe in detail how and when required information is collected and determined accurate and reportable; and (4) include a detailed description with timelines of how SacRT will ensure timely submission of all future Semi-Annual Uniform Reports.	
14.b	Bidders List and Reporting DBE Participation	26.11	D	SacRT's bidders list did not contain all required data elements.	SacRT must submit to the FTA Office of Civil Rights an updated bidders list that includes all required elements, as available, and confirmation that its online vendor registration application captures all required information for future registrants.	60

14.c	Monitoring	26.37	D	SacRT's monitoring procedures were inadequate.	<p>SacRT must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none">• An updated DBE Program Plan that includes or incorporates by reference detailed monitoring procedures for tracking and ensuring compliance with the requirements in 49 CFR §§26.11, 26.13, 26.29, 26.37, 26.49, and 26.55. To the extent possible, the procedures can be compiled from existing procedures, as appropriate, into one set of procedures. The procedures must (1) identify the staff positions involved in and responsible for monitoring compliance in the aforementioned regulations; (2) describe in detail how and when monitoring occurs; (3) include a detailed description of the monitoring tools, reports, and systems (manual and electronic)	60
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					<p>and how they are used; (4) include a process for confirming work counted towards DBE goal attainment is performed by certified DBEs; (5) include or incorporate by reference how subrecipients are monitored for compliance with the aforementioned regulations, as applicable; and (6) describe in detail how subrecipient findings of DBE Program deficiency are corrected.</p> <ul style="list-style-type: none">• An updated DBE Program Plan that includes or incorporates by reference an updated DBE PCRC or other such instrument that documents SacRT's monitoring for compliance with the requirements in 49 CFR §§26.11, 26.13, 26.29, 26.37, 26.49, and 26.55. The PCRC or other such	
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			AC	It is suggested that SacRT research the utility and feasibility of third-party DBE Program management and compliance information systems for use in the administration, management, and monitoring of its DBE Program.	instrument must also document subrecipient compliance with the same, as applicable. <ul style="list-style-type: none">• A current subrecipient oversight schedule.	
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Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency;
NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

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ATTACHMENT A – FTA NOTIFICATION LETTER TO SacRT



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

November 8, 2019

Henry Li
General Manager and CEO
Sacramento Regional Transit District
1400 29th Street
Sacramento, CA 95816

Dear Mr. Li:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE specialized reviews of grant recipients. The Sacramento Regional Transit District (SRTD) has been selected for a review of its overall DBE program to take place January 7–10, 2020.

The purpose of this review will be to determine whether SRTD is meeting its obligations, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program/implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, DC, to conduct this specialized review. Representatives of DMP and FTA will participate in the opening and exit conferences, with FTA participating by telephone.

We request an opening conference at 9 a.m., on Tuesday, January 7, to introduce the DMP team and FTA representatives to SRTD. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as DMP's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 30 days of the date of this letter. Please forward these materials to the following contact person:

Donald G. Lucas
The DMP Group, LLC
2233 Wisconsin Avenue NW, Suite 228
(202) 726-2630 Office
(202) 297-2942 Mobile
donald.lucas@thedmpgroup.com

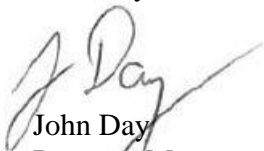
FTA requests your attendance at an exit conference scheduled for 11 a.m. on Friday, January 10, 2020. The exit conference will afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide them to you in a draft report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The draft and final report, when issued to SRTD, will be considered public documents subject to release under the Freedom of Information Act, upon request.

SRTD representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact me at 202-366-1671, or via e-mail at *john.day@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day
Program Manager
FTA Office of Civil Rights

Enclosure

cc: Ray Tellis, Regional Administrator, FTA Region 9
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights

Enclosure

The following information must be submitted to DMP within 30 calendar days from the date of this letter:

1. Current DBE Program Plan (which should include SRTD's organization chart).
2. Federal fiscal years (FY) 2015–2017 and FYs 2018-2020 goal methodology submissions.
3. Current Memorandum of Understanding or similar documents for SRTD's participation in the Unified Certification Program.
4. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts, and worksite locations, where applicable.
5. Provide a list of contracts to include:
 - the last 15 FTA-assisted contracts awarded by SRTD in FY 2019
 - the last 15 FTA-assisted contracts completed by SRTD in FY 2019
 - the last 15 FTA-assisted contracts with DBE goals awarded by SRTD in FY 2019
 - the last 15 FTA-assisted contracts with DBE goals completed by SRTD in FY 2019.
6. The identification of firms, if any, that have worked on SRTD's projects and have graduated from SRTD's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified.
7. Information identifying FTA-funded contracts awarded from FY 2017 to present by SRTD and its subrecipients. (The federal fiscal year begins October 1 and ends September 30.) The information should identify the names of prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
8. List of DBE subcontractors terminated or substituted from FTA-funded contracts with contract goals in the last three years.
9. Good Faith Effort criteria established by SRTD.
10. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
11. Procedures for monitoring subrecipients for compliance with DBE requirements, as applicable.
12. Small Business Element as implemented by SRTD.
13. FTA-assisted transit vehicle procurements/contracts for the past five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer.
14. List of all FTA-assisted transit vehicle request for proposals (RFPs) or invitation for bids (IFBs) for the last five (5) years.
15. List of all vendors that responded to or bid on the RFPs and IFBs provided in response to Item 14.

16. Shortfall analyses and corrective action plans for the last three (3) years, as applicable.
17. List of all subrecipients and the amount of FTA funds allocated to each subrecipient from FY 2017 through present, as applicable.
18. Names of interested a party (external organizations) with which SRTD has interacted on the DBE program issues.
19. Any complaints or lawsuits received concerning SRTD's DBE program over the past five (5) years.
20. The DBELO official position description and position descriptions for other SRTD staff or contractors responsible for implementing the DBE Program.
21. Other pertinent information determined by SRTD's staff to illustrate its DBE compliance efforts.

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ATTACHMENT B – SacRT’S RESPONSE TO DRAFT REPORT



**Sacramento Regional
Transit District**
A Public Transit Agency
and Equal Opportunity Employer

Administrative Offices
1400 29th Street
Sacramento, CA 95816
916-321-2800

Mailing Address
P.O. Box 2110
Sacramento, CA 95812-2110

Human Resources
2810 O Street
Sacramento, CA 95816
916-556-0298

**Customer Service &
Sales Center**
1225 R Street
Sacramento, CA 95811

**Route, Schedule & Fare
Information**
916-321-BUSS (2877)
TDD 916-483-HEAR (4527)
www.sacrt.com

Public Transit Since 1973

October 14, 2020

John Day
Program Manager, Policy & Technical Assistance
Office of Civil Rights
Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Ave., SE, Room E-54-310
Washington, DC 20590

SUBJ: FTA Draft Report: Sacramento RTD DBE Review

Dear Mr. Day:

Thank you for providing Sacramento Regional Transit District (SacRT) staff with the opportunity to review the draft report for the DBE Review of SacRT, which was conducted on January 7–10, 2020.

Staff has provided additional clarification regarding our system and operations as Attachment 1 to this correspondence.

SacRT acknowledges and appreciates the fact that the FTA understands the impact of COVID-19 on SacRT's day-to-day operations, and that FTA has implemented temporary flexibilities on reporting timelines into October 2020. SacRT's DBELO is focused on the following upcoming FTA Reporting deadlines:

- Uniform Report, due on December 1, 2020
- Triennial DBE Goal, which has an approved extended due date of December 1, 2020
- Shortfall Analysis, due on December 29, 2020

SacRT appreciates the FTA's guidance and support during this time.

Sincerely,

Henry Li
General Manager/CEO

c: Laura Ham, VP, Planning & Engineering
Jessica Shevlin, DBE Liaison Officer, Acting

ATTACHMENT 1

4.1 Introduction to SacRT and Organizational Structure

SacRT was created by the California State Legislature in 1971 and began bus transit operations in April 1973. It constructs, operates, and maintains a comprehensive transit system that is authorized to provide service within approximately 400 square miles in Sacramento County, with a service area population of approximately 1.5 million people. In 2019, SacRT provided an average of 75,000 trips per weekday, an average of 29,000 trips on Saturdays, and an average of 20,000 trips on Sundays.

The SacRT Board of Directors consists of four members from the City of Sacramento, three members from the County of Sacramento, and one member each from the cities of Rancho Cordova, Citrus Heights, Elk Grove, and Folsom. SacRT's transit system is led by a General Manager and Chief Executive Officer who oversees the following divisions: Operations and Maintenance; Safety, Security & Customer Service; Planning & Engineering; Integrated Services & Strategic Initiatives; and Finance & Procurement. SacRT directly operates a fleet of 192 40-foot buses and 52 shuttle buses (68 FTA funded) that provide fixed-route service on a network of 66 routes. In 2019, SacRT began the conversion to an electric bus fleet, with 15 electric buses now in service. SacRT maintains a network of seven bus-only transit centers. Bus service is provided weekdays from 4:59 a.m. to 11:13 p.m., Saturdays from 5:41 a.m. to 11:11 p.m., and Sundays from 5:45 a.m. to 10:12 p.m.

SacRT also operates a light rail system of 43 miles with 52 stations or stops. 24 of SacRT's light rail stations provide fixed-route bus connections. Rail service is provided with 97 rail cars. Rail service operates from 3:49 a.m. to 12:59 a.m. on weekdays, from 4:26 a.m. to 12:59 a.m. on Saturdays, and from 4:49 a.m. to 10:59 p.m. on Sundays.

The basic adult fare for bus and light rail service is \$2.50. A reduced fare of \$1.25 is offered to seniors, persons with disabilities, and Medicare cardholders. SacRT's new Ryde Free Pass is offered to K-12 students for free fare. SacRT also offers daily and monthly passes and pre-paid ticket books. All of SacRT's standard pass options, including single ride tickets, are available on the ZipPass mobile application. SacRT monthly pass options and fares for 8 partner agencies in the region are available on the Connect Card.

SacRT operates 120 vehicles to provide ADA and non-ADA demand-response paratransit service. Complementary paratransit service is available to origins and destinations within a 3/4-mile radius of SacRT's bus routes or light rail stations during regular fixed-route service hours.

On February 12, 2018, SacRT launched a microtransit pilot called "SmaRT Ride," an on-demand public transit service similar to Uber or Lyft. SacRT's continued SmaRT Ride service operates in 9 zones in the Sacramento area. Customers can use a smartphone application to request a ride that will pick them up and drop them off wherever they wish to travel within the service boundaries. SmaRT Ride customers can also request rides online or by calling SacRT.

SacRT's administrative offices, primary bus operations and maintenance facility, Metro Heavy Repair Facility, and light maintenance satellite facility are located in Sacramento. Light bus maintenance occurs at the Community Bus Services facility in McClellan.

SacRT passes formula grant funds to subrecipients, including the cities of Sacramento, Citrus Heights, Placerville, Elk Grove, and Roseville; the Sacramento Area Council of Governments; and El Dorado Transit, the Yolo County Transit District, and the Yuba-Sutter Transit Authority.

5.2 Methodology

Please update the following in 2 locations under this section heading: Melissa **Noble**, Senior Attorney.



U.S. Department
of Transportation
**Federal Transit
Administration**

Headquarters

5th Floor – East Bldg., TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

December 9, 2020

Henry Li
General Manager and CEO
Sacramento Regional Transit District
1400 29th Street
Sacramento, CA 95816

RE: Disadvantaged Business Enterprise (DBE) Program Specialized Review Final Report

Dear Mr. Li:

This letter concerns the Federal Transit Administration's (FTA) DBE Specialized Review of the Sacramento Regional Transit District's (SacRT), conducted January 7-10, 2020. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page.

FTA's Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of our ongoing oversight efforts, FTA conducts a number of onsite reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA uses the findings from these reviews to provide technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise noted, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please submit your responses to me at john.day@dot.gov.

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident SacRT will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at 202-366-1943 or via email at guljed.birce@dot.gov.

Sincerely,

John Day
Program Manager
FTA Office of Civil Rights

Enclosure

cc: Ray Tellis, Regional Administrator, FTA Region 9
Selene Faer Dalton-Kumins, Associate Administrator, FTA Office of Civil Rights