

FINAL
COMPLIANCE REVIEW REPORT
OF THE
Metropolitan Transit Authority of Harris County (METRO)
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

June 2012

**Prepared for the
Federal Transit Administration
Office of Civil Rights**

by

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Section 1 – General Information

Grant Recipient: Metropolitan Transit Authority of Harris County
1900 Main Street

City/State: Houston, TX 77208-1429

Grantee Number: 1547

Executive Official: George Greanias
President and Chief Executive Officer

On Site Liaison: Deborah Richard
Vice President of Business Services
713-739-3787

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Site Visit Dates: October 25-27, 2011

Compliance Review Team
Members: Denise Bailey
Sandra Swiacki
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Section 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 subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A., (18), October 1, 2011 and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The Metropolitan Transit Authority of Harris County (METRO) is a recipient of FTA funding assistance and is therefore subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in METRO's DBE program and were the basis for the selection of compliance elements that were reviewed.

Section 3 – Purpose and Objectives

PURPOSE

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the Metropolitan Transit Authority of Harris County's (METRO) Disadvantaged Business Enterprise (DBE) program is necessary.

The primary purpose of the compliance review is to determine the extent to which METRO has implemented 49 CFR Part 26, as represented to FTA in its DBE Program Plan. This compliance review is intended to be a fact-finding process to: (1) examine METRO's Disadvantaged Business Enterprise 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 to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues in behalf of any party.

OBJECTIVES

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

- ensure nondiscrimination in the award and the administration of DOT-assisted contracts in the Department's 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 this part's eligibility standards are permitted to participate as DBEs;
- help remove barriers to the participation of DBEs in DOT-assisted contracts;
- assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- 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 METRO is honoring its commitment represented by its certification to FTA that it is complying with its responsibilities under 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in DOT Programs”;
- examine the required components of METRO’s DBE Program Plan against the compliance standards set forth in the regulations and to document the compliance status of each component; and
- gather information and data regarding the operation of METRO’s Disadvantaged Business Enterprise Program Plan from a variety of sources – DBE program managers, other METRO management personnel, DBEs, and prime contractors.

Section 4 – Background Information

The Texas State Legislature authorized the creation of local transit authorities in 1973. In 1978, Houston-area voters created METRO and approved a one-cent sales tax to support its operations. METRO opened for business in January 1979. METRO's Board of Directors has nine members. Five are nominated by the Mayor of Houston and confirmed by the Houston City Council. Two are appointed by the mayors of METRO's 14 other member cities. Two are nominated by the Harris County Judge and confirmed by the County Commissioners.

Since its inception, METRO has grown into a regional multimodal transportation system. Communities that are part of the METRO area include the cities of Houston, Bellaire, Bunker Hill Village, El Lago, Hedwig Village, Hilshire Village, Humble, Hunters Creek, Katy, Missouri City, Piney Point, Southside Place, Spring Valley, Taylor Lake Village, and West University Place. Major portions of unincorporated Harris County are also included.

METRO services include bus, METRORail, METROLift, High Occupancy Vehicle (HOV) lanes, park and ride lots, and transit centers. METRO has over 1,200 buses, which include over 400 transit diesel-hybrid buses. The METRORail Red Line is a 7.5-mile light rail service running from the University of Houston-Downtown to south of Reliant Park along the streets of Main, Fannin and San Jacinto. The METRORail system features 16 rail stations and 18 vehicles. METROLift provides pre-scheduled, curb-to-curb transportation for persons with disabilities who cannot ride fixed-route bus service. HOV lanes operate on the Southwest, Gulf, North, Eastex and Northwest freeways. Since 2001, METRO also has been operating concurrent-flow Diamond HOV Lanes, which are identified by diamond-shape icons in a lane separated from main-lane traffic by double solid white lines. Diamond HOV Lanes in the METRO service area are located on the Katy Freeway between Texas Highway 6 and Texas Highway 99 (Grand Parkway) in Katy.

METRO received a Full Funding Grant Agreement from FTA in 2011 for its rail expansion efforts. The rail expansion, estimated to cost over \$1 billion, includes extending the Red Line and initiation of the Southeast (Purple) Line connecting downtown with local universities.

Section 5 – Scope and Methodology

Scope

Implementation of the following twelve required DBE program components specified by the FTA are reviewed in this report.

1. A DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval. [49 CFR 26.21]
2. A signed policy statement expressing a commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation [49 CFR 26.23].
3. Designation of a 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].
4. Efforts made to use DBE financial institutions, by the recipient as well as prime contractors, if such institutions exist [49 CFR 26.27].
5. 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].
6. Determination if overconcentration exists and address this problem if necessary [49 CFR 26.33].
7. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
8. 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 a recipient's DOT-assisted contracts [49 CFR 26.43 – 26.53].
9. Inclusion of a contract non-discrimination clause, a prompt payment clause and implementation of appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
10. A certification process to determine if a potential DBE is legitimately socially and economically disadvantaged. The potential DBE must submit an application, a personal net worth statement and a statement of disadvantage, along with the proper supporting documentation [49 CFR 26.67].
11. A certification procedure to include document review and an on-site visit and determination of eligibility consistent with Subpart D of the regulations [49 CFR 26.83].
12. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a

monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. [49 CFR Part 26.37] Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

Methodology

The initial step in the scope of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's TEAM System and other sources. Subsequent to this review, potential dates for the site visit were coordinated.

An agenda letter was then compiled and sent to METRO by FTA's Office of Civil Rights. The agenda letter notified METRO of the planned site visit, requested preliminary documents, and informed METRO of additional documents needed and areas that would be covered during the on-site portion of the review. It also informed METRO of staff and other parties that would potentially be interviewed.

The documents received prior to the on-site portion of the review were examined and an itinerary for the site visit was developed. An entrance conference was conducted at the beginning of the Compliance Review with FTA representatives, METRO staff, and the review team.

Subsequent to the entrance conference, a review was conducted of METRO's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer. Interviews were then conducted with METRO regarding DBE program administration, record keeping and monitoring. These interviews included staff from diversity, procurement, and finance. A sample of contracts were then selected and reviewed for their DBE elements. Additionally, interviews with prime contractors, subcontractors, and interested parties were conducted.

At the end of the review, an exit conference was held with FTA representatives, METRO staff, and the review team. A list of attendees is included at the end of this report. At the exit conference, initial findings and corrective actions were discussed with METRO.

Following the site visit, this draft report was compiled.

NOTE: Materials and information to address the findings and corrective actions in the report should be sent to the attention of:

Randelle Ripton
FTA Office of Civil Rights
1200 New Jersey Ave., SE, East Bldg., 5th Floor,
Washington, DC 20590
Randelle.ripton@dot.gov

Section 6 – Issues and Recommendations

1. **DBE Program Plan**

Basic Requirement: (49 CFR Part 26.21) Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. 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 DBE Compliance Review, deficiencies were found with the requirements for a program plan.

METRO revised their DBE Program plan in October 2011. On February 24, 2012, the agency submitted a revision to their DBE Program to include a section addressing requirement of 49 CFR Part 26.39, Fostering Small Business. METRO needs to further revise the program to provide clarifying information in areas such as:

- Ensuring that the federally-funded programs are not perceived as having any geographic preference. For instance, on page 1 of the plan it notes that the program, "...was created to provide additional opportunities for *local* Small Business..." and notes that the program was, "...designed to include all segments of the region's business community..." Additionally, METRO defines Significant Local Presence in its DBE program. While it notes in that definition that it applies only for contracts that are not federally-funded, having this as a part of the DBE program plan submitted to FTA is inappropriate and must be removed..
- Delineating between METRO's Small Business (race and gender neutral) program requirements, which are not enforceable by 49 CFR Part 26, and DBE Program requirements that must be implemented in accordance with 49 CFR Part 26. METRO combines the two programs, in ways that make it difficult to demonstrate appropriate compliance. The table below highlights several of these instances.

Program Plan Page	Citation
3	Defines Annual Goal(s) as "a numerically expressed aspirational goal which METRO seeks to achieve annually for both [sic] overall Small Business participation."
4	Under the definition of DBE, it is stated as a "voluntary designation" and further notes that it must necessarily meet the requirements of a Small Business herein." Throughout this document and other METRO documents, DBEs should be referred to as those firms that have been certified as such by the Texas UCP.

6	Under Program Eligible Contract, it notes that “In accordance with the U.S. Department of Transportation DBE program, METRO will establish goals on all DOT-funded contracts and expenditures that have subcontracting opportunities...” It is inappropriate to establish contract goals for DOT-assisted contracts when pursuing a race and gender neutral small business program, and this statement could be misconstrued as detailing a race-conscious program.
8	Under Scope of the Program, the program is presented as the Small Business/Disadvantaged Business Program.
8	Under Scope of the Program it is noted that “...in accordance with the U.S. Department of Transportation DBE program, METRO will establish goals on all DOT-funded contracts and expenditures that have subcontracting opportunities...” It is inappropriate to establish contract goals for DOT-assisted contracts when pursuing a race and gender neutral small business program, and this statement could be misconstrued as detailing a race-conscious program.
9	The Annual Goal is described as “aspirational in nature, designed to inform METRO of its overall progress in utilizing Small Businesses and Disadvantaged Businesses...These goals are set based on availability and prior METRO utilization of Small Businesses and Disadvantaged Businesses.” Although the section does continue to describe METRO’s requirement to set Triennial Goals for FTA funding, it may lead to confusion between METRO’s annual small business goal (not a required element of the DBE Program) and the required FTA three-year overall agency DBE goal.
9	In the discussion of contract goals, it notes that, “The criteria used to set Contract Goals shall include Small Business capacity, small business or Disadvantaged Business participation with similar contracts, available certified firms...”
10	Under criteria exempting a contract from a contract goal, provision 3) is if ... “the application of the SBE/DBE provisions would impose an unwarranted economic burden or risk...” and provisions 4) is if “The possible Small Business/Disadvantaged Business participation level based on availability would produce negligible or very limited Small Business opportunity.”

10	Under Counting Small Business/Disadvantaged Business Participation, SBE and DBE participation is co-mingled throughout. In particular, item c) under this section notes that "...METRO or a Contractor may not count toward its Contract Goal the portion of the total dollar value of a contract that is subcontracted to a Small Business or Disadvantaged Business that further subcontracts the work to a non SBE or non DBE." This could serve to complicate METRO's already complex process for reporting to FTA, as any work that a DBE subcontracts to a non-DBE (even if it is small) will not count towards METRO's overall DBE achievement.
18	Under Accountability Measures, it notes that the effectiveness of the program will be measured by a review of data indicating prime and subcontract awards to Small Businesses and Disadvantaged Businesses." It further states that "Federally-funded expenditures will be reviewed in advance to issuance to establish DBE participation levels." This could be construed as setting DBE goals in a race and gender neutral program.
19	Under Contractor's Utilization Plan, it often refers to the utilization of SBE and/or DBEs which could be construed as being two separate goals. For instance, this section describes that "When requested, the CUP should provide a time schedule showing the proposed utilization of SBE and/or DBEs during the contract."
20	Under Contractor's Utilization Plan it notes "Any changes to the CUP regarding the proposed use of Disadvantaged Business Enterprises must adhere to U.S. Department of Transportation 49 C.F.R., Section 26.53." On page 23, it notes that "Termination of a DBE team member or subcontractor shall be conducted in accordance with 49 CFR Part 26.53." This section of the DBE regulation applies to contracts with DBE goals. Since METRO implements a race neutral program (i.e., no DBE contract goals), this language should not be included as part of its DBE program or FTA funded projects.
20	Under Contractor's Utilization Plan, it notes that "...SBEs and DBEs are limited to submitting as subcontractors on only four bid/proposal submissions for the same project. Failure to adhere to this four bid/proposal limit may result in the disqualification of the offending SBE or DBE from all bids/proposals." It is unclear why this is a restriction on only SBEs and DBEs and not other subcontractors, and why this would be a restriction on a DBE if METRO is running a race and gender neutral program.

20	Throughout the Letter of Intent section, commitments and agreements to SBE/DBEs are discussed.
21	Contractor Utilization Plan Pledge section intermingles DBE and SBE language throughout
22	Under Contract Award/Post Award, it notes reporting of "...utilization of identified SBEs or DBEs"
23	Under Contract Award/Post Award, it notes that "Termination of a DBE team member or subcontractor shall be conducted in accordance with 49 C.F.R. sec 26.53." Section 26.53 of the regulation only applies to contracts with DBE goals, and should not be used in a race and gender neutral program.
24	Statement that "METRO's Small Business/Disadvantaged Business Enterprise Program will be incorporated into all federally-funded contracts and all contracts with small business goals." This may need further clarification as not all elements of this program conform to federally-funded contracts.

- The following summarizes areas of revision and/or clarification on critical elements of METRO's Addendum – Small Business Elements on pages 31 and 31 of the Program Plan dated February 24, 2012.
 - Plan did not address how contracting requirements will be structured or obstacles will be eliminated to facilitate competition by small businesses (i.e. 'unbundling' large contracts Because of the voluminous back up documentation provided after the site visit for the reporting of DBE attainment for semi-annual reports and the HRT project, FTA will be contacting METRO to set up a separate meeting to ensure that this documentation provides accurate reporting of data. This is also referenced in section 8G) *Counting DBE Participation.*)
 - Impermissible race or gender considerations in small business program.
- As note in 8 A) *Goal Calculation*, a revision to the description of the goal-setting methodology in the DBE program is required.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a plan and schedule for reviewing and revising its current DBE program for the above-noted items and other necessary revisions.

Houston Response: Metro will revise its program by August 31, 2012, to delineate between METRO's small business (race and gender neutral) program requirements, to clarify geographic preferences, to revise goal calculation and to clarify METRO's Addendum- Small Business Elements. Changes to the program will require METRO Board approval. The changes are scheduled to be presented at the METRO Board July meeting.

FTA Response: Submitting a revised program by August 31, 2012 is acceptable. This finding will remain open until FTA receives, reviews, and approves of METRO's revised program. Please ensure that there are no geographic preferences related to METRO's Federal DBE program. Geographic preferences are not allowed under the DBE regulations.

2. DBE Policy Statement

Basic Requirement: (49 CFR Part 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 DBE Compliance Review, no deficiencies were found with the requirements for a policy statement.

The DBE policy statement is included in METRO's DBE program. The policy statement identifies Deborah Richard, Vice President of the Office of Small Business as the DBE Liaison Officer and was signed by George Greanias, President and Chief Executive Officer on August 31, 2011.

METRO noted that it had internally distributed this policy statement to its Board of Directors and to all components of the organization. Additionally, it was noted that the policy statement was mailed to local chambers of commerce and emailed to Houston area small and disadvantaged businesses.

3. DBE Liaison Officer

Basic Requirement: (49 CFR Part 26.25) Recipients must have a designated DBE liaison officer 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 DBE Compliance Review, no deficiencies were found with the requirements for the DBE Liaison Officer (DBELO).

METRO's designation of the DBE Liaison Officer is included in their DBE policy statement dated August 31, 2011. The current DBE Liaison Officer is Deborah Richard, Vice President of Business Services. She reports directly to Terence Fontaine, METRO's Group Vice President Business Services. Mr. Fontaine affirmed that, although Ms. Richard reports directly to him, she has direct and independent access to the President/CEO for DBE matters.

Ms. Richard was also asked during the review if she had direct and independent access to the President/CEO regarding DBE matters. Ms. Richard indicated that she does have direct and independent access to the CEO and provided examples of how this access occurred. Areas that she reported she directly goes to the CEO for include revisions to the overall program and issues that may come up from time to time.

To assist in the implementation of the DBE program, Ms. Richard has a staff of six. At the time of the site visit, all positions were fully staffed. Other departments within METRO also participate in implementing the DBE program. These include the grants, procurement, and project management departments. Representatives from these offices

were interviewed during the DBE compliance review site visit.

METRO also utilizes the services of consultants to assist in implementing its program. It retains a direct consultant (program advisor) that assists in implementing overall program elements such as goal-setting and monitoring and requires that prime contractors on major projects retain their own program advisor to perform these services. Prime contractors select their program advisor from a list of firms approved by METRO.

4. Financial Institutions

Basic Requirement: (49 CFR Part 26.27) Recipients must investigate the existence of DBE financial institutions and make efforts to utilize them. Recipients must encourage prime contractors to use these DBE financial institutions.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for financial institutions; however an advisory comment was made.

METRO has identified Unity Bank, a minority owned bank, located in Houston. Their services are currently being utilized to administer METRO's 2010 Business Assistance Fund. The review team advised METRO to make prime contractors aware of and to also encourage their use of this financial institution. In addition, METRO should set a schedule for reviewing available DBE financial institutions to ensure that its list is up-to-date.

5. DBE Directory

Basic Requirement: (49 CFR Part 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 DBE Compliance Review, no deficiencies were found with the requirement for a DBE directory. METRO is not a certifying member of the Texas UCP and does not have the responsibility to maintain the statewide DBE directory.

6. Overconcentration

Basic Requirement: (49 CFR Part 26.33) The recipient must determine if overconcentration of DBE firms exists and address the problem, if necessary.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for overconcentration. METRO is currently operating a race-neutral program, and, therefore, does not influence overconcentration of DBEs in certain areas by use of race-conscious DBE goals.

7. **Business Development Programs**

Basic Requirement: (49 CFR Part 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 DBE Compliance Review, no deficiencies were found in the area of Business Development Programs (BDP). METRO does not have a formal Business Development Program; however, they are active in the business community through participation in several events and conduct several workshops each year. An extensive listing of such events was provided to the review team. Additionally, METRO operates the Small Business Opportunities University where they offer courses relevant to small businesses and has a Business Assistance fund which is designed to provide various mitigation services to small businesses affected by METRO construction projects.

Additionally, as noted in other sections of this report, METRO operates a Small Business enterprise (SBE) program in lieu of a race-conscious DBE program. To meet SBE goals on contracts, bidders submit evidence that they have made good faith efforts to obtain SBE participation from firms certified as a small business by Houston METRO or as a DBE by the Texas UCP.

8. **Determining/ Meeting Goals**

A) Calculation

Basic Requirement: (49 CFR Part 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 achieved, all other relative evidence must be considered in an adjustment of this figure to match the needs of the specific DBE community.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for calculation of goal.

Metro's current FTA DBE goal is 12%. It is for the period FFYs 2011-2013 and is an entirely race neutral goal. Areas that require correction and/or further analysis include:

- Correctly noting inclusion of all FTA-funded contracting activity. There is currently a statement in the goal submission that METRO looks at "...federally funded projects valued over \$250,000..." METRO noted that this was most likely a notation that was erroneously left in the narrative and that it does look at projects with a value of less than \$250,000. In Exhibit B of the goal submission, projects with a value of less than \$250,000 were identified.

It does not (?) appear that METRO is including FTA-funded contracting activity of its subrecipients (in the goal submission Appendix there is a distinction between METRO-managed projects and those managed by others). So that FTA can be sure that contracting activities of all subrecipients are being considered, for its current goal submission, METRO must list each of its subrecipients and note what, if any, contracting activities are anticipated.

- Evaluating the geographic area from which it selects goal-setting data. Currently METRO uses data from the entire state of Texas for all firms ready, willing, and able and DBEs ready, willing, and able. USDOT's Tips for Goal-setting defines local market area as "*the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.*" It further notes that "*It is important that you specify in your submission how you determined the boundaries of your local market area.*" In conversations with METRO, it was not clear that the entire state of Texas should be considered the local market area. Information on local market area could be gleaned from the use of bidders list information (required by 26.11). Use of the bidders' list was not noted in the goal submission.

Using statewide data in the current methodology, METRO's Step 1 calculated to 2.88%. When past participation of 20% was averaged in (as part of Step 2), the resultant overall goal was 12%.

At the time of the site visit, METRO had neither included the HRT project in its overall agency goal, nor had a project-specific goal been submitted to FTA for this project. METRO had submitted achievement reports to FTA for the HRT project and sought guidance on submitting those reports. However, no record was found of methodology or submission of methodology for an HRT project-specific goal as described in the regulations. Subsequent to the site visit, on March 12, 2012, METRO submitted a project-specific goal for the HRT project. FTA makes the following observations about METRO's HRT project goal:

- METRO did use a better marketplace to pull their numbers of firms from. Previously METRO used the whole state of Texas, this time METRO used a 13-county area that represents 80% of METRO's contracting activity.
- METRO's use of eligible firms that are not currently certified helped to offset the use of the County Business Patterns.
- The resultant Step One Base figure of 6.21%, is more accurate than METRO's Step One base figure from its previous overall submission.
- METRO did not use a past participation adjustment because it noted there were no federally-funded projects of a similar nature in the past.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to the FTA's Office of Civil Rights a revised DBE program plan that includes procedures in the goal-setting methodology for inclusion of all FTA funded contracting activities and correct selection of data based on local market area.

Houston Response: METRO has incorporated the selection of data from the 13 surrounding counties which makes up 80% of METRO's contracting activity in the METRO rail expansion DBE goal setting. METRO will continue to incorporate data based on the bidder's lists and local market area and will confirm the certification of firms in future DBE goal calculations. METRO has revised its DBE goal-setting methodology (Exhibit A). METRO attached a list of sub-recipients with anticipated contracting activities (Exhibit B).

FTA Response: The methodology submitted is generally sound. The “Step 2— Adjusting the Base Figure” section of the methodology, it is unclear with METRO has a “Disparity Study” it is relying upon to adjust the base figure as that section is blank. In addition, under “Past Participation”, METRO proposes the adjusting the base figure using past participation because there are similar contracting opportunities. This is an acceptable approach, however, please include a listing of the contracting opportunities for each year that METRO intends to use as part of the past participation analysis so that FTA can verify that the contracting opportunities are indeed similar. Submit METRO’s revised goal using this methodology within 30 days of receiving this final report. Before adopting the revised goal, FTA expects METRO to conduct consultation as described in subsection (B) below, as well as advertising the revised goal. Finally, “Exhibit B” of METRO’s response is unclear. Column headings do not correspond to column contents. For example, one column is titled “Current Subrecipients” has content of “sidewalks” or “Program Administrators.” Please correct and clarify this attachment and resubmit.

B) Public Participation

Basic Requirement: (49 CFR Part 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 published notice announcing the overall goal must be available for 30 days. The public must be notified that the recipient is accepting comments on the goal for 45 days following the date of the notice.

Discussion: During this DBE Compliance Review, an advisory comment is made regarding the requirement for Public Participation and Outreach.

In its goal submission, METRO provides information on the stakeholders that it has invited to participate in its consultative process. This information includes the letter to stakeholders describing the type of input that the agency is seeking, including the language from 26.45 g(1). METRO also includes the list of minority, women, trade, and community organizations that it invites. For FY 2010, the stakeholders meeting was scheduled for June 25, 2009, after the goal was advertised to the general public.

METRO provided copies of the published notice announcing the overall goal. For FY 2010, the goals were advertised by June 15, 2009 and included placement in The Houston Chronicle, The Houston Defender, LA INFORMACION, Pakistan Chronicle Weekly, El Dia Spanish Newspaper, and the Citizens Community News.

For future goal-submittal years, the consultative process must occur before goals are advertised for public comment. METRO should plan to publish its goal by June 15th so that it can be submitted timely to FTA by August 1st.

METRO Response: METRO will conduct the consultative process prior to the goals being advertised for public comment.

C) Transit Vehicle Manufacturer (TVM)

Basic Requirement: (49 CFR Part 26.49) The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations.

Discussion: During this DBE Compliance review, no deficiencies were found with the requirement for transit vehicle manufacturers. The reviewers were given copies of TVM certifications from METRO's recent Light Rail vehicle purchase (RFP NO. 1100003). The TVM certifications were current and complete.

D) Race Neutral DBE Participation

Basic Requirement: (49 CFR Part 26.51) The recipient must meet the maximum feasible portion of the overall goal by using race neutral means of facilitating DBE participation. Examples of how to reach this goal amount are listed in the regulations.

Discussion:

During this DBE Compliance review, deficiencies were found with the requirement for race neutral DBE participation. METRO operates a race-neutral program, which means that there are no DBE goals in contracts. Instead, METRO uses Small Business Enterprise (SBE) goals. However, the language used to describe goals in some contract documents and in other general information is either not clearly race-neutral or is race-conscious. For instance, in the HOV to HOT Lanes project documents, the following language was used, *"The Contractor hereby agrees to attain small business participation in the amount of 35% (which includes 15% DBE) of the total Base Contract Amount."*

METRO noted that this is older contract language and is no longer utilized. However, other sections of contract documents that provide for remedies for not using DBEs makes the implementation of a race-neutral program unclear. During the site visit, METRO did initiate amending the HOT Lane contract to revise language to be only a SBE goal; however, the language needs to be race-neutral at the time of solicitation for a race-neutral program to be effectively implemented.

During the site visit, METRO staff reiterated that they operate a Small Business program and that to meet that goal, bidders submit evidence that they have made good faith efforts to obtain SBE participation from firms certified as a small business by Houston METRO or as a DBE by the Texas UCP. They noted that their Small Business database available at www.RideMETRO.org included firms they had certified, as well as firms certified by the City of Houston as a DBE. For DBEs certified by other Texas UCP certifiers, bidders would have to review the Texas UCP DBE directory.

The contract language that contributes to making implementation of a race-neutral program unclear includes:

- The use of both DBE and Small Business language in solicitation documents. For example, in IFB No. IB1100035 on page 1, although the goal is stated as a small business goal, other language states "ALL PROPOSERS ARE REQUIRED TO EXERCISE GOOD FAITH EFFORTS TO USE SMALL AND DISADVANTAGED BUSINESS ENTERPRISES TO THE EXTENT INDICATED IN THIS SOLICITATION." On page 8, it also includes information on termination provisions of 26.53, which are to be used only when there is a DBE goal.

Additionally, METRO describes the sources for SBEs in various ways that can be unclear

to bidders. In IFB IB1100035, the source for small businesses on page 8 is listed as <http://www.RideMETRO.org>, while on page 10, nine different sources are noted. On page 16, under Determination of Good Faith Efforts, one criterion is if the bidder reviewed "...the list of METRO certified firms, METRO Opportunity University graduates and firms certified through the Texas UCP..."

To be clear that METRO is operating a race-neutral program that is based solely on a small business program, METRO should consider noting in contract solicitations (and related website and announcement postings) that it has a SBE goal only. It should mention DBE as one category that can count toward that goal and METRO should cease referring to its SBE goal as an SBE/DBE goal.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, provide the FTA Office of Civil Rights with a plan and schedule for developing contract language that clearly represents METRO's implementation of a race-neutral program.

Additionally, include procedures for ensuring that the DBELO provides approval of contract goal language for METRO procurements and that of its subrecipients.

METRO Response: METRO has taken steps to revise its solicitation, contract and website language to clarify that it implements a race-neutral program and that it has a Small Business goal, only. Final revisions will be implemented upon Board approval of the revised program plan. Procedures for ensuring the DBELO provides approval of contract goal language for METRO procurements and of its sub-recipients and will be also included in the revised program plan. METRO will revised its goal by August 31, 2012.

FTA Response: Based on METRO's response above, please ensure that "contract goals" relate only small businesses. METRO will need time to complete the consultation and public participation process. Thus, METRO should submit its final revised goal to FTA after completing that process, but no later than November 30, 2012.

E) Race Conscious DBE Participation

Basic Requirement: (49 CFR Part 26.51) The recipient must project a percentage of its overall goal that will be met through race conscious means. These contracts may have varying DBE goals, and be made on an individual basis, depending on conclusions of the studies performed.

Discussion: During this DBE Compliance Review, an advisory comment was made for the requirements for race conscious participation. METRO is currently operating a race-neutral program. However, because certain elements of how METRO is implementing its DBE program could be interpreted as race-conscious, see the previous section's discussion and corrective actions related to this area.

METRO Response: This advisory comment will be addressed with METRO's program changes.

F) Good Faith Efforts

Basic Requirement: (49 CFR Part 26.53) The recipient may only award contracts, with DBE goals, to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. The bidders must provide documentation of these efforts for

review by the recipient.

Discussion: During this DBE Compliance Review, an advisory comment was made in the area of good faith efforts requirements.

Section 26.53 of the new regulations requires stricter due process including agency approval if a DBE on a project with a DBE goal is terminated or substituted. In response to the new rule, METRO incorporated this requirement in their DBE Program plan and contract administration. However, these provisions are for race conscious goals, and should not be applied in a race neutral environment. As part of the corrective action for *Section 8. D)* above, METRO is advised to revise its current language which applies this requirement to METRO's race-neutral program.

METRO Response: This advisory comment will be addressed with METRO's program changes.

G) Counting DBE Participation

Basic Requirement: (49 CFR Part 26.55) The recipient must count only the value of work actually performed by the DBE toward actual DBE goals.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for counting DBE participation. Further information is needed to verify that DBE participation noted on METRO's reports to FTA are certified by the Texas UCP and are working within their certified areas of work.

Verify that counted firms are certified by the Texas UCP

In response to the review team's request for data showing which DBEs were being counted towards METRO's overall agency DBE goals, METRO provided the following sources:

1. Listing of FTA-funded contracts awarded during the past two years identifying DBE awards and payments;
2. Reports from their B2GNow online reporting system, which has a yes/no column to identify a firm as a DBE; and
3. Backup detail for its first semi-annual report for 2010.

All of the firms on the backup detail from the semi-annual report were found in the Texas UCP directory. The following firms, listed either as a DBE from lists 1 or 2 above, were not found in the Texas UCP directory.

Firm	Status
[REDACTED]	Certified as SBE not DBE
[REDACTED]	DBE status expired in May 2009
[REDACTED]	Not listed in Texas UCP directory, but METRO produced hard copy of certificate June 2011 – June 2012
[REDACTED]	DBE status expired May 2011
[REDACTED]	DBE status expired February 2008
[REDACTED]	DBE status expired June 2008

Additionally, for its internal listing (list 1 from above) METRO counts payments to non-DBE suppliers that are subcontractors to DBE prime/subprime contractors as 100% DBE participation for the HRT contract based on direction from the FTA Regional Civil Rights Officer. While it does not appear that this results in double counting credit, it does make verifying the status of DBE firms difficult and METRO needs to be diligent that these firms being counted are in fact suppliers and not subcontractors carrying out a portion of the work. Subcontracts to non-DBE firms must be deducted from DBE credit attained by a DBE.

Verify that firms are certified for work for which they are counted

For the DBE firms interviewed, the review team viewed their certification information in the Texas UCP directory and compared that to the scope of work for which METRO was counting them for DBE credit. [REDACTED] is certified for “Other Services to Buildings and Dwellings” and “Car Washes.” The firm’s scope of work reviewed for the METROLift Van Transportation Services contract included landscaping and other services for which it was not certified. Additionally, [REDACTED] noted during the interview that it had subcontracted a small portion of its work (landscaping) to another non-DBE subcontractor.

Both [REDACTED] and [REDACTED] are performing similar inspection services under METRO contracts. However, it is unclear under which of the NAICS codes that they are certified under that this work falls. The NAICS code that the two firms have in common is Commercial and Institutional Building Construction. METRO should verify that this NAICS code is the most relevant code for the inspection work these firms are providing on the HRT project.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA’s Office of Civil Rights a plan and schedule for verifying that DBEs are certified by the Texas UCP for the types of work for which they are being counted for FTA reports. Additionally, provide information on how subcontracting from DBEs to non-DBEs will be effectively monitored to ensure accurate reporting. For the next semi-annual report submitted (June 1, 2012) submit a back up sheet detailing which DBEs comprise the awards to DBEs (prime and subcontract) so that verification can be conducted.

METRO Response: Exhibit C reflects METRO’s procedure to confirm DBE certification and work type during bid/proposal review process and during monitoring of the awarded contracts. This process also incorporates the activity to monitor the subcontracting DBEs to non-DBEs through an on-line compliance system and the performance of Commercially Useful Function audits. METRO submitted the report on DBEs in its June 1st METRO rail report submitted to TEAM on May 22, 2012.

FTA Response: METRO’s monitoring procedures includes a section on “good faith efforts” to meet METRO’s small business goal. Good faith efforts only apply to race conscious programs, therefore, METRO must remove this from its Federal DBE program monitoring requirements because METRO operates a race neutral program. Regarding “Commercially Useful Function Audits”, METRO must include an element that has the Office of Small Businesses conducting on-site monitoring to ensure that DBEs are

performing a commercially useful function and the work for which the DBE is contracted to perform.

H) Quotas

Basic Requirements: (49 CFR Part 26.43) The recipient is not permitted to use quotas or set-aside contracts.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for quotas. No evidence of the use of quotas or DBE set-aside contracts by METRO was found during the site visit.

9. Required Contract Provisions

A) Contract Assurance

Basic Requirements: (49 CFR Part 26.13) Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include a non-discrimination clause detailed by the regulations.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for contract assurances. The review team examined four prime contracts and nine subcontracts listed in the chart below for the required contract provisions. The clause was found in all of the prime contracts. However, it was not found in the subcontract with [REDACTED]. Additionally, the language found in the subcontract agreements with Houston Rapid Transit Joint Venture did not specifically reference subcontractors in the clause. It was additionally noted that [REDACTED] did not execute any subcontracts other than with [REDACTED] METRO noted this exception to their policy and immediately notified [REDACTED] to execute contracts with each of its subcontractors.

Prime Contractor	Project	Contract No.	DBE Subcontractor
[REDACTED]	Houston Rapid Transit Design/Build	[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	HOV Lane to Hot Lane Conversion	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	METROLift Van Transportation Services	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	Traffic Engineering and Analysis Services	[REDACTED]	[REDACTED]

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan and schedule to ensure that the contract assurance clause is placed in every DOT-assisted subcontract.

METRO Response: METRO is in the process to obtain copies of every DOT-assisted subcontract to ensure the inclusion of the contract assurance clause by June 30, 2012. Primes will be required to modify subcontract agreements in cases where the clause is missing. Copies of the subcontracts will be kept in the contract files. METRO will require copies of all future DOT-assisted subcontracts within 30 days of contract award or contracting new subcontractors to ensure the inclusion of the contract assurance clause. Exhibit D—contract language to include this requirement.

FTA Response: METRO's proposed corrective action is acceptable. Please send FTA a sample size of ten (10) subcontracts METRO has collected by July 6th. Of the ten subcontracts sent to FTA, we are also requiring METRO to submit corrected subcontracts, if necessary, by August 31st. In addition, by December 31st, send FTA copies of subcontracts issued from July 1, 2012, to ensure that required contract terms are included. If such required clauses are included, then FTA will close this finding.

B) Prompt Payment

Basic Requirements: (49 CFR Part 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 DBE Compliance Review, a deficiency was found with regard to the requirement for return of retainage. No deficiencies were found with the requirement for prompt payment.

Prompt Payment

METRO's DBE Program Plan notes that each contractor is required to sign a Contractor Utilization Plan Pledge that includes payment of all SBE/DBEs within five calendar days of receiving payment from METRO. Based on a review of the contracts referenced above, prompt payment language stipulating no more than 30 days was incorporated in all contracts and subcontracts.

For the **Houston Rapid Transit (HRT) Project**, the contract between METRO and Houston Rapid Transit Joint Venture referenced prompt payment in four separate areas.

- Section 6.5.1 of the prime contract provides for payment to SBE/DBE subcontractors within 5 business days and to each of its non-SBE/DBE subcontractors within 10 business days after receiving payment from METRO;
- Appendix 7-3, Invoicing and Payment, Section C, Subcontractor and Supplier Payments specifies payment to each subcontractor and supplier within 15 calendar days after receiving payment;
- The Progress Assessment Report of Work Subcontracted requires contractors to certify payments within 5 calendar days of receipt of funds; and
- Appendix 10-1, Section 17, Disadvantaged Business Enterprises, provides for payment no later than 30 days.

Subcontracts reviewed for the HRT Project contained the five business-day prompt

payment clause, with the exception of [REDACTED] where payment was specified within 10 days.

For the **HOV Lane to Hot Lane Conversion Project**, the five-day prompt payment clause was found in the contract between the prime contractor, [REDACTED], and METRO. Additionally, both subcontracts ([REDACTED] and [REDACTED]), stipulated payment within 30 calendar days after receipt of invoices or acceptance by [REDACTED] of delivered items.

For **METROLift Van Transportation Services**, the 5-day prompt payment clause was found in the prime contract with [REDACTED], and 10 days with the subcontractor, [REDACTED].

Return of Retainage

In June 2003, USDOT issued a Final Rule on DBE that contained new requirements for prompt return of retainage. According to the Final Rule, if an agency chooses to hold retainage from a prime contractor, they must have prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

METRO's DBE Program plan specifies that retainage is applicable to construction contracts only and should be released to subcontractors within 30 days after satisfactory completion and approval of work performed. This retainage language, however, was not found in contract #0800120 between METRO and the Houston Rapid Transit Joint Venture. Rather, it indicated that the subcontractor, after satisfactory completion of work, may petition the prime contractor who then may petition METRO for payment or release of some portion of retainage to be applied to the final payment. It also indicated that METRO's release of retainage is dependent on the contractor's progress toward the completion of the project. Furthermore, if a release is to be made, its return should be made to the subcontractor within 15 days.

Lastly, it was noted that the subcontract agreement for [REDACTED] did not include the appropriate number of days for return of retainage. The subcontract stated that final payment should be made within five business days after receipt of payment by the contractor.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan to ensure that:

- Prime contracts and subcontracts contain return of retainage language; and
- METRO can demonstrate how it will provide phased acceptances of work so that applicable retainage held can be released to the contractor so that the contractor can release applicable retainage promptly to subcontractors. Along with this release mechanism, METRO must also provide a monitoring and enforcement mechanism to assure itself that the retainage is being promptly returned.

METRO Response: METRO is in the process to obtain copies of every DOT-assisted subcontract to ensure the inclusion of the contract assurance clause by June 30, 2012.

Primes will be required to modify subcontract agreements in cases where the clause is missing. Copies of the subcontracts will be kept in the contract files. METRO will require copies of all future DOT-assisted subcontracts within 30 days of contract award or contracting new subcontractors to ensure the inclusion of the contract assurance clause. Exhibit E—contract language to include this requirement. METRO will submit a procedure demonstrating phased acceptance of work and its monitoring and enforcement process by June 30, 2012.

FTA Response: METRO's response to this finding is acceptable. Once FTA receives, reviews, and approves of METRO's monitoring and enforcement procedures, this finding may be closed.

C) Legal Remedies

Basic Requirements: (49 CFR Part 26.37) Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state and local law.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for legal remedies. METRO's DBE Program plan provides for the imposition of sanctions against contractors, small businesses and disadvantaged businesses who violate the program or its program procedures. METRO designates a Compliance Resolution Committee (CRC) to hear allegations of misconduct regarding the program and to issue sanctions, including suspensions, if appropriate. The CRC's operating procedures were also detailed in METRO's DBE Program plan. METRO did not recall any recent CRC meetings regarding DBE subcontractors or prime contractors.

10. Certification Standards

Basic Requirements: (49 CFR Part 26.67) The recipient must have a certification process intact to determine if a potential DBE firm is legitimately socially and economically disadvantaged according to the regulations. The DBE applicant must submit the required application and a signed and notarized statement of personal net worth with appropriate supporting documentation.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for Certification Standards. METRO is not a certifying entity within the Texas UCP.

11. Certification Procedures

Basic Requirements: (49 CFR Part 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 DBE Compliance Review, deficiencies were found with the requirements for Certification Standards. METRO is not a certifying entity within the Texas UCP. It is a signatory to the Texas UCP Memorandum of Understanding. During the review it was noted that some of the reported DBEs could not be located on the Texas UCP electronic directory. By conducting additional research, METRO was able to find

additional information on these firms. For one firm, [REDACTED] that was not found on the electronic UCP directory, METRO was able to obtain a paper copy of their certification. No explanation was received detailing why this firm did not appear in the Texas UCP electronic directory.

Since METRO should rely on the UCP directory for counting firms towards DBE achievements and payments in reports to FTA, they should initiate discussions with the UCP to ensure that the directory is reliable. Additionally, because the New Final Rule issued in January 2011 included new requirements for interstate certification, METRO should gain an understanding of how new certification requirements are being met by the UCP.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan and schedule for ensuring that the directory is reliable and an understanding how new certification requirements are being met by the UCP.

METRO Response: METRO will attend the quarterly TUCP meetings in order to obtain a better understanding of how the new certification requirements are being met by the UCP. METRO will also bring to the attention of the TUCP any discrepancies found in the reliability of the directory.

FTA Response: METRO's response to this finding is acceptable and this finding is closed.

12. Record Keeping and Enforcements

Basic Requirement: (49 CFR Part 26.11, 26.55) The recipient must provide data about its DBE program to the FTA on a regular basis. This information must include monitoring of DBE participation on projects through payments made to DBE firms for work performed. 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: During this DBE Compliance Review, no deficiencies were found with the FTA requirement for maintaining the bidders list. Deficiencies were found in the areas of monitoring and reporting.

Monitoring

Because METRO operates a race-neutral program, monitoring prime contractors to ensure that they use the DBEs named in contracts with goals does not apply to their FTA-funded contracts. METRO does have mechanisms in place to monitor other elements of its DBE program, such as payment and contract clauses. In addition to staff monitoring, METRO retains a program advisor for DBE program element technical assistance and monitoring and for major contracts, requires that prime contractors retain a program advisor for DBE matters. Because some of the information that METRO may be relying on comes from the external program advisors hired by prime contractors, FTA recommends that METRO ensure some oversight mechanisms are in place over this information. This is to protect against a perception of conflict of interest when oversight information is being received from a party that is being paid by the party being overseen.

Additionally, as noted in *Sections 9. A) (Required Clauses)* and *9. B) (Prompt Payment)* of this report, METRO's monitoring efforts for inclusion of correct payment and non-discrimination clauses needs to be improved.

Because METRO has several subrecipients, mechanisms for monitoring their implementation of the DBE program when they initiate procurements needs to be defined.

Additionally, METRO should monitor for contracting practices that could undermine independence of DBEs and/or impact the amount of achievement they are credited with. The review team interviewed a representative of and reviewed contract documents for [REDACTED]. It was confirmed that [REDACTED] has received several payments on the HRT project which were joint checks paid to [REDACTED] and their supplier. It was noted that this was done at the request of the supplier. METRO should institute a monitoring mechanism to review instances of joint checks to DBEs to ensure that correct counting of attainment is accomplished.

Reporting

The review team examined several semi-annual and ARRA DBE reports. METRO's first report for FY2010 reported only ARRA awards. METRO described that the reason for this is that for that six-month period, the only projects awarded were ARRA-funded projects. Therefore, the amount of DBE awards for that period was the same for the ARRA report and the total report. However, on the ARRA report, the total amount of contracts awarded was higher than the non-ARRA report by \$96,040,000 because METRO mistakenly included the rail car vehicle procurement in the ARRA report. METRO will work with FTA's Office of Civil Rights to correct the ARRA report, as this error now shows the ARRA percentage to DBEs on that report as approximately 4%, when it should most likely be approximately 13%.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan and schedule for ensuring that:

- effective monitoring and reporting mechanisms are in place and performed by staff to monitor and report work on METRO's direct contracts and their subrecipients' FTA funded contracts, and
- procedures are implemented for accurate and complete collection and reporting of data for semi-annual and ARRA DBE reports to FTA.

Advisory Comment: Because of the voluminous back up documentation provided after the site visit for the reporting of DBE attainment for semi-annual reports and the HRT project, FTA will be contacting METRO to set up a separate meeting to ensure that this documentation provides accurate reporting of data. This is also referenced in section 8G) *Counting DBE Participation.*

METRO's Response: Exhibit F reflects METRO's process to ensure effective monitoring of FTA funded contracts. Exhibit G is a sample form used to monitor sub-recipients. METRO's Office of Small Business monitors the Program Advisor's report for accuracy and program compliance. The error on METRO's first ARRA report was corrected and with an increased understanding of the requirements for ARRA reporting METRO is confident that there will not be any problems with future reports. METRO's Office of

Small Business, Grants and Project Management departments will work closely together to ensure accurate collection of funding and contract data. Data will be confirmed prior to reporting.

FTA Response: Please see FTA comments under “Section G” of this report. In addition, METRO’s response is unacceptable regarding how it is going to ensure that its ARRA reporting will be correct in the future. METRO must specifically describe what procedures it will implement to ensure future reporting is correct. FTA will schedule a call with DBELO, Karen Hudson, to discuss further.

Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site visit Find ing	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date	Revised Response Date
1. Program Plan	26.21	D	Submit to the FTA's Office of Civil Rights a plan and schedule for reviewing and revising its current DBE program.	30 days	August 31, 2012
2. Policy Statement	26.23	ND			
3. DBE Liaison Officer	26.25	ND			
4. Financial Institutions	26.27	ND			
5. DBE Directory	26.31	ND			
6. Overconcentration	26.33	ND			
7. Business Development Programs	26.35	ND			
8. Determining / Meeting Goals					
A. Calculation	26.45	D	Submit to the FTA's Office of Civil Rights a revised DBE program plan that includes procedures in the goal-setting methodology for inclusion of all FTA funded contracting activities and correct select of data.	30 days	NLT than November 30, 2012 after completing consultation and public participation process
B. Public Participation	26.45	AC			
C. TVM	26.45	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Find ing	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date	Revised Response Date
D. Race Neutral	26.51	D	Provide the FTA Office of Civil Rights with a plan and schedule for developing contract language that clearly represents METRO's implementation of a race-neutral program. Additionally, include procedures for ensuring that the DBELO provides approval of contract goal language for METRO procurements and that of its subrecipients.	30 days	August 31, 2012
E. Race Conscious	26.51	AC			
F. Good Faith Efforts	26.53	AC			
G. Counting DBE Participation	26.55	D	Submit to the FTA's Office of Civil Rights a plan and schedule for verifying that DBEs are certified by the Texas UCP for the types of work for which they are being counted for FTA reports. Additionally, provide information on how subcontracting from DBEs to non-DBEs will be effectively monitored to ensure accurate reporting. For the next semi-annual report submitted (June 1, 2012) submit a back up sheet detailing which DBEs comprise the awards to DBEs (prime and subcontract) so that verification can be conducted.	30 days	Resubmit Exhibit C by July 31, 2012

Requirement of 49 CFR Part 26	Ref.	Site visit Find ing	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date	Revised Response Date
H. Quotas	26.43	ND			
9. Required Contract Provisions A. Contract Assurance	26.13	D	Submit to FTA Office of Civil Rights a plan and schedule to ensure that the contract assurance clause is placed in every DOT-assisted subcontract.	30 days	Send sampling of 10 sub-contracts to FTA by July 6, 2012 Submit corrected sub-contracts by August 31, 2012 Submit new sub- contracts by December 31, 2012

Requirement of 49 CFR Part 26	Ref.	Site visit Find ing	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date	Revised Response Date
B. Prompt Payment	26.29	D	Submit to FTA Office of Civil Rights a plan to ensure that: <ul style="list-style-type: none"> • Prime contracts and subcontracts contain return of retainage language; and • METRO can demonstrate how it will provide phased acceptances of work so that applicable retainage held can be released to the contractor so that the contractor can release applicable retainage promptly to subcontractors. Along with this release mechanism, METRO must also provide a monitoring and enforcement mechanism to assure itself that the retainage is being promptly returned. 	30days	June 30, 2012
C. Legal Remedies	26.37	ND			
10. Certification Standards	26.67	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Find ing	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date	Revised Response Date
11. Certification Procedures	26.83	D	Submit to FTA's Office of Civil Rights a plan and schedule for ensuring that the directory is reliable and an understanding how new certification requirements are being met by the UCP.	30 days	Closed
12. Record Keeping and Enforcements A. Bidders List	 26.11	 ND			
B. Monitoring	26,37 26.55	D	Submit to FTA's Office of Civil Rights a plan and schedule for ensuring that effective monitoring and mechanisms are in place and performed by staff to monitor and report work on METRO's direct contracts and their subrecipients' FTA funded contracts.		Resubmit Exhibit C by July 31, 2012

Requirement of 49 CFR Part 26	Ref.	Site visit Find ing	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date	Revised Response Date
C. Reporting	26.11	D	<p>Submit to FTA's Office of Civil Rights a plan and schedule for ensuring that procedures are implemented for accurate and complete collection and reporting of data for semi-annual and ARRA DBE reports to FTA.</p> <p>Because of the voluminous back up documentation provided after the site visit for the reporting of DBE attainment for semi-annual reports and the HRT project, FTA will be contacting METRO to set up a separate meeting to ensure that this documentation provides accurate reporting of data. This is also referenced in section 8G) <i>Counting DBE Participation.</i></p>	30 days	Resubmit procedures by July 31, 2012

Findings at the time of the site visit: ND = No deficiencies found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment

Section 8 – List of Attendees

Name	Organization	Title	Phone	Email
FTA (via conference call):				
Gail Lyssy	Federal Transit Administration, Region VI	Director of Program Management and Oversight	817-978-0564	Gail.lyssy@dot.gov
Cheryle Tyson	Federal Transit Administration, Region VI	Transportation Program Specialist	817-978-0568	Cheryle.tyson@dot.gov
METRO Members:				
George Greanias	METRO	President and CEO	713-739-4600	George.greanias@ridemetro.org
David Couch	METRO	Senior Vice President	713-739-4927	David.couch@ridemetro.org
Deborah Richard	METRO	Vice President	713-739-3787	Deborah.Richard@ridemetro.org
Karen Hudson	METRO	Compliance & Program Advisor Manager	713-739-6048	Kh17@ridemetro.org
Michael Kyme	METRO	Associate Vice President-Procurement & Material	713-652-8082	MK15@ridemetro.org
Ninfa Muench	METRO	Direct		
Alva Trevino	METRO	General Counsel	713-739-3866	Alva.Trevino@ridemetro.org
Terence Fontaine	METRO	Group Vice President-Business Services	713-739-4655	Terence.fontaine@ridemetro.org
Don Piper	METRO	Senior Program Initiation Specialist-Planning, Engineering & Construction	713-739-4884	dp10@ridemetro.org
Thomas Lambert	METRO	Sr. Vice President & Chief Administrative Officers	713-615-6409	Thomas.lambert@ridemetro.org
Tiko Reynolds-Hausman	METRO	Compliance and Program Advisor Manager	713-739-6032	Tiko.hausman@ridemetro.org
Shurronda Murray	METRO	Small Business Certification Specialist	713-739-4845	Sd01@ridemetro.org

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