

# FTA

FEDERAL TRANSIT ADMINISTRATION

## Foothill Transit Disadvantaged Business Enterprise (DBE) Program Final Compliance Review Report

March 2016

Federal Transit Administration



U.S. Department of Transportation  
Federal Transit Administration

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## Executive Summary

This report details the findings of a compliance review of Foothill Transit's Disadvantaged Business Enterprise (DBE) program implementation. The compliance review examined this agency's DBE program procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and Foothill Transit. In addition, the following entities were interviewed as part of this review: Foothill Transit officials; Irwindale Chamber of Commerce; Conference of Minority Transportation Officials (COMTO), Southern California; Latin Business Association; prime and subcontractors; and other stakeholders. The three-day review included interviews, assessments of data-collection systems, a visit to a construction site to observe DBE work, and a review of program and contract documents.

### Foothill Transit's DBE Program includes the following positive program elements –

#### Positive Program Elements

- **DBE Liaison Officer** – The DBELO is a senior executive who actively participates in small business and DBE outreach and has regular access to the CEO and Board of Directors.
- **Public Participation** – Foothill Transit demonstrated it has regularly involved both the DBE and non-DBE business community in programs to increase awareness of contracting opportunities.
- **Bidders List** – Foothill Transit has collected all the required information for a bidders list in its vendor database of over 3,000 firms.

### The Program has the following administrative deficiencies –

#### Administrative Deficiencies

- **DBE Program Plan** – Foothill Transit's DBE plan needs to reflect current practice and recent DBE rule changes.
- **Shortfall Analysis and Corrective Action Plan** – Future shortfall analyses, if needed, should include specific measures and milestones for achieving future goals.

### The Program has the following substantive deficiencies –

#### Substantive Deficiencies

- **Determining/Meeting Goals** – Foothill Transit should re-evaluate its DBE goal to determine if the Step 2 adjustment to a goal of 3.5 percent from a base figure of 20.6 percent is justifiable.
- **Required Contract Provisions and Enforcement** – Foothill Transit must implement procedures to ensure required DBE contract provisions are included in all FTA-assisted contracts and subcontracts.

Foothill Transit's DBE participation has increased over the past three fiscal years, as shown in the table below.

**Foothill Transit's DBE Three-Year Goal Attainment**

<b>Fiscal Year 2013 Goal: 6 Percent</b>		1	2	3 (1 + 2)
DBE Uniform Report		June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE prime contractors ( <i>Line 8C</i> )	\$0	\$40,021	\$40,021
B.	Total dollars awarded to DBE subcontractors ( <i>Line 9C</i> )	\$1,400	\$143,168	\$144,568
C.	Total dollars awarded to DBEs (A3 + B3)			\$184,589
D.	Total prime contract dollars awarded ( <i>Line 8A</i> )	\$662,567	\$10,458,787	\$11,121,354
E.	Annual percentage awarded (C3/D3)			<b>1.66%</b>

<b>Fiscal Year 2014 Goal: 6 Percent</b>		1	2	3 (1 + 2)
DBE Uniform Report		June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE prime contractors ( <i>Line 8C</i> )	\$0	\$0	\$0.00
B.	Total dollars awarded to DBE subcontractors ( <i>Line 9C</i> )	\$74,913	\$728,821	\$803,734
C.	Total dollars awarded to DBEs (A3 + B3)			\$803,734
D.	Total prime contract dollars awarded ( <i>Line 8A</i> )	\$1,035,214	\$9,323,876	\$10,359,090
E.	Annual percentage awarded (C3/D3)			<b>7.76%</b>

<b>Fiscal Year 2015 Goal: 6 Percent</b>		1	2	3 (1 + 2)
DBE Uniform Report		June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE prime contractors ( <i>Line 8C</i> )	\$0	\$166,455	\$166,455
B.	Total dollars awarded to DBE subcontractors ( <i>Line 9C</i> )	\$0	\$0	\$0.00
C.	Total dollars awarded to DBEs (A3 + B3)			\$166,455
D.	Total prime contract dollars awarded ( <i>Line 8A</i> )	\$552,853	\$232,220	\$785,073
E.	Annual percentage awarded (C3/D3)			<b>21.21%</b>

As the table shows, Foothill Transit met its overall DBE participation goal of 6 percent in years FY 2014 and FY 2015, however it did not meet its goal in FY 2013, achieving only 1.66 percent DBE participation in that year.

Foothill Transit conducted a shortfall analysis of its FY 2013 DBE participation shortfall in which it identified discouragement on the part of potential DBEs from participating in the DBE program because of the 2006 Western States Paving Company, Inc. v. Washington State Department of

Transportation case (Western States). The Western States case resulted in a Ninth Circuit jurisdictional ruling requiring covered grantees to have confirmed past or current effects of discrimination before using race-conscious contracting goals and minority preferences. Other factors included complaints referenced by Foothill Transit registered by potential DBEs about the DBE program's cumbersome application process. Foothill Transit's FY 2013 shortfall analysis only included feedback from small businesses that were not DBE certified, but the agency did not include or otherwise reference feedback from registered DBE firms concerning their participation interest or their experience with the Foothill Transit DBE program experience.

These factors notwithstanding, Foothill Transit reported exceeding its goal in FY 2014 and FY 2015, suggesting that its outreach efforts at attending small business networking events, advertising in minority publications, and participating in outreach events with minority advocacy groups were successful. In spite of this success, Foothill Transit submitted a DBE goal for FYs 2016–18 of 3.5 percent, which is well below its FY 2014 and FY 2015 achievement, well below its Step 1 base goal of 20.6 percent, and well below the median DBE goal of 8 percent of other FTA recipients in Southern California.

It is important to note that Foothill Transit expects to use nearly all its FTA funding for bus replacement in the coming three years. Foothill Transit's only projected non-bus procurement is an estimated \$800,000 contract for the construction of a charging station for its electric buses. The large majority of this contract will fund the equipment, with a small portion devoted to the construction aspect. As a result, Foothill Transit's DBE goal of 3.5 percent, if met, will yield only \$28,000 in total dollars awarded to DBEs over the next three years.

## I. General Information

This section provides basic information concerning this compliance review of Foothill Transit. Information on Foothill Transit, the review team, and the dates of the review are presented below.

<b>Grant Recipient:</b>	Foothill Transit
<b>City/State:</b>	West Covina, CA
<b>Grantee Number:</b>	5551
<b>Executive Official:</b>	Doran J. Barnes (626) 931-7200 <a href="mailto:dbarnes@foothilltransit.org">dbarnes@foothilltransit.org</a>
<b>On-site Liaison:</b>	Kevin McDonald (626) 931-7201 <a href="mailto:kmcdonald@foothilltransit.org">kmcdonald@foothilltransit.org</a>
<b>Report Prepared By:</b>	The DMP Group, LLC
<b>Dates of On-site Visit:</b>	October 13–15, 2015
<b>Compliance Review Team Members:</b>	Maxine Marshall, Lead Reviewer John Potts, Reviewer Donald Lucas, Reviewer

## **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 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

Foothill Transit is the recipient of one or more federal transit grants, loans, and/or contracts that result in contracting opportunities exceeding \$250,000. Hence, Foothill Transit is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in Foothill Transit's DBE program and were the basis for this compliance review.

## 3. Purpose and Objectives

### 3.1 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 49 CFR Part 26. FTA has determined that a compliance review of the Foothill Transit's DBE program is necessary.

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

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

### 3.2 Objectives

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

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

The objectives of this compliance review are to:

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

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

## **4. Background Information**

The purpose of this section is to provide an understanding of Foothill Transit's operations and scale. The subsections below highlight Foothill Transit's history, organizational structure, services, and short-term initiatives; its budget and FTA-assisted projects; and the history of its DBE program.

### **4.1 Introduction to Foothill Transit and Organizational Structure**

Foothill Transit was created in 1988 as a unique joint powers authority following the Southern California Rapid Transit District (RTD) announcement of service cuts and fare increases that would negatively impact the San Gabriel Valley. The Los Angeles County Transportation Commission approved Foothill Transit's application to assume operation of 14 lines that were operated by RTD, and Foothill was tasked by community leaders to provide superior public transportation while reducing costs and improving local control. Foothill Transit is currently governed by a Joint Powers Authority of 22 member cities, three appointees, and the County of Los Angeles. The larger Governing Board is divided into five regional clusters that elect representatives once a year at the agency's annual meeting to serve on a five-member Executive Board.

At its inception, Foothill Transit relied on contractor-provided operations facilities to maintain its growing fleet. Foothill Transit opened its first agency-owned operations facility in Pomona in 1997. A second facility in Arcadia was completed in September 2002. In 2007, the administrative offices moved to its current address at 100 South Vincent Avenue in West Covina.

On June 15, 2013, Foothill Transit began the transition to in-house management by hiring its first full-time employee, Executive Director Doran J. Barnes. Mr. Barnes had previously served as Executive Director since 2003 under a management contract with Veolia Transportation. At the direction of the Board, senior leadership and technical staff for each functional area of the organization were hired and the management services contract with Veolia Transportation was amended, resulting in management of Foothill Transit being brought in-house on July 1, 2013. On-street operations and maintenance, as well as transit store operations and bus stop maintenance, continue to be provided under contracts with private firms.

Foothill Transit's service began in December 1988 with the operation of two fixed-route bus lines absorbed from RTD Lines 495 and 498. Foothill Transit now operates 36 fixed-route local and express lines, covers over 300 square miles in eastern Los Angeles County, and serves approximately 14 million customers each year (providing approximately 48,000 trips per weekday).

In 2007, Foothill Transit launched Silver Streak, the region's first cross-valley, high-occupancy bus service. Covering approximately 40 miles from Montclair to Grand and Olympic in downtown Los Angeles, the Silver Streak route spends about 5 percent of its total trip time on surface streets. By utilizing freeways and high-occupancy toll lanes for quick commuting between designated station stops, it mimics the efficiency and speed of light rail. The Silver Streak was also the first public transit service in Southern California to offer customers free mobile Wi-Fi service on all 30 of its 60-foot articulated buses. Wi-Fi service was discontinued in early 2009 due to smart phone advancements and looming operating budget cuts from the state.

Foothill Transit began converting its diesel-fueled fleet to compressed natural gas (CNG) in 2002. The fleet conversion was completed in 2013. In addition, and consistent with its commitment to adopting low-emissions technology, in 2010 the agency implemented the first-of-its-kind all-electric, zero-emissions Ecoliner. Funded through the American Recovery and Reinvestment Act of 2009 (ARRA), these vehicles were the first all-electric, heavy-duty public transit buses ever to utilize in-route fast-charging capability, enabling them to remain in service throughout the day without having to leave the route to be charged before returning to service. Foothill Transit received a \$10.2 million TIGGER II grant in early 2011 to expand the Ecoliner program. This funding enabled the purchase of 12 more electric vehicles for use on Line 291 and on other lines that serve Pomona Transit Center. In July 2014, Line 291 became the first all-electric, zero-emissions bus line in operation in Los Angeles County. Today, Foothill Transit has a fleet of 347 CNG buses and 15 Ecoliner buses.

Foothill Transit's major short-term initiatives include the following:

- **Bus Replacement Project** – Acquire new CNG vehicles to replace vehicles that have reached or exceeded their useful life.
- **SMART Bus System (SBS) Replacement** – Replace its aging computer-aided dispatch and automated vehicle location system.
- **College Pass Program** – Build on its current pilot programs at Mount San Antonio College (Mt. SAC) and the University of La Verne by developing similar programs at major colleges and universities throughout the San Gabriel and Pomona Valleys, including Cal Poly Pomona and Citrus College.
- **Fare Restructuring Analysis** – Simplify the current fare structure to ensure the proper product mix at the proper price point, and provide seamless access for customers who ride other systems in addition to Foothill Transit.
- **San Gabriel and Pomona Valley Park & Rides** – Complete the Azusa Intermodal Parking Facility and pursue other opportunities for Park & Rides in the San Gabriel and Pomona Valleys.
- **Service Enhancement** – Optimize current transit services, maximize underused resources, and expand the system in an efficient manner.
- **Mt. SAC Transit Center** – Develop and construct an off-street transit center and transit store at Mt. SAC, one of Foothill Transit's largest trip generators.

#### 4.2 Budget and FTA-Assisted Projects

Foothill Transit's budget comprises local, state, and federal funds, as well as revenue from fares and other sources. According to Foothill Transit's Business Plan and Budget for FY 2014 and FY 2015, the agency had an operating budget of approximately \$78 million and a capital budget of approximately \$52 million, as shown in the tables below:

### Foothill Transit Operating Revenues

Revenue Source	FY 13-14 Budget	%	FY 14-15 Budget	%
<b>Fare Revenue</b>	\$18,800,000	25.2%	\$18,870,000	24.0%
<b>State and Local Funding</b>	\$53,368,300	71.5%	\$56,966,270	72.7%
<b>Federal Funding (CMAQ)</b>	\$1,000,000	1.3%	\$1,000,000	1.3%
<b>Other (non-Federal)</b>	\$1,500,000	2.0%	\$1,500,000	2.0%
<b>TOTAL</b>	\$74,668,300	100%	\$78,336,270	100%

### Foothill Transit Capital Revenue

Revenue Source	FY 14-15 Budget	%
<b>FTA Section 5307</b>	\$17,257,900	33.4%
<b>Excise Tax Credit</b>	\$1,240,670	2.4%
<b>State and Local Funding</b>	\$33,121,430	64.2%
<b>TOTAL</b>	\$51,620,000	100%

Foothill Transit has the following FTA-assisted projects currently underway:

- **San Gabriel Valley Park & Ride** – Construction of two multi-level park & ride facilities in the cities of Industry and Azusa.
- **CNG Bus Fleet Replacement** – Purchase of 42-foot CNG buses (43) to replace older vehicles approaching the end of their useful life.

## 4.3 DBE Program

Foothill Transit's Deputy Executive Director is responsible for monitoring and enforcing the DBE program to ensure compliance with appropriate federal and state laws and regulations. The Deputy Executive Director has direct access to the Executive Director. In his role as Foothill Transit's Disadvantaged Business Enterprise Liaison Officer (DBELO), the Deputy Executive Director's responsibilities include all required duties applicable to Foothill Transit. For example, the DBELO is an active participant in networking events focused on small business and DBEs in the Southern California area. The DBELO also prepares and submits semi-annual DBE Reports in FTA's TEAM system and regularly informs the Executive Director on DBE accomplishments.

Foothill Transit is under the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, which in May 2006 ordered a change in the administration of DBE programs by California recipients of U.S. Department of Transportation transit and highway funds [Western States Paving Company, Inc. v. Washington State Department of Transportation case (Western States)]. The court's Western States decision resulted in Foothill Transit's implementation of a race-neutral DBE program.

Although Foothill Transit has faced challenges meeting its annual goal using race-neutral methods, it has not commissioned a disparity study or used the results of a 2013 Los Angeles County Metropolitan Transportation Authority (Los Angeles Metro) disparity study. Foothill

Transit indicated Los Angeles Metro's disparity study focused on major capital projects (e.g., rail construction) and that Foothill Transit's contracting opportunities are not comparable. Foothill Transit also stated it believes most of the DBEs in the area are at or near capacity working on MTA projects, therefore limiting their availability to participate in Foothill Transit projects.  
purchase transit vehicles

## 5. Scope and Methodology

### 5.1 Scope

Implementation of the following DBE program components specified by the FTA are reviewed in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to Foothill Transit DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by Foothill Transit as well as by prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers, and types of work performed, made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (not) exist and efforts to address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43–26.53]
- A shortfall analysis and corrective action plan when Foothill Transit did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include Foothill Transit seeking FTA approval to establish a project-specific goal for vehicle purchases. [49 CFR 26.49]
- A non-discrimination and a prompt payment clause is included in all FTA-assisted contracts and a prompt payment verification process. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65–26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE program must also include monitoring and enforcement

mechanisms 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 and 26.55].

## 5.2 Methodology

The initial step of this compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA’s TEAM System and other sources. After reviewing this information, potential dates for the site visit were coordinated.

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

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

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

An opening conference was conducted at the beginning of the compliance review with FTA representatives, Foothill Transit staff, and the review team. The people who attended the meeting are shown in the following table.

### ***Foothill Transit***

<b>Name</b>	<b>Title</b>	<b>E-mail Address</b>
Doran Barnes	Executive Director	<a href="mailto:dbarnes@foothilltransit.org">dbarnes@foothilltransit.org</a>
Kevin McDonald	Deputy Executive Director	<a href="mailto:kmcdonald@foothilltransit.org">kmcdonald@foothilltransit.org</a>
Jarrett Stoltzfus	Director of Procurement	<a href="mailto:jstoltzfus@foothilltransit.org">jstoltzfus@foothilltransit.org</a>

<b>Name</b>	<b>Title</b>	<b>E-mail Address</b>
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***Thompson Coburn LLP Foothill Transit Outside Counsel***

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***FTA (via teleconference)***

<b>Name</b>	<b>Title</b>	<b>E-mail Address</b>
Anita Heard	Equal Opportunity Specialist, FTA Office of Civil Rights	<a href="mailto:anita.heard@dot.gov">anita.heard@dot.gov</a>
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Antoinette Davis	Equal Opportunity Specialist, FTA Office of Civil Rights	<a href="mailto:antoinette.davis@dot.gov">antoinette.davis@dot.gov</a>
Janelle Hinton	Program Analyst, FTA Office of Civil Rights	<a href="mailto:janelle.hinton.ctr@dot.gov">janelle.hinton.ctr@dot.gov</a>
Jennifer Riess	Equal Opportunity Specialist, FTA Office of Civil Rights	<a href="mailto:jennifer.riess@dot.gov">jennifer.riess@dot.gov</a>
Marisa Appleton	Acting FTA Region IX Civil Rights Officer	<a href="mailto:marisa.appleton@dot.gov">marisa.appleton@dot.gov</a>

***The DMP Group (Compliance Review Team)***

<b>Name</b>	<b>Title</b>	<b>E-mail Address</b>
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Donald Lucas	Reviewer	<a href="mailto:donald.lucas@thedmpgroup.com">donald.lucas@thedmpgroup.com</a>

Following the opening conference, the review team examined Foothill Transit’s DBE Program Plan and other documents submitted by the DBELO. The team then conducted interviews with Foothill Transit staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from its diversity,

procurement, and finance offices. A sample of contracts was then selected and reviewed for their DBE elements. Additional interviews with prime contractors, subcontractors, and interested parties were also conducted.

At the end of the review, FTA representatives, Foothill Transit staff, and the review team convened for the final exit conference. At the exit conference, initial findings and corrective actions were discussed with Foothill Transit. Participants in the exit conference were the same as those who participated in the entrance conference listed in the previous table, with the exception of Mr. Doran Barnes, Executive Director.

Following the site visit, a draft report was compiled and transmitted to Foothill Transit for comments on January 11, 2016. Foothill Transit did not provide comments on the draft report. This final report describes the compliance review findings, and corrective actions with related deadlines.

### 5.3 Stakeholder Interviews

During the DBE compliance review, eight DBEs, four non-DBE prime contractors, and seven minority- and women-owned business advocacy organizations (other interested parties) were contacted, as follows:

<b><u>DBEs</u></b>	<b><u>Non-DBE Prime Contractors</u></b>	<b><u>Other Interested Parties</u></b>
Alameda Construction Services, Inc. Black, Male 2528 East 125th Street Compton, CA 90222 <a href="#">Alameda Construction</a>	Joseph E. Aragon or Designee Aragon Construction, Inc. (Prime DBE, SBA 8(a), MBE) 5440 Arrow Highway Montclair, CA 91763 <a href="#">Aragon Construction</a>	Asian American Chamber Association 977 North Broadway Ground Floor, Suite E Los Angeles, CA 90012 <a href="#">LA Chinese Chamber of Commerce</a>
Command Performance Constructors Hispanic, Male 3346 Olive Avenue Signal Hill, CA 90755 <a href="#">Command Performance Constructors</a>	Choate Parking Consultants 16969 Von Karman Avenue Suite 230 Irvine, CA 92606 <a href="#">Choate Parking</a>	Black Business Association of Los Angeles P.O. Box 43159 Los Angeles, CA 90043 Earl "Skip" Cooper, President and CEO <a href="#">Black Business Association of LA</a>
Diaz Yourman & Associates Hispanic, Male 1616 East 17th Street Santa Ana, CA 92705 <a href="#">Diaz Yourman</a>	Walker Parking Consultants 606 South Olive Street Suite 1100 Los Angeles, CA 90014 <a href="#">Walker Parking Consultants</a>	COMTO Southern California P.O. Box 6218 Whittier, CA 90690 <a href="mailto:comtosocal@gmail.com">comtosocal@gmail.com</a> <a href="#">COMTO Southern California</a>
Excelsior Elevator Corporation Asian Pacific, Female 1961 Blair Avenue Santa Ana, CA 92705 <a href="#">Excelsior Elevator</a>	W. M. Klorman Construction Corporation 23047 Ventura Boulevard Woodland Hills, CA 91364 <a href="#">Klorman Construction</a>	Latin Business Association 120 South San Pedro Street Suite 530 Los Angeles, CA 90012 <a href="#">Latin Business Association</a>
Hardy Landscape Asian Subcontinent, Male 21520 Ambushers Street Diamond Bar, CA 91765		Los Angeles Latino Chamber of Commerce 634 South Spring Street Suite 600 Los Angeles, CA 90014

**DBEs**

Lenax Construction Services  
Caucasian, Female  
3700 Wilshire Blvd, Suite 560  
Los Angeles, CA 90010  
[Lenax Construction](#)

Rivera Irrigation  
Native American, Female  
12645 Wells Place  
Chino, CA 91710

Terry A. Hayes Associates, Inc.  
Black, Male  
8522 National Boulevard, #102  
Culver City, CA 90232  
[Terry A. Hayes Associates](#)

**Non-DBE Prime Contractors**

**Other Interested Parties**

[Los Angeles Latino Chamber of Commerce](#)  
National Organization of Minority Contractors Southern California Chapter  
P.O. Box 43307  
Los Angeles, CA 90043  
[National Organization of Minority Contractors](#)

National Association of Women Business Owners Los Angeles  
523 West 6th Street, Suite 516  
Los Angeles, CA 90014  
[National Association of Women Business Owners LA](#)

**DBEs**

Interviews were conducted with four of the eight DBEs contacted, all of which worked on Foothill Transit FTA-assisted projects within the past six years. All the DBEs interviewed were contracted to perform work for which they were certified in the California Unified Certification Program (CUCP). The DBEs learned of Foothill Transit contracting opportunities through requests for proposals (RFPs) posted on the Foothill Transit website, monitoring and receiving notices via an electronic service called Dodge Construction Leads, notices from prime contractors, and invitations to and attendance at pre-bid conferences and project site visits. One of the DBEs interviewed noted that Foothill Transit asks all prime contractors to raise their hands during pre-bid meetings, purposefully creating an opportunity for potential subcontractors to identify prime contractors with whom they might network. Two of the DBEs interviewed worked on Foothill Transit projects and subcontracted a portion of their work. In most cases, the subcontracts were awarded to DBEs, with the exception of two subcontracts awarded to small businesses. None of the DBEs interviewed reported problems with retainage being withheld or problems with prompt payment. None of the DBEs interviewed reported any disputes or complaints with Foothill Transit.

**Non-DBE Prime Contractors**

Interviews were conducted with two of the four non-DBE prime contractors contacted. The prime contractors interviewed reported they solicited DBEs in general, and for Foothill Transit specifically, by using electronic bid mail services, posting ads in local newspapers, attending small business networking events hosted by Foothill Transit and other organizations, and distributing information to subcontractor e-mail lists they maintain. One of the primes reported a problem with a DBE on a construction project but was optimistic the issue would be resolved and did not anticipate the need to take remedial action. Both prime contractors reported knowledge of on-site monitoring conducted by Foothill Transit. One contractor confirmed Foothill Transit's periodic review of DBE invoices for confirmation of work performed and prompt payment. This contractor stated they were aware of calls made by Foothill Transit to DBEs to

confirm they were performing the work they were contracted to perform. One prime contractor reported they pay subcontractors as billed, and the other prime contractor reported paying subcontractors within 10 days of being invoiced. Neither of the prime contractors was certain about if and how retainage was withheld, but one speculated that 5 percent retainage may be withheld and released per contract terms. Neither prime contractor made joint check payments.

#### Other Interested Parties

Three of the eight minority- and women-owned business advocacy organizations contacted were interviewed. In summary, all of them confirmed awareness of Foothill Transit's DBE program and their active engagement and partnership with Foothill Transit on ongoing outreach, technical assistance, and networking initiatives designed to encourage small and minority- and women-owned business participation on Foothill Transit projects. One organization reported Foothill Transit's participation on its board and regular attendance at board meetings and small business outreach events. All three reported receiving regular notices from Foothill Transit on contracting opportunities. None reported concerns or complaints with Foothill Transit registered by the DBE and small business community.

## 6. Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to Foothill Transit's DBE program are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

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

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

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

### 6.1 DBE Program Plan

#### Basic Requirement (49 CFR Part 26.21)

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

#### Discussion

During this compliance review deficiencies were found with this requirement. Foothill Transit's most recent DBE Program Plan, dated February 24, 2012, did not include all required elements. Specifically, the plan did not include procedures for when and how it would conduct a shortfall analysis and develop a corrective action plan; provisions for protecting against termination for convenience; or procedures for interstate certification, as required by 49 CFR Part 26, as amended. Foothill Transit's Program Plan should be updated to reflect provisions for all missing elements.

Additionally, Foothill Transit's Program Plan did not reflect its current practice. Specifically, Section 26.25 of the plan included a description of its DBELO responsibilities, in which the DBELO is described as being responsible for "maintain[ing] Foothill Transit's updated DBE directory on certified DBEs." In Section 26.31 of the same plan, Foothill Transit stated it "maintains a directory identifying all firms eligible to participate as DBEs." Finally, in Section 26.35 of the Program Plan, Foothill Transit stated it "has not established a business

development plan,” but in Section 26.39 of the same plan, it includes Foothill Transit DBE Business Development Program Guidelines modeled after those found in 49 CFR Part 26, Appendix C. During the site visit, it was confirmed that Foothill Transit did not certify or maintain a DBE Directory or have a Business Development Program, and its plan should not include these provisions.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes all required elements and reflects actual practice.

## **6.2 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' organizations and to the DBE and non-DBE business communities.

### **Discussion**

During this compliance review a deficiency was found with this requirement. Although Foothill Transit's DBE Policy Statement contained all required elements, Foothill Transit did not distribute or circulate its policy statement as required and as it stated it would in its DBE Program Plan. In its plan, Foothill Transit states that it

*has disseminated this policy statement to the Foothill Transit Executive Board and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.*

Foothill Transit further states in its Program Plan that

*This policy statement is also contained on the Foothill Transit vendor database where DBE and non-DBE businesses may view possible contracting opportunities. The availability of this this [sic] statement is/will be advertised along with the DBE goal in local business newspapers.*

During this compliance review Foothill Transit did not provide documentation that the DBE Policy Statement had been distributed throughout the organization (with the exception of its Executive Board) or to the DBE and non-DBE business communities as described in its plan.

## **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Office of Civil Rights documentation confirming its DBE Program Policy Statement has been distributed as required by 49 CFR Part 26.23 and as stated in its DBE Program Plan.

### **6.3 DBE Liaison Officer**

#### **Basic Requirement (49 CFR Part 26.25)**

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

#### **Discussion**

During this compliance review no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement. Foothill Transit should update the DBELO job description to reflect duties listed in its DBE Program Plan and the DBELO's current responsibilities.

Foothill Transit's DBELO is the Deputy Executive Director, a senior executive in the agency with frequent and direct access to the Executive Director. It was clear from on-site interviews and a review of documentation that Foothill's DBELO is actively engaged in carrying out the required day-to-day responsibilities of the DBELO. These duties include gathering and reporting statistical information to FTA, working with departments to establish DBE goals, participating in pre-bid meetings, and advising the Executive Director and Board of Directors on DBE matters. The DBELO is supported by staff from the procurement and finance departments.

A review of Foothill Transit's organization chart and discussions about DBELO operating procedures confirmed that the Foothill Transit DBELO did not have any conflicts of interest in performing his duties.

A comparison of duties identified in the DBELO job description to those identified in the DBE Program Plan revealed inconsistencies related to maintenance of the bidders list and the DBE Directory.

#### **Corrective Actions and Schedule**

Foothill Transit is advised to update its DBELO job description, DBE Program Plan, and all other documents communicating the responsibilities of its DBELO such that they are all consistent. Furthermore, Foothill Transit is advised to include only those DBELO responsibilities that are relevant and currently apply to its DBE program.

### **6.4 DBE Financial Institutions**

#### **Basic Requirement (49 CFR Part 26.27)**

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

## Discussion

During this compliance review a deficiency was found with this requirement. In its DBE Program Plan, Foothill Transit stated that

*It is the policy of Foothill Transit to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract[s] to make use of these institutions.*

*To date we have not identified any DBE Financial Institutions. The search was conducted utilizing the California Unified Certification Program for NAICS Category 52: Finance and Insurance.*

*Any information on the availability of such institutions can be obtained from the DBE Liaison Officer.*

Although Foothill Transit searched the CUCP for DBE-owned and -controlled financial institutions, its search by definition was limited to DBE certified financial institutions. 49 CFR Part 26.27 does not require the DBE financial institution to be certified; rather, it requires Foothill Transit to investigate the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in the community (certified or not) and make reasonable efforts to use these institutions, as well as encourage prime contractors to do the same.

During the site visit, Foothill Transit questioned whether this requirement meant the DBE financial institution had to be both socially and economically disadvantaged, submitting that although social disadvantage could be easily determined, economic disadvantage could not be determined in the absence of a certification process or program (i.e., the CUCP). Foothill Transit was advised that as it is unlikely that DBE certified financial institutions exist (primarily due to their inability to meet economic disadvantage criteria), social disadvantage was a sufficient criterion for identifying DBE financial institutions pursuant to compliance with 49 CFR Part 26.27. It was further suggested that Foothill Transit reference the current Federal Reserve Statistical Release (FRSR), found at the [Federal Reserve Statistical Release website](#). Currently, the FRSR reports more than 15 minority-owned banks, many with multiple branches throughout the State of California, and many near or within the Foothill Transit service area.

## Corrective Actions and Schedule

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Office of Civil Rights documentation confirming it has investigated and considered the services of DBE financial institutions for its own use and shared a listing of these organizations with its prime contractors and subcontractors.

## 6.5 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 compliance review no deficiencies were found with this requirement. In the State of California, DBE program certification and administration, including DBE directory maintenance, was the responsibility of the California Unified Certification Program (CUCP) and its 10 regional certifying agencies, which are listed below.

Area	Counties	Certifying Agencies
<b>Southern Cluster</b>		
Riverside, Imperial, and San Diego	Imperial, Riverside, San Diego	<ul style="list-style-type: none"> <li>• City of Los Angeles</li> <li>• Los Angeles County Metropolitan Transportation Authority</li> <li>• California Department of Transportation</li> </ul>
Los Angeles Area	Kern, Los Angeles, Orange, San Bernardino, San Luis Obispo, Santa Barbara, Ventura	<ul style="list-style-type: none"> <li>• City of Los Angeles</li> <li>• Los Angeles County Metropolitan Transportation Authority</li> </ul>
<b>Northern Cluster</b>		
Bay Area/Central Valley	Alameda, Amador, Calaveras, Contra Costa, Fresno, Kings, Madera, Marin, Mariposa, Merced, Monterey, Napa, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, Tuolumne	<ul style="list-style-type: none"> <li>• San Francisco Bay Area Rapid Transit District</li> <li>• San Francisco Municipal Transportation Agency</li> <li>• City of Fresno</li> <li>• San Mateo County Transit District Peninsula Corridor Join Powers Board (CALTRAIN)</li> <li>• Santa Clara Valley Transportation</li> <li>• Central Contra Costa Transit Authority</li> </ul>
Northern California	Alpine, Butte, Colusa, Del Norte, El Dorado, Glen, Humboldt, Inyo, Lake, Lassen, Mendocino,	<ul style="list-style-type: none"> <li>• California Department of Transportation</li> <li>• Yolo County Transportation</li> </ul>

Area	Counties	Certifying Agencies
	Modoc, Mono, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, Yuba	District

At the time of the site visit, Foothill Transit was a non-certifying participant in the CUCP and therefore was not required to maintain a DBE Directory. The CUCP DBE Directory meets all the requirements of 49 CFR Part 26.31.

**Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

**6.6 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 compliance review a deficiency was found with this requirement. In Section 26.33 of its DBE Program Plan, Foothill Transit stated that it “has not identified that overconcentration exists in the types of work that DBEs perform.” During this compliance review, no analysis was provided to support this determination. Foothill Transit also did not indicate how often it re-evaluated the potential occurrence of overconcentration. Finally, Foothill Transit did not describe the measures it would take to address overconcentration should it occur.

**Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Civil Rights Office an updated DBE Program Plan that details its procedures for analyzing and determining if overconcentration exists and the measures it would take to address the occurrence of overconcentration (e.g., use of incentives, technical assistance, business development programs, and mentor-protégé programs).

## 6.7 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 compliance review no deficiencies were found with this requirement. An advisory comment, however, is made regarding the requirement. Section 26.35 of Foothill Transit's Program Plan states it "has not established a business development plan," and during the site visit, the agency acknowledged it did not have a business development plan.

However, Section 26.39 of the plan, *Small Business Development Mechanisms*, includes Foothill Transit DBE Business Development Program Guidelines modeled nearly identically after those found in 49 CFR Part 26, Appendix C.

#### Corrective Actions and Schedule

Foothill Transit is advised to remove the reference to the Foothill Transit DBE Business Development Program Guidelines from its DBE Program Plan unless and until these Guidelines are to be used.

## 6.8 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 calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

#### Discussion

During this compliance review deficiencies were found with this requirement. In Section 26.11(c) of its DBE Program Plan, Foothill Transit stated the following:

*Foothill Transit will maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals.*

Foothill Transit provided its DBE goal methodology for FY 2010–12 and FY 2016–18, but indicated it could not locate the DBE goal methodology it used for FY 2013–15. Neither of the DBE goal methodologies provided used the referenced bidders list.

In its most recent goal submission for FY 2016–18, Foothill Transit identified a single contracting opportunity, construction of an electric bus charging station, for the three-year period. This

project was estimated to be an \$800,000 contract. Foothill Transit indicated it planned to use the remainder of FTA funding for bus replacement projects.

Both the FY 2010–12 and FY 2016–18 goal methodologies were based on business data from CUCP (ready, willing, and able DBEs) and the U.S. Census Bureau County Business Patterns (all ready, willing, and able businesses). No other factors were considered in the calculation of the FY 2010–12 DBE goal of 6 percent. However, a Step 2 adjustment was made in the calculation of the FY 2016–18 DBE goal that reduced the Step 1 base figure from 20.6 percent to a Step 2 goal of 3.5 percent. Specifically, Foothill Transit determined in its Step 1 calculation that there were 185 ready, willing, and able DBE firms in the CUCP for the type of work sought. In its Goal Methodology, however, Foothill Transit stated that only 17 percent (31) of those firms “would not already be at capacity and would be ready, willing, and able to complete the work.” Foothill Transit did not perform a similar analysis of the capacity of non-DBEs to perform the work. Firm capacity for the DBEs was determined by Foothill Transit to be a function of the volume of contracting opportunities made available by the Los Angeles Metro. The rationale applied by Foothill Transit is that because MTA provided a substantial majority of the contracting opportunities in the region, most (or 83 percent) of the ready, willing, and able firms would be working on MTA projects and thus would not have the capacity to work on Foothill Transit projects. This rationale resulted in a FY 2016–18 DBE goal of 3.5 percent, or \$28,000 in business for DBEs.

Foothill Transit did not provide any further analysis, evidence, or support for its Step 2 rationale. For example, Foothill Transit did not consider the results of a disparity study that was completed by Los Angeles Metro in 2013, which shares the same geographic market area as Foothill Transit, nor did it define its geographic market area for contracting purposes. Consequently, it could not be determined if the geographic area used was too small, thereby limiting the number of DBEs eligible for inclusion in its goal calculation.

It was noted that Foothill Transit, which is located in Los Angeles County, has a goal (3.5 percent) well below the median goal (8 percent) of 20 FTA-funded transit agencies throughout Southern California, as shown below.

	<b>FTA Recipient</b>	<b>Period</b>	<b>Goal<sup>1</sup></b>
1	Southern California Regional Rail Authority	2016–18	25.00%
2	Los Angeles County MTA	2016–18	18.00%
3	Ventura County Transportation Commission	2016–18	12.50%
4	Antelope Valley Transit Authority	2016–18	11.95%
5	City of Los Angeles	2016–18	11.24%
6	Riverside County Transportation System	2016–18	10.8%
7	Long Beach Transit	2016–18	10.00%
8	Orange County Transportation Authority	2016–18	10.0%
9	City of Santa Clarita	2016–18	8.00%
10	City of Santa Monica	2015	8.00%
11	City of Commerce	2016–18	7.85%
12	Culver City	2016–18	6.97%
13	City of Montebello	2013–15 <sup>2</sup>	5.50%
14	City of Gardena	2016–18	5.00%
15	<b>Foothill Transit</b>	<b>2016–18</b>	<b>3.50%</b>

<sup>1</sup> Goals are as reported in FTA’s TEAM system.

<sup>2</sup> City of Montebello requested an extension in submission of its FY 2016–18 goal.

	<b>FTA Recipient</b>	<b>Period</b>	<b>Goal<sup>1</sup></b>
16	Access Services	2016–18	2.50%
17	OmniTrans	2016–18	2.45%
18	Metro Gold Line Foothill Extension	2013–15 <sup>3</sup>	2.30%
19	Riverside Transit Agency	2016–18	2.00%
20	Victor Valley Transit Authority	2016–18	1.00%

### **Corrective Actions and Schedule**

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

- An updated goal methodology description in its DBE Program Plan that accurately describes the use of a bidders list when calculating overall DBE program goals. If a bidders list is not used, Foothill Transit is to remove any reference to the bidders list in the description of Foothill Transit’s goal methodology.
- Documentation supporting Foothill Transit’s FY 2016–18 Step 2 adjustment resulting in a goal of 3.5 percent.

### **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 notice announcing the overall goal must be published on the recipient’s official website and may be published in other media outlets with an optional 30-day public comment period.

#### **Discussion**

During this compliance review no deficiencies were found with this requirement. An advisory comment, however, is made regarding the need to advertise its DBE goal on the Foothill Transit website. It was confirmed that Foothill Transit consulted with minority, women, and contractor groups to raise awareness about and encourage participation in its DBE program. Foothill Transit provided its notice of a March 25, 2013, Small Business Mixer, during which it recognized women-owned businesses and encouraged their participation in Foothill Transit contracting opportunities. In addition, Foothill Transit provided documentation of its hosting or participating in several local information-sharing and networking events focused on DBEs and small businesses. Finally, during interviews conducted with the Irwindale Chamber of Commerce and the Council of Minority Transportation Officials (COMTO), Southern California, both organizations reported that Foothill Transit did a good job of regularly engaging DBEs and small businesses on issues and opportunities related to its DBE program. DBEs interviewed also reported Foothill Transit’s ongoing efforts to communicate information and seek input related to its DBE program.

<sup>3</sup> Metro Gold Line Foothill Extension will have no contracting opportunities in FY 2016 or beyond.

It was also confirmed that Foothill Transit provided outreach to DBE contracting groups and encouraged their input into its overall DBE goal development through the following local newspapers: *San Gabriel Valley Tribune*, *Inland Valley Daily Bulletin*, *La Opinion*, and *Los Angeles Times*. Foothill Transit provided a copy of its notice posted on its website and published in these newspapers on May 14, 2015, in connection with its FY 2016–18 DBE goal development process. The notice communicated a public hearing to obtain input from the vendor community on its proposed goal of 3.5 percent. The notice was translated and published in English, Spanish, and Chinese.

### **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

Advisory Comment:

Foothill Transit is advised that the DBE goal must be maintained on its website for the entire triennial period.

### **C) Race-Neutral DBE Participation**

#### **Basic Requirement (49 CFR Part 26.51)**

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

#### **Discussion**

During this compliance review no deficiencies were found with this requirement. In its DBE Program Plan, Foothill Transit stated it used the following race-neutral means to encourage and increase DBE participation:

- Encouraged participation of DBEs in pre-bid conferences.
- Conducted outreach to DBE trade associations to provide information on Foothill Transit contracting opportunities.
- Solicited support of DBE trade associations to distribute bid announcements, including bid specifications.
- Encouraged DBEs to discuss their capabilities with prime contractors at pre-bid conferences.

During the site visit, Foothill Transit provided documentation of each of the four race-neutral measures listed above, as follows:

- March 25, 2013 – Hosted the Making it Happen Business Networking Event to share information on doing business with Foothill Transit and help DBEs and small businesses network with prime contractors.

- June 24, 2013 – Hosted the Downtown Small Business Mixer to share information on doing business with Foothill Transit and help DBEs and small businesses network with prime contractors.
- March 18, 2014 – Participated in the OmniTrans How to do Business with Local Transit Agencies & DBE/Small Business Workshop.
- March 25, 2014 – Participated in the Irwindale Chamber of Commerce Small Business Roundtable, a forum for business owners and CEOs to share contracting challenges and solutions.
- November 6, 2014 – Exhibited at the Los Angeles Small Business Expo.

In addition, in its DBE Program, Foothill Transit stated that it would implement the following small business mechanisms:

- assure that prime contractors provide subcontracting opportunities of a size that small business, including DBE's, could reasonably perform;
- ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, could perform; and
- identify alternative acquisition strategies, where appropriate, to facilitate consortia or joint ventures consisting of small businesses, including DBEs.

A review of the procurement documentation and ensuing contracts demonstrated that Foothill Transit had implemented several of these mechanisms. For example, Foothill Transit provided an opportunity for a prime contract by soliciting for architectural services for the Asuza Parking Facility, separate from the construction contract. This effort resulted in the awarded of a prime contract (Contract No. 11-037) to a DBE firm. Additionally, on the Asuza Parking Facility construction contract (IFB No. 15-002), Foothill Transit required prime contractors to identify proposed subcontractors and to “take necessary and reasonable steps to ensure that DBEs have fair opportunity to participate in the proposed contract and /or subcontracts”. This effort resulted in three DBE subcontracts on this project.

Foothill Transit had not, however, clearly documented these and other efforts to fully demonstrate that it was taking these measures as a part of the implementation of the small business element requirements.

During the review team's interviews with interested parties, Irwindale Chamber of Commerce and COMTO both commented on Foothill Transit's active participation in their respective business development and small business networking workshops. COMTO reported Foothill Transit meets with them six to seven times per year to provide information on its DBE program and discuss contracting opportunities for DBEs and small businesses. The Irwindale Chamber of Commerce reported it receives monthly correspondence from Foothill Transit seeking DBE and small business referrals for the agency's contracting opportunities.

DBEs interviewed during the compliance review reported they learn of Foothill Transit's contracting opportunities through invitations to pre-bid meetings and project site visits. It was further reported that these meetings provided a forum for networking with prime contractors. One of the DBEs interviewed noted it was Foothill Transit's practice to ask all primes in attendance to raise their hands and identify themselves so DBEs and small businesses could connect with them to discuss possible subcontracting opportunities after the meetings conclude. Another DBE reported they used the Dodge Lead Center website, a popular resource for finding

construction contracting opportunities. This DBE indicated that both Foothill Transit and its prime contractors advertised contracting and subcontracting opportunities through this resource.

### **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

Advisory Comment:

Foothill Transit is advised to document the efforts it makes to implement the required Small Business Element of its DBE Program.

## **D) Race-Conscious DBE Participation**

### **Basic Requirement (49 CFR Part 26.51)**

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

### **Discussion**

During this compliance review no deficiencies were found with this requirement. Foothill Transit did not use race-conscious DBE goals in its contracts and had not considered race-conscious goals as a corrective action when it experienced DBE goal shortfalls in FY 2013 using race-neutral-only measures.

Because Foothill Transit is subject to the Western States case, it is prohibited from implementing race-conscious contracting goals unless such goals are justified through the conduct of a disparity study. Los Angeles Metro, which shares the same market area as Foothill Transit, completed a disparity study in 2013. In its FY 2013 shortfall analysis and corrective action plan, Foothill Transit referenced the 2013 Los Angeles Metro disparity study and stated as a potential corrective action that it “is also investigating adapting LA Metro’s Disparity Study to fit Foothill Transit’s projects and vendor community and evaluating whether implementing a race-conscious DBE program at Foothill Transit is appropriate.”

These factors notwithstanding, Foothill Transit reported exceeding its DBE goal in FY 2014 and FY 2015, suggesting that its outreach efforts at attending small business networking events, advertising in minority publications, and participating in outreach events with minority advocacy groups were successful.

It does not appear that Foothill Transit should consider using contract goals until such time as it fails to meet its DBE goal using race-neutral means.

### **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

## **E) Good Faith Efforts**

### **Basic Requirement (49 CFR Part 26.53)**

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

### **Discussion**

During this compliance review no deficiencies were found with this requirement. As previously described, Foothill Transit has not used race-conscious contract goals in its DBE Program, therefore it has not had to assess good faith efforts. However, its DBE Program Plan does contain procedures for good faith efforts. In its DBE Program, Foothill Transit stated that it considered good faith efforts as a matter of bidder responsiveness. It required that bids, proposals or solicitations for which a contract goal has been established include the following information:

1. The names and addresses of DBE firms that will participate in the contract.
2. A description of the work that each DBE will perform.
3. The dollar value of the participation of each DBE firm participating.
4. Written and signed documentation of commitment to use a DBE subcontractor, whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts.

### **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

## **F) Protecting Against Termination for Convenience**

### **Basic Requirements (49 CFR Parts 26.53 and 26.13)**

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

### **Discussion**

During this compliance review deficiencies were found with this requirement. Foothill Transit did not include a provision in all prime contracts requiring prime contractors to obtain Foothill Transit

approval prior to terminating a DBE subcontractor, as required by 49 CFR Part 26.53 and as indicated in Foothill Transit's DBE Program Plan. For example, the prime contract for the Azusa Parking Facility Project did not include the required provision.

Foothill Transit reported that no DBEs had been improperly terminated from any of its DOT-assisted contracts. This claim was supported by interviews with two prime contractors, four DBEs, and three small and minority business advocacy organizations. There were no complaints of wrongful termination filed by DBEs that worked on Foothill Transit contracts with the FTA, and no complaints filed with the local Better Business Bureau or other known agency.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Office of Civil Rights procedures ensuring the inclusion of the termination for convenience provision found in 49 CFR Part 26.53 in all future prime contracts.

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

### **Discussion**

During this compliance review no deficiencies were found with this requirement. In its DBE Program Plan, Foothill Transit indicated it counts DBE participation in accordance with the requirements set forth in 49 CFR Part 26.55. During the site visit, Foothill Transit provided a general ledger report from its accounting system that showed expenditures by project and indicated where payments were made to DBE firms. The records for the most recent Semi-Annual Uniform Report of DBE Awards or Commitments and Payments were compared to the general ledger to confirm that actual payments on the report matched the actual payments on the ledger.

### **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

## **H) Quotas**

### **Basic Requirements (49 CFR Part 26.43)**

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

## **Discussion**

During this compliance review no deficiencies were found with this requirement. A review of six recent Foothill Transit contracts and interviews with Foothill Transit procurement staff confirmed Foothill Transit had not used quotas in its contracting practices.

## **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

## **6.9 Shortfall Analysis and Corrective Action Plan**

### **Basic Requirement (49 CFR Part 26.47)**

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

## **Discussion**

During this compliance review no deficiencies were found with this requirement. An advisory comment, however, is made regarding this requirement. Foothill Transit conducted a shortfall analysis and developed a corrective action plan in response to not achieving its overall FY 2013 DBE goal. Per 49 CFR Part 26.47, Foothill Transit was required to do and/or consider the following:

- Analyze in detail the reasons for the difference between the overall goal and actual awards and commitments, and
- Establish specific steps and milestones to correct the problems identified in its analysis and to enable the achievement of its goal for the new fiscal year.
- If Foothill Transit's Uniform Report of DBE Awards or Commitments and Payments or other information demonstrates current trends make it unlikely its overall goal will be achieved, FTA, as applicable, may require other good faith efforts, such as modifying Foothill Transit's race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Foothill Transit's shortfall analysis lacked detail and scope. Specifically, Foothill Transit referenced an overall goal of 5.99 percent, but it did not report the shortfall; consequently, the degree to which it was unable to achieve its goal was not communicated. The shortfall analysis also listed the projects eligible for DBE participation and enumerated the race-neutral measures implemented during FY 2013 to encourage DBE participation and achieve the agency's overall goal. Those measures included the following:

- Outreach to DBE vendors via the CUCP DBE Directory.
- Staff attendance at small business networking events (i.e., Los Angeles area Small Business Mixers on March 25, 2013, and June 24, 2013; and the Los Angeles Small Business Expo on November 7, 2013).

Although providing this information helped to establish a context for further analysis, Foothill Transit did not sufficiently analyze its activities to ascertain why its efforts were unsuccessful. For example, Foothill Transit reported it reached out to DBEs registered in the CUCP DBE Directory to make them aware of contracting opportunities and encourage their participation; however, in its analysis, Foothill Transit did not report that it attempted to follow up with those same DBEs to ask why they did not pursue said opportunities. This feedback may have been useful when crafting Foothill Transit's corrective action plan. Instead, Foothill Transit reported feedback from non-DBEs that described a general discouragement on their parts with the viability of the DBE program overall, given the Western States case and the view that the DBE certification process is overly burdensome.

Based on feedback from non-DBEs, Foothill Transit alluded to the potential benefits to DBEs as a result of the 2013 Los Angeles Metro disparity study, which provided some prior justification, as required by the Western States case, for the use of race-conscious measures. Foothill Transit further stated in its shortfall analysis that it "is also investigating adapting LA Metro's Disparity Study to fit Foothill Transit's projects and vendor community and evaluating whether implementing a race-conscious DBE program at Foothill Transit is appropriate." Foothill Transit did not, however, provide a detailed plan and related milestones for its investigation and final determination. On the one hand, Foothill Transit offered the Los Angeles Metro disparity study as encouragement to non-DBEs to participate in its DBE program, but on the other hand, Foothill Transit did not commit in good faith (by setting milestones) to employing the provisions of the Los Angeles Metro disparity study by a specified date.

Foothill Transit's corrective action plan essentially included the continued use of the same race-neutral measures it used in FY 2013 that failed to produce the achievement of its overall DBE goal in that year. Foothill Transit should consider broadening its outreach, implementing other race-neutral measures as detailed in 49 CFR Part 26.51, and establishing a mentor-protégé program as described in 49 CFR Part 26.35 in order to achieve future goals. Foothill Transit is situated in an area with a multiplicity of minority contractor organizations that reflect the cultural diversity of the area. Such organizations include, but are not limited to, the following:

- Southern California Black Chamber of Commerce
- Greater Los Angeles African American Chamber of Commerce
- National Association of Minority Contractors, Los Angeles Chapter
- Black Women's Network
- Black Business Association of Los Angeles
- Black Chamber of Commerce of Los Angeles
- Black N LA
- Crenshaw Chamber of Commerce
- National Organization of Minority Architects
- Korean American Chamber of Commerce of Los Angeles
- Los Angeles Chinese Chamber of Commerce
- FAME Renaissance Business Development Center
- Women's Chamber of Commerce in Los Angeles, California
- Los Angeles Latino Chamber of Commerce
- Regional Hispanic Chamber of Commerce
- Los Angeles Metro Hispanic Chamber of Commerce
- Society of Hispanic Professional Engineers

The above-noted organizations are already deeply rooted in the community and can be potentially helpful to Foothill Transit in its efforts to achieve its annual overall DBE goals. In addition, these organizations can serve as a viable resource for the regular and timely distribution of information to DBEs.

### **Corrective Actions and Schedule**

Foothill Transit is advised to update its DBE Program Plan to include detailed procedures on how it conducts DBE shortfall analyses and develops corrective action plans.

## **6.10 Transit Vehicle Manufacturers (TVMs)**

### **Basic Requirement (49 CFR Part 26.49)**

The recipient must require that each transit vehicle manufacturer (TVM) certify it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the name of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding an FTA-assisted vehicle contract.

### **Discussion**

During this compliance review no deficiencies were found with this requirement. An advisory comment, however, is made regarding this requirement. Foothill Transit included the DBE requirements for TVMs in both its DBE program and its contracts for transit vehicles. Foothill Transit requires TVMs to certify in writing that they have met the DBE requirements of 49 CFR Part 26.49 as a part of the bid or proposal process. However, during the site visit, it was confirmed that Foothill Transit did not have a process in place to confirm or corroborate TVM certification. Prior to awarding any contracts for the purchase of transit vehicles, Foothill Transit is advised to verify the TVM awardee has fulfilled all the requirements of 49 CFR Part 26.49, which can be done by visiting the [FTA DBE website](#). This resource provides a list of all FTA-certified TVMs that have submitted a goal methodology to FTA that has been approved or has not been disapproved. Foothill Transit is further advised to print the list of certified TVMs from the FTA TVM website at the time of confirmation and to keep such documentation in its procurement files, along with any other correspondence documenting the confirmation of TVM certification.

In addition, Foothill Transit did not have a process in place to notify FTA, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract, as required by the most recent update to 49 CFR Part 26, dated November 3, 2014. At the time of the site visit, Foothill Transit indicated it had one vehicle purchase contract executed after November 3, 2014 (Contract No. 15-001, purchase of two 40-foot fast charge battery electric buses, executed on January 7, 2015), for which it had not provided the required information to FTA.

Although Foothill Transit had included this contract on a list of FTA-funded contracts provided to the review team, following the site visit exit conference, Foothill Transit provided a copy of the Procurement Initiation Form, dated July 24, 2014, for the purchase showing that non-federal

funds were used to pay for this vehicle. The review team examined recent grants and drawdowns in TEAM and did not identify a line item or a disbursement for the electric vehicles.

Foothill Transit did have an active FTA grant (CA-90-Z226-0) to purchase 23 CNG buses. The grant application indicated the contract with North American Bus Industries, which was awarded in 2012, included options for up to 30 buses each year for five years. According to its September 30, 2015, Milestone Progress Report, Foothill Transit awarded option #2 on October 24, 2014, prior to the November 3, 2014, DBE Rule update regarding reporting TVM awards. Additional corrective actions are noted below.

### **Corrective Actions and Schedule**

Foothill Transit is advised to:

- Notify FTA within 30 days of exercising the remaining three options on the NABI or other TVM contracts.
- Update its DBE Program Plan to include procedures for confirming the required TVM certifications and submissions prior to awarding contracts for the purchase of transit vehicles.
- Update its DBE Program Plan to include procedures for notifying FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49.

## **6.11 Required Contract Provisions**

### **A) Contract Assurance**

#### **Basic Requirement (49 CFR Part 26.13)**

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

#### **Discussion**

During this compliance review deficiencies were found with this requirement. 49 CFR Part 26.13 requires the inclusion of the following clause in all DOT-assisted contracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

During the compliance review, the following contracts were reviewed to confirm they contained the required contract provisions discussed in this section:

<b>Contract</b>	<b>Contract Assurance</b>	<b>Prompt Payment</b>	<b>Legal Remedies</b>
09-001 – CNG Buses	No	No	Yes
09-034 – Electric Buses and Charging Station	No	No	Yes
12-006 – Electric Buses	Yes	Yes	Yes
12-040 – CNG Buses	Yes	Yes	Yes
13-029 – Electric Charging Station	No	Yes	Yes
15-002 – Construction of Azusa Parking Facility	Yes	Yes	Yes

As shown above, three of the six contracts (50 percent) did not include the required contract assurance. During the site visit, it was confirmed that Foothill Transit was not collecting copies of subcontractor agreements from its prime contractors. However, upon request, Foothill Transit was able to provide copies of two subcontractor agreements from its Azusa Park & Ride construction project. Neither of the two DBE subcontracts contained the required nondiscrimination clause or the prompt payment provision.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for ensuring all FTA-assisted prime and subcontracts contain the required DBE contract assurance.

### **B) Prompt Payment**

#### **Basic Requirement (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 compliance review deficiencies were found with this requirement. As shown above, of the six FTA-assisted contracts reviewed during the site visit, two of the prime contracts (33 percent) did not contain the required prompt payment clause. As noted above, neither of the two DBE subcontracts contained the required prompt payment provision.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, Foothill Transit must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for ensuring all FTA-assisted prime and subcontracts contain the required prompt payment provision.

## **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. Breach of contract remedies should be used as appropriate.

### **Discussion**

During this compliance review no deficiencies were found with this requirement. All the contracts reviewed contained legal remedies to enforce non-compliance with contract terms and conditions. The legal remedies identified in Foothill Transit's DBE Program include:

- Cancellation of Contract – Foothill Transit shall have the right to cancel the Contract without expense to Foothill Transit if (1) the contractor is guilty of misrepresentation; (2) the Contract is obtained by fraud, collusion, conspiracy or other unlawful means; or (3) the Contract conflicts with any statutory or Constitutional provision of the State of California or the United States.
- Termination for Default – Foothill Transit may terminate the whole or any part of the Contract in any one of the following circumstances: (1) failure to provide the services in the manner required by the Contract; (2) failure to perform any of the provisions of the contract in accordance with its terms; or (3) if the Contractor fails to make progress in the prosecution of the work under the contract so as to endanger such performance.

As noted in the table above, each of the contracts examined included these legal remedies. Foothill Transit indicated it had never had to use these remedies to enforce compliance with DBE participation, although on one occasion the threat of using legal remedies was sufficient to obtain compliance.

### **Corrective Actions and Schedule**

No corrective actions are needed at this time for this requirement.

## **6.12 Certification Standards**

### **Basic Requirements (49 CFR Parts 26.67–26.71)**

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

## **Discussion**

During this compliance review no deficiencies were found with this requirement. Foothill Transit is a member of the California Unified Certification Program (CUCP) and does not currently certify DBEs.

## **Corrective Actions and Schedule**

No corrective actions are needed for the Certification Standards requirements.

## **6.13 Certification Procedures**

### **A) On-site Visits and Document Review**

#### **Basic Requirement (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 compliance review no deficiencies were found with this requirement. Foothill Transit is a member of the California Unified Certification Program (CUCP) and does not currently certify DBEs.

### **B) Annual Affidavit**

#### **Basic Requirement (49 CFR Part 26.83)**

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

#### **Discussion**

During this compliance review no deficiencies were found with this requirement. Foothill Transit is a member of the California Unified Certification Program (CUCP) and does not currently certify DBEs.

### **C) Interstate Certification**

#### **Basic Requirement (49 CFR Part 26.85)**

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

#### **Discussion**

During this compliance review no deficiencies were found with this requirement. Foothill Transit is a member of the California Unified Certification Program (CUCP) and does not currently certify DBEs.

## **D) Certification Appeals**

### **Basic Requirement (49 CFR Part 26.86)**

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

#### **Discussion**

During this compliance review no deficiencies were found with this requirement. Foothill Transit is a member of the California Unified Certification Program (CUCP) and does not currently certify DBEs.

### **Corrective Actions and Schedules for Certification Procedures**

No corrective actions are needed for the Certification Procedures requirements at this time.

## **6.14 Record Keeping and Enforcements**

### **Basic Requirements (49 CFR Parts 26.11 and 26.37)**

The recipient must provide data about its DBE program to FTA on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1 and December 1 of each fiscal year by using the FTA electronic grants management system, unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the DOT Office of Civil Rights by January 1 of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close-out reviews for contracts.

Lastly, 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 compliance review deficiencies were found with this requirement. Foothill Transit did not document its monitoring of contract performance and refinements to its vendor database.

A review of Foothill Transit's Semi-Annual Uniform Reports for the past three years showed that three of the six reports (50 percent) were submitted late. Foothill Transit was found deficient for submission of reports in its FY 2014 FTA Triennial Review. Since that time, it has uploaded its Semi-Annual Reports in the TEAM reporting module. The reports for 2015 were submitted on

time. During the site visit, Foothill Transit provided a general ledger report from its accounting system that showed expenditures by project and indicated where payments were made to DBE firms. The records for the most recent Semi-Annual Uniform Report of DBE Awards or Commitments and Payments were compared to the general ledger to confirm that actual payments on the report matched the actual payments on the ledger. Foothill Transit required prime contractors to submit evidence of payment to subcontractors as a supporting document for the prime contractor's invoice.

Foothill Transit's DBE Program Plan included a section on *Monitoring and Enforcement Mechanisms* that contained a substantially similar version of the required DBE nondiscrimination clause. The clause, however, was presented in this section as a reference for what is required in all DOT-assisted prime contracts and subcontracts. This section did not describe the procedures Foothill Transit follows to monitor prime contracts and subcontracts for the inclusion of the required clause. A document titled "Foothill Transit DBE Contract Monitoring Protocol" addressed monitoring procedures for prompt payment and confirmation of DBE work performance; however, there were no procedures documented describing how Foothill Transit monitored and ensured all prime contracts and subcontracts contained the required clause.

The review team requested monitoring reports or some other form of documentation of monitoring efforts, but Foothill Transit reported it had only recently implemented this procedure following a deficiency in its FY 2014 FTA Triennial Review. Since that time, it had only two DBE subcontractors on the 2015 contract to construct the Azusa Parking Facility. At the time of this DBE compliance review, the DBE subcontractors had not substantially performed work under this contract, which was underway.

Foothill Transit maintained a vendor database that contained information on the names, addresses, self-identified DBE status, age of firm, and annual gross receipts for any vendor that registers on Foothill Transit's website to receive information on contracting opportunities. Foothill Transit did not extract from the available data the DBEs and non-DBEs that actually submitted bids. This information would enable Foothill Transit to use the bidders list in its Step 1 DBE goal-setting process as a more accurate reflection of ready, willing, and able DBEs and non-DBEs for Foothill contracts.

### **Corrective Actions and Schedule**

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

- Documentation of its monitoring efforts on contract performance and payment to DBEs for the Asuza Parking Facility project, and
- Documentation confirming it has updated its vendor database to identify, track, and report on actual DBE and non-DBE firms that bid on Foothill Transit contracts.

## 7. Summary of Findings

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	D	<p>Foothill Transit's most recent DBE Program Plan, dated February 24, 2012, did not include all required elements. Additionally, Foothill Transit's Plan did not reflect current practice.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes all required elements and reflects actual practice.</p>	60 Days/*
2.	Policy Statement	26.23	D	<p>Foothill Transit did not provide documentation that the DBE Policy Statement had been distributed throughout the organization or to the DBE and non-DBE business communities as described in their Plan.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil</p>	60 Days/*

				Rights documentation confirming its DBE Program Policy Statement has been distributed as stated in its DBE Program Plan.	
3.	DBE Liaison Officer	26.25	AC	Foothill Transit is advised to update the DBELO job description to reflect duties listed in its DBE Program Plan and the DBELO's current responsibilities.	
4.	Financial Institutions	26.27	D	<p>Foothill Transit did not sufficiently investigate the availability or encourage the use of DBE banks.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil Rights documentation confirming it has investigated and considered the services of DBE financial institutions for its own use and shared a listing of these organizations with its prime contractors and subcontractors.</p>	60 Days/*
5.	DBE Directory	26.31	ND		
6.	Overconcentration	26.33	D	Foothill Transit did not conduct an analysis to determine the occurrence of overconcentration; did not	60 Days/*

				<p>have a procedure in place for analyzing the occurrence of overconcentration; and did not describe measures it would take should overconcentration occur.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Civil Rights Office an updated DBE Program Plan that details its procedures for analyzing and determining if overconcentration exists.</p>	
7.	Business Development Programs	26.35	AC	Foothill Transit is advised to remove the reference to its DBE Business Development Program Guidelines from its DBE Program Plan.	
8. Determining / Meeting Goals					
8.a	Calculation	26.45	D	Foothill Transit referenced the use of a bidders list in its goal calculation methodology; however, it did not use a bidders list to calculate its goals. In addition, Foothill Transit did not provide sufficient analysis and support for its	60 Days/*

				<p>FY2016-FY2018 Step 2 goal calculation.</p> <p><b>Corrective Action:</b>                      Foothill Transit must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• An updated goal methodology description in its DBE Program Plan that accurately describes the use of a bidders list when calculating overall DBE program goals.</li> <li>• Documentation supporting Foothill Transit's FY 2016 – FY 2018 Step 2 adjustment resulting in a goal of 3.5 percent.</li> </ul>	
8.b	Public Participation	26.45	AC	Foothill Transit is advised that the DBE goal must be maintained on its website for the entire triennial period.	
8.c	Race-Neutral	26.51	AC	Foothill Transit is advised to document the efforts it makes to implement the required small business element of its DBE	

				program.	
8.d	Race-Conscious	26.51	ND		
8.e	Good Faith Efforts	26.53	ND		
8.f	Counting DBE Participation	26.55	ND		
8.g	Protecting Against Termination for Convenience	26.53	D	<p>Foothill Transit did not include a provision in all prime contracts requiring prime contractors to obtain Foothill Transit approval prior to terminating a DBE subcontractor.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil Rights procedures ensuring the inclusion of the termination for convenience provision found in 49 Part 26.53 in all future prime contracts.</p>	60 Days/*
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	AC	Foothill Transit is advised to update its DBE Program Plan to include detailed procedures on how it conducts DBE shortfall analyses and develops corrective action plans.	
10.	TVM	26.49	AC	Foothill Transit is advised to update its DBE Program Plan to include procedures for confirming the required	

				<p>TVM certifications and submissions prior to awarding contracts for the purchase of transit vehicles.</p> <p>In addition, Foothill Transit is advised to update its DBE Program Plan to include procedures for notifying FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract</p>	
11.Required Contract Provisions and Enforcement					
11.a	Contract Assurance	26.13	D	<p>Foothill did not ensure that the required contract non-discrimination assurance was included in all prime and subcontractor agreements.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for ensuring that all FTA-assisted prime and subcontracts contain</p>	60 Days/*

				the required DBE contract assurance.	
11.b	Prompt Payment	26.29	D	<p>Foothill did not ensure that the required contract prompt-payment provision was included in all prime and subcontractor agreements.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for ensuring that all FTA-assisted prime and subcontracts contain the required DBE contract assurance.</p>	60 Days/*
11.c	Legal Remedies	26.37	ND		
12. Certification Standards		26.67-26.71	ND		
13. Certification Procedures			ND		
13.a	Onsite Visit	26.83	ND		
13.b	Annual Affidavit	26.83	ND		
13.c	Interstate Certification	26.85	ND		
13.d	Certification Appeals	26.86	ND		
14. Record Keeping and Enforcements					

14.a	Bidders List and Reporting DBE Participation	26.11	D	<p>Foothill Transit did not maintain a bidders list of firms that submit bids or proposals.</p> <p>Corrective Action: Foothill Transit must submit to the FTA Office of Civil Rights documentation confirming it has updated its vendor database to identify, track, and report on actual DBE and non-DBE firms that bid on Foothill Transit contracts.</p>	60 Days/*
14.b	Monitoring	26.37	D	<p>Foothill Transit did not document its monitoring of contract performance or payments to subrecipients.</p> <p><b>Corrective Action:</b> Foothill Transit must submit to the FTA Office of Civil Rights documentation of its monitoring efforts on contract performance and payment to DBEs for the Asuza Parking Facility project.</p>	60 days/*

\*Date to be provided in Transmittal Letter

Findings at the time of the site visit: ND = no deficiencies found; D = deficiency; NA = not applicable; AC = advisory comment.