

FTA's Top State Management Review Findings

AASHTO/APTA/CTAA
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What is Program Oversight?

FTA is responsible for conducting oversight activities to help ensure that recipients of Chapter 53 grants use the funds in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements.

We do this through Comprehensive Reviews (Triennial & State Management) which:

- Occur every three years
- Forward-looking instead of reactive
- Assess management practices and program implementation

Specialized Reviews (Financial, Procurement, & Civil Rights):

- Occur at FTA's discretion
- Focus on specific areas of Federal compliance



FTA Oversight in Context

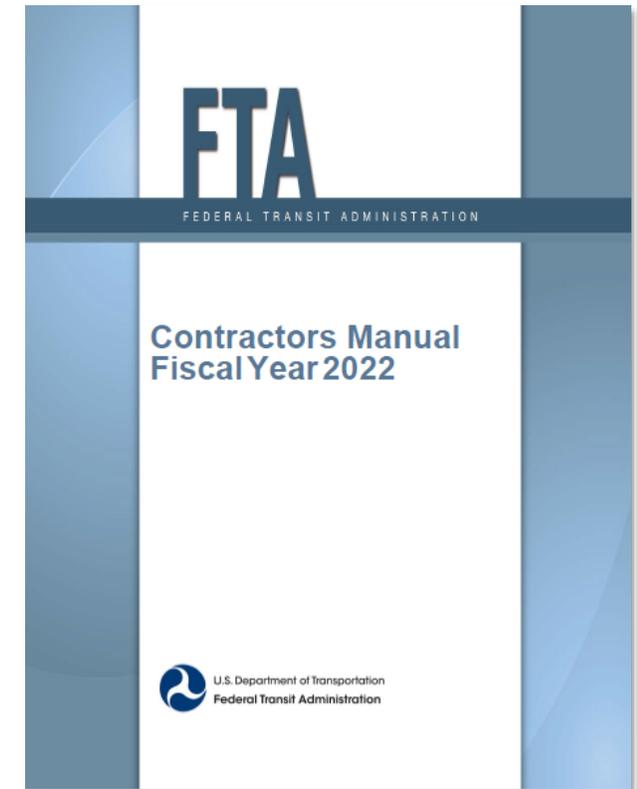
Oversight is necessary and beneficial for recipients, the public, and FTA

- Strengthens the capacity of FTA funding recipients to improve public transit for America's communities
- Meets legislation requirements
- Fulfills FTA's fiduciary responsibility to prevent and identify improper payments and to ensure every dollar counts toward improving public transit
- Confirms and promotes recipient compliance with FTA requirements
- Helps address Congressional and public questions about the use of federal funds

FTA's Comprehensive Review Manual

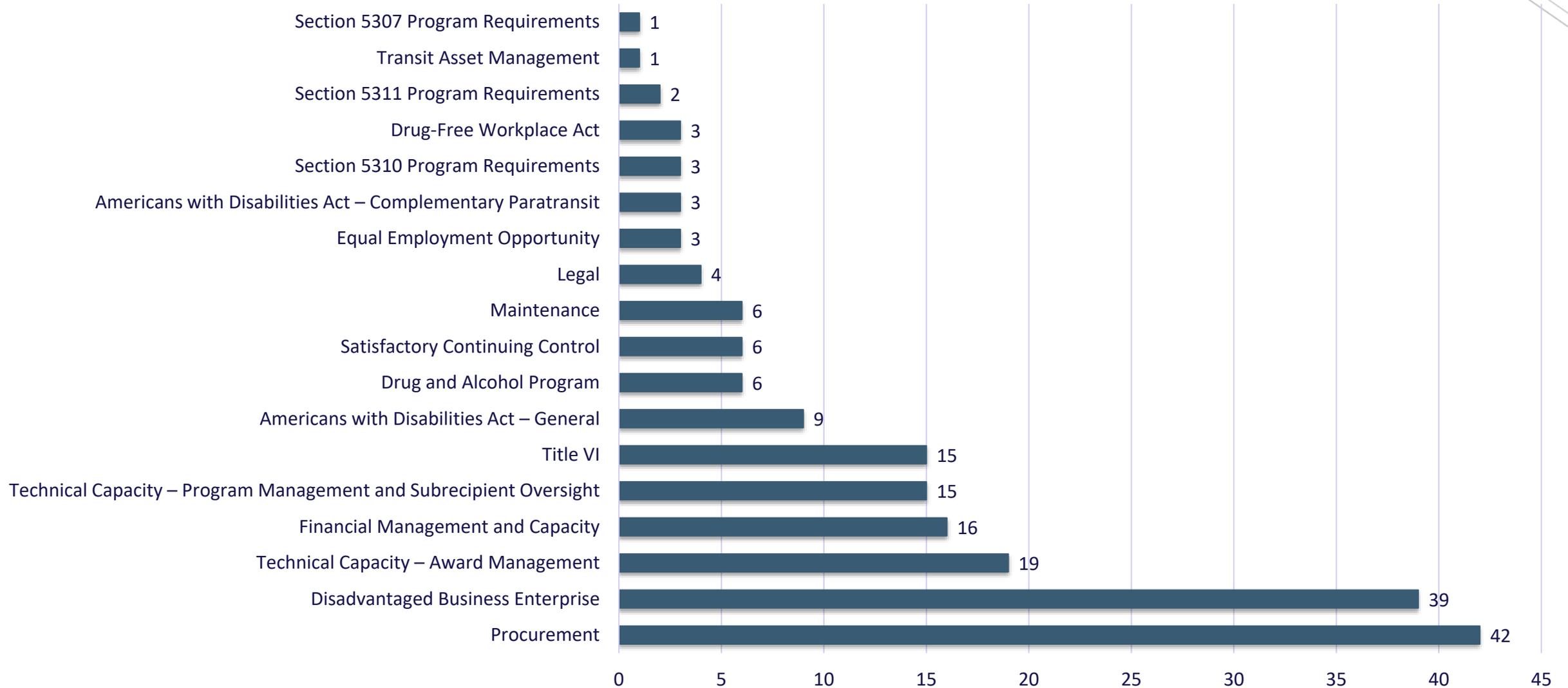
Each overarching question has six basic parts

- 1. Basic Requirement:** High-level, clear statement of what a recipient is required to do
- 2. Applicability:** Recipients to whom the requirement applies
- 3. Explanation:** Detailed description of the basic requirement
- 4. Indicators of Compliance:** How reviewers will assess compliance with the basic requirement
- 5. Determination:** Based on result of indicators
- 6. Governing Directives:** Citation from law, regulation, agreement, or other guidance forming the basis of a potential finding



 [Contractors Manual FY2022](#)

FY21 SMR: Findings by Review Area



Overall Tips For Compliance

Review previous State Management Review report

- Document corrective action implementation
- Avoid repeat deficiencies

Conduct a self-assessment in non-review years

- FTA updates the Contractors Manual annually

Understand how information provided for one section of the review provides input for others, such as:

- Procurement lists for DBE
- Inventory lists for Maintenance

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- <https://public.govdelivery.com/accounts/USDOTFTA/subscriber/new>

Highlights of Top SMR Deficiencies



FY21 SMR: Top Findings

Review Area	Finding
Procurement	P11-1 - Missing FTA clauses
	P21-1 - Insufficient oversight of subrecipient procurements
	P10-2 - Lacking required cost/price analysis
	P5-1 - Incomplete written documentation of procurement history
	P10-1 - Lacking independent cost estimate
Technical Capacity – Award Management	TC-AM5-1 - Inactive award/untimely closeouts
	TC-AM4-1 - Annual Status reports missing or lacking required information
	TC-AM3-1 - MPRs lack required information
Technical Capacity – Program Management and Subrecipient Oversight	TC-PgM6-1 - FFATA reporting deficiencies
Disadvantaged Business Enterprise	DBE6-1 - DBE goal achievement analysis and corrective action plan not completed
	DBE5-1 - DBE uniform reports contain inaccuracies and/or are missing required information

Procurement



Procurement

PURPOSE OF PROCUREMENT REVIEW AREA

The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to Federal procurements, those policies and procedures must still be compliant with all Federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements. For example, FTA does not require each State DOT to have policies and procedures separate from the state education department.



Procurement

P11-1: Missing FTA Clauses

Review Guide Question:	P-11: Did the recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000?
Indicators of Compliance:	A. Did the recipient include applicable required clauses in FTA-funded procurements?
Drivers of Deficiency:	<ul style="list-style-type: none">• Recipients are not remaining current with the Master Agreement or 2 CFR 200 (Appendix II)• Procurements are not recognized as being 'FTA-funded'<ul style="list-style-type: none">○ This has become more complicated with the increase in funding and eligible projects due to COVID-19 supplemental funds and BIL funds

Procurement

What can recipients do to prevent this deficiency?

Use a Clause Checklist

- Reference FTA's [Contractors Manual](#)
- Review [FTA's Master Agreement](#) when issued each year

Identify FTA-funded Procurements

- Develop methods for identifying procurements across all departments
- Coordinate with those conducting procurements to develop methods for identifying procurements

Procurement

P10-1: Lacking Independent Cost Estimate

Review Guide Question:	P10 – Does the recipient develop independent cost estimates (ICE) and conduct cost and/or price analysis as described in its policies and procedures and for each procurement action above the Federal Simplified Acquisition Threshold?
Indicators of Compliance:	A. Did the recipient develop an ICE prior to the receipt of bids and proposals for procurements above the Federal Simplified Acquisition Threshold?
Drivers of Deficiency:	<ul style="list-style-type: none">• Procurements are not recognized as FTA-funded• ICE is not documented• ICE is not dated or dated after receipt of bids/proposals

Procurement

What can recipients do to prevent this deficiency?

**Establish a
Process for
Identifying FTA-
funded projects**

- Include development of an ICE as part of the procedure for authorizing a procurement
- Develop a standardized form for the ICE that identifies completion date, completion by whom and basis of completion



Procurement

P10-2: Lacking Required Cost/Price Analysis

Review Guide Question:	P10 – Does the recipient develop independent cost estimates and conduct cost and/or price analysis as described in its policies and procedures and for each procurement action above the Federal Simplified Acquisition Threshold?
Indicators of Compliance:	B. Did the recipient conduct a cost analysis or price analysis for every procurement action above the Federal Simplified Acquisition Threshold?
Drivers of Deficiency:	<ul style="list-style-type: none">• Recipients do not conduct a cost or price analysis when applicable<ul style="list-style-type: none">○ Often occurs with one type of procurement or buyer, and/or where procurement is a decentralized function• Recipients conduct a cost or price analysis but do not document it

Procurement

What can recipients do to prevent this deficiency?

Monitor Completion of Cost or Price Analysis

- Develop and include a checklist for completion of cost or price analysis

Develop a Standardized Form for Cost or Price Analysis

- Utilize FTA's [Best Practices Procurement Manual](#) for guidance, sample forms and checklists
- Utilize FTA's [Pricing Guide for FTA Grantees](#) for additional guidance

Procurement

P5-1: Incomplete Written Documentation of Procurement History

Review Guide Question:	P5 – Does the recipient maintain records sufficient to detail the history of each procurement as described in its policies and procedures and in compliance with 2 CFR Part 200?
Indicators of Compliance:	A. Do procurement files reviewed include required historical information?
Drivers of Deficiency:	<ul style="list-style-type: none">• Recipient procurement staff do not understand the requirement for the four minimum items to have in FTA-funded procurement files

Procurement

What can recipients do to prevent this deficiency?

› **Ensure all Required
Procurement Files
are Submitted**

Develop a checklist for rationale for:

- the method of procurement,
- selection of contract type,
- reason for contractor selection/rejection, and
- basis for contract price in checklist



Procurement

P21-1: Insufficient Oversight of Subrecipient Procurements

Review Guide Question:	P21 – Does the recipient perform oversight of its subrecipients’ FTA-funded procurement activities as described in its policies and procedures?
Indicators of Compliance:	<p>A. Does the recipient implement oversight procedures of its subrecipients for FTA-funded procurements?</p> <p>B. Do subrecipient procurement files reviewed demonstrate adequate oversight by the recipient?</p>
Drivers of Deficiency:	<ul style="list-style-type: none">• Recipients have subrecipients• Oversight procedures are not current• Oversight activities not consistently documented• Follow-up of oversight findings does not occur• Existing complications when subrecipients are also direct FTA recipients

Procurement

What can recipients do to prevent this deficiency?

Develop a Comprehensive, Standardized Approach

- Include oversight procedures for items reviewed by FTA in Question P-21 of the Contractors Manual
- When regulations change, review and revise oversight guides

Monitor all Oversight Activities

- Document oversight activities and corrective measures
- Follow up with subrecipients on identified deficiencies

Technical Capacity – Award Management



Technical Capacity – Award Management

PURPOSE OF TECHNICAL CAPACITY – AWARD MANAGEMENT REVIEW AREA

The recipient must report **progress of projects** in awards to the Federal Transit Administration (FTA) and **close awards timely**.



Technical Capacity – Award Management

TC-AM5-1: Inactive Award/Untimely Closeout

Review Guide Question:	TC-AM5 – Does the recipient ensure timely expenditure of funds and close out of awards?
Indicators of Compliance:	C. Does the recipient have any delayed or inactive awards that should be closed? If the recipient has any inactive awards that should not be closed, review the recipient’s explanation why.
Drivers of Deficiency:	<ul style="list-style-type: none">• Delays in subrecipient projects• New staff managing the program• Lack of matching funds at subrecipient level<ul style="list-style-type: none">○ This has become more complicated with the increase in funding from COVID-19 supplemental funds and BIL funds

Technical Capacity – Award Management

What can recipients do to prevent this deficiency?

Monitor Awards and Expended Funds

- Analyze available funds in existing awards before applying for new funds or awarding subawards for a new project
- Consistently review for delayed or inactive awards that should be closed

Establish Process for Award Closeout

- Develop procedures for initiating closeout with subrecipients to ensure that the closeout occurs by the time the award is closed with FTA



Technical Capacity – Award Management

TC-AM4-1: Annual Status Reports Missing or Lacking Required Information

Review Guide Question:	TC-AM4 – Are Program of Projects (POP) Status Reports complete and submitted on time?
Indicators of Compliance:	<ul style="list-style-type: none">B. Do status reports include an updated POP for each approved award that contains active projects?C. Does the updated POP reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories?D. Were any changes to line item budgets for the award submitted as budget revisions?E. Were any significant civil rights compliance issues addressed?

Technical Capacity – Award Management

TC-AM4-1: Annual Status Reports Missing or Lacking Required Information

Drivers of Deficiency:

- Too many open awards to report on
- Inactive awards with no activity to report
- Reports omit:
 - Revised project description/changes and/or adjustments to the budget
 - Significant civil rights compliance issues
 - Notable accomplishments or problems involving subrecipients

Technical Capacity – Award Management

What can recipients do to prevent this deficiency?

**Develop
Standardized
Procedures for
Completing Reports**

- Identify responsible parties for completing all steps of the process, including review, approval and submission to ensure all required information is included

**Minimize
Number of
Reports Needed**

- Reduce the amount of open/active awards

Technical Capacity – Award Management

TC-AM3-1: MPRs Lack Required Information

Review Guide Question:	TC-AM3 – Are MPRs complete and accurate?
Indicators of Compliance:	A. Do MPRs address the required topics?
Drivers of Deficiency:	<ul style="list-style-type: none">• Recipients do not include or lack access to the 12 items required

Technical Capacity – Award Management

What can recipients do to prevent this deficiency?

**Ensure
Collection of
Quality
Information**

- Develop an internal format and information collection strategy to receive a comprehensive understanding of all items required



Technical Capacity – Award Management

Required Elements in MPRs

1. **Status of each milestone** that has passed during the prior reporting period, including the actual completion dates for any milestones and revised completion dates for any milestones not met
2. **Narrative of activity status** and any **problems encountered** in implementation, specification preparation, bid solicitation, resolution of protests, or third-party contract awards
3. Detailed discussion of **budget or schedule changes**
4. Explanation of why **scheduled milestones or completion dates were not met**
5. **Identification of problem areas** and a narrative on how the problems will be solved
6. Discussion of the **expected impacts** and the **efforts to recover** from the delays
7. Analysis of each **significant project cost variance**: completion and acceptance of equipment and construction or other work, breakout of the costs incurred and those costs required to complete the project using quantitative measures, such as hours worked, sections completed, or units delivered



Technical Capacity – Award Management

All 12 Required Elements in MPRs

8. List of **outstanding claims exceeding \$100,000** and all claims settled during the reporting period, accompanied by a brief description, estimated costs, and the reasons for the claims
9. A list with a brief description of all **potential and executed change orders**, and amounts exceeding \$100,000, pending, or settled
10. A list of **claims or litigation involving third party contracts** and potential third-party contacts that have a value exceeding \$100,000; involve a controversial matter irrespective of amount; or involve a highly publicized matter, irrespective of amount
11. A list of **real property acquisition actions**, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel reported
12. **Contract award milestone** for all rolling stock activity line items (ALLs)



Technical Capacity – Program Management and Subrecipient Oversight



Technical Capacity – Program Management and Subrecipient Oversight

PURPOSE OF TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT REVIEW AREA

States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Sections 5310, 5311, and 5339 funds must **develop and submit a State Management/ Program Management Plan** to the FTA for approval. Recipients must enter into an agreement with each subrecipient, obtain required certifications from subrecipients, report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards, and ensure subrecipients comply with the terms of the award.

Technical Capacity – Program Management and Subrecipient Oversight

TC-PgM6-1: FFATA Reporting Deficiencies

Review Guide Question:	TC-PgM6 – Has the recipient reported subaward information to FSRS for all subawards over \$30,000 timely?
Indicators of Compliance:	<p>A. Has the recipient reported subaward information to FSRS for all subawards greater than or equal to \$25,000 (\$30,000 effective November 12, 2020), including subaward amendments making the total award greater than or equal to \$25,000 (\$30,000 effective November 12, 2020)?</p> <p>B. Were the reports submitted by the end of the month after the month in which the subaward was made?</p>

Technical Capacity – Program Management and Subrecipient Oversight

TC-PgM6-1: FFATA Reporting Deficiencies

Drivers of Deficiency:

- There is not a designated point person for entering this information
- Awards are not provided timely for entry
- Lack of awareness of this requirement (and/or the threshold)



Technical Capacity – Program Management and Subrecipient Oversight

What can recipients do to prevent this deficiency?

**Designate
Point of
Contact or
Office**

- Include responsibility of entering information in the position description so that it does not get forgotten when there are personnel changes

**Coordinate
with Points of
Contact for
Subawards**

- Standardize processes used by those awarding subawards and those entering this information



Disadvantaged Business Enterprise



Disadvantaged Business Enterprise

PURPOSE OF DISADVANTAGED BUSINESS ENTERPRISE REVIEW AREA

Recipients must comply with 49 CFR Part 26 to **ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts**. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.



Disadvantaged Business Enterprise

DBE6-1: DBE Goal Achievement Analysis and Corrective Action Plan not Completed

Review Guide Question:	DBE6 – For each of the past three completed Federal fiscal years, if the recipient’s DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?
Indicators of Compliance:	<ul style="list-style-type: none">A. Was the recipient required to conduct a shortfall analysis and develop a corrective action plan?B. If applicable, did the recipient submit shortfall analyses and corrective action plans to FTA on time?C. If the recipient is not considered to be a Top 50 Recipient by FTA, but was required to conduct a shortfall analysis and develop a corrective action plan, do the analysis and plan contain the required elements?

Disadvantaged Business Enterprise

DBE6-1: DBE Goal Achievement Analysis and Corrective Action Plan not Completed

Drivers of Deficiency:

- Recipients do not meet their overall DBE goal, and:
 - Do not realize that they have to complete a shortfall analysis, and/or
 - Do not know what numbers on their reports to analyze
- The analysis and corrective action plan are not sufficient
 - Too much narrative, not enough facts, data, and dates
- 'Top 50' recipients do not submit analysis to FTA or submit it late



Disadvantaged Business Enterprise

What can recipients do to prevent this deficiency?

Ensure Timely Completion of Report

- Complete the last DBE report of the fiscal year early (the last report is due December 1 and the shortfall analysis is due December 29)

Utilize Training and Additional Resources

- Check [FTA's website](#) for “Top 50” determinations
- Use training modules on [FTA's DBE website](#) to view Contractors Manual list analysis contents



Disadvantaged Business Enterprise

DBE5-1: DBE Uniform Reports Contain Inaccuracies and/or are Missing Required Information

Review Guide Question:	DBE5 – Are the semi-annual Uniform Reports of DBE Awards or Commitments and Payments completed accurately?
Indicators of Compliance:	A. Does a review of FTA information and selected FTA-funded procurements indicate that the recipient is completing the reports accurately?
Drivers of Deficiency:	<ul style="list-style-type: none">• There is a lack of understanding on how the form should be completed• The DBE office is completing the reports without the input of procurement and/or finance• Subrecipient activity is not accurately accounted for

Disadvantaged Business Enterprise

What can recipients do to prevent this deficiency?

Utilize Training and Additional Resources

- Leverage [FTA](#) and [NTI](#) training materials on how to complete and interpret the results of the reports

Communicate with Procurement Office

- Engage with procurement office on completion of Section A of the report, both for the form and the provided instructions



Disadvantaged Business Enterprise

What can recipients do to prevent this deficiency?

Develop Procedures and Timelines

- Develop and implement procedures and a timelines for collecting required information for the report, including internal procurement, payment activity and subrecipient activity

Upskill Subrecipients

- Train subrecipients on providing complete and accurate information to ensure quality



Questions

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