

# FTA

FEDERAL TRANSIT ADMINISTRATION

## Louisiana Department of Transportation and Development Disadvantaged Business Enterprise (DBE) Compliance Review Final Report

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Federal Transit Administration

PREPARED BY  
Milligan & Company, LLC



U.S. Department of Transportation  
Federal Transit Administration

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## **Section 1 – General Information**

Grant Recipient: Louisiana Department of Transportation and Development  
1201 Capital Access Road

City/State: Baton Rouge, LA 70802

Grantee Number: 1562

Executive Official: Sherri LeBas  
Secretary of Transportation

On Site Liaison: Stephanie Ducote  
Compliance Programs Director  
(225) 379-1363

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Site Visit Dates: December 12–14, 2011

Compliance Review Team  
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## **Section 2 – Jurisdiction and Authorities**

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub-recipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (18), October 1, 2011, and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The Louisiana Department of Transportation and Development (DOTD) is a recipient of FTA funding assistance and is therefore subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in DOTD’s DBE program and were the basis for the selection of compliance elements that were reviewed.

## **Section 3 – Purpose and Objectives**

### **PURPOSE**

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

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

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its sub-recipients, nor to adjudicate these issues in behalf of any party.

### **OBJECTIVES**

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

- ensure nondiscrimination in the award and the administration of DOT-assisted contracts in the Department's financial assistance programs
- create a level playing field on which DBEs can compete fairly for DOT-assisted contracts
- ensure that the Department's DBE program is narrowly tailored in accordance with applicable law
- ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs
- help remove barriers to the participation of DBEs in DOT-assisted contracts
- assist the development of firms that can compete successfully in the marketplace outside the DBE program
- 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 DOTD is honoring its commitment represented by its certification to FTA that it is complying with its responsibilities under 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in DOT Programs”
- examine the required components of DOTD’s DBE Program Plan against the compliance standards set forth in the regulations and to document the compliance status of each component
- gather information and data regarding the operation of DOTD’s Disadvantaged Business Enterprise Program Plan from a variety of sources—DBE program managers, other DOTD management personnel, DBEs, and prime contractors

## **Section 4 – Background Information**

The Louisiana Department of Transportation and Development (DOTD) was formed in 1976 after the Department of Highways and the Department of Public Safety, both established in 1940, were abolished. In addition to maintaining the state's public transportation system and its roads, highways, and bridges, the agency is also responsible for managing canal, aviation, floodplain, and levee systems and floodplain management, port facilities, commercial vehicles, and aviation. There are nine district offices, which are headquartered in Bridge City, Lafayette, Shreveport, Monroe, Lake Charles, Alexandria, Chase, Baton Rouge, and Hammond.

The organization consists of the following divisions:

- Administration – includes the Office of the Secretary and the Office of Management, which provides departmental support by providing financial, audit, budget, facilities, procurement, and other management services
- Office of Public Works and Intermodal Transportation – responsible for planning, developing, and maintaining surface water-related resources; oversight of the state's marine and rail systems, aviation-related operations, programs, and activities; and management of the public transportation system
- Office of Engineering and Operations – responsible for planning, designing, constructing, and maintaining highways, transportation, pavements, and bridges, and for operating the district offices to conduct field activities agency related projects

DOTD's current projects include expanding and resurfacing certain interstates and roadways, roadway preservation and maintenance, and bridge repair and improvement projects throughout the state.



## Section 5 – Scope and Methodology

### Scope

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

1. A DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval. [49 CFR 26.21]
2. A signed policy statement expressing a commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation [49 CFR 26.23].
3. Designation of a liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25].
4. Efforts made to use DBE financial institutions, by the recipient as well as prime contractors, if such institutions exist [49 CFR 26.27].
5. A DBE directory including addresses, phone numbers and types of work performed made available to the public and updated at least annually [49 CFR 26.31].
6. Determination if overconcentration exists and address this problem if necessary [49 CFR 26.33].
7. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
8. An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a recipient's DOT-assisted contracts [49 CFR 26.43 – 26.53].
9. Inclusion of a contract non-discrimination clause, a prompt payment clause and implementation of appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
10. A certification process to determine if a potential DBE is legitimately socially and economically disadvantaged. The potential DBE must submit an application, a personal net worth statement and a statement of disadvantage, along with the proper supporting documentation [49 CFR 26.67].
11. A certification procedure to include document review and an on-site visit and determination of eligibility consistent with Subpart D of the regulations [49 CFR 26.83].
12. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a

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

### **Methodology**

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

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

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

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

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

Following the site visit, draft and final reports were compiled.

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

Aida B. Douglas, MPA  
Interim Civil Rights Officer  
Federal Transit Administration- Region VI  
819 Taylor Street, 8A36  
Fort Worth, TX 76102  
[aida.douglas@dot.gov](mailto:aida.douglas@dot.gov)

## Section 6 – Issues and Recommendations

### 1. **DBE Program Plan**

**Basic Requirement** (49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

**Discussion:** During this DBE Compliance Review, deficiencies were found with the requirements for a Program Plan.

The Louisiana DOTD DBE Program Plan was revised in 2010. DOTD staff were unsure of the exact date but planned to update the Program Plan in February 2012 to align with the small business element deadline submission date.

A “Dear Colleague” letter was sent to the grantee concerning its DBE program and goal submission responsibilities. As a result of the new DBE rules, the grantee was asked to submit an updated DBE program proving compliance with the new requirements to FTA by October 7, 2011. An FTA letter in TEAM indicated that the grantee’s DBE program was received on April 26, 2011, and approved by FTA on April 27, 2011.

It was discovered during the compliance review that the Public Transportation Section administered the DBE program differently than reflected in the Program Plan. The Program Plan reflects DBE activities as it relates to Federal Highway Administration (FHWA) funded opportunities. For example, the Public Transportation Section withheld retainage on its contracts, whereas no retainage is withheld on FHWA-assisted contracts and is stated as such in the Program Plan.

As DOTD submits a revised Program Plan to include the small business element, several other areas will need to be addressed. These areas primarily include procedures addressing the items of deficiencies detailed in the balance of this compliance review report. Procedures should also address new provisions in the DBE rule issued by US DOT in February 2011 and provide specific information that reflects how FTA-funded DBE activities will be accomplished.

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to the FTA’s Office of Civil Rights a schedule and plan for updating the DBE program as detailed above.

**Grantee Response:** The DBE Program was revised in February 2012 to include the Small Business Element and submitted to the FHWA and the Federal Transit Administration (FTA). The US DOT by letter dated March 29, 2012, approved the Small Business Element. This letter was signed by Britney Berry, FTA Equal Opportunity Specialist, and Martha Kenley, FHWA National DBE Program Director. Also, by letter dated April 19, 2012, Joe Bloise, Assistant Division Administrator of the FHWA Louisiana Division Office, approved the DBE Program submitted by LA DOTD. LA DOTD is awaiting a response from FTA regarding the DBE Program.

**FTA Response:** FTA partially agrees with LA DOTD's response to the noted deficiency. Revisions including but not limited to the areas of Goal Setting, DBE Liaison Officer, Overconcentration, Counting DBE Participation, and Certification require additional revisions to the February 28, 2012, DBE Program Plan are noted throughout the report. Additionally, changes required by this review may also necessitate changes in State Management Plans. Please provide revised a DBE Program Plan and current State Management Plan to FTA's Office of Civil Rights by January 15, 2013.

## **2. DBE Policy Statement**

**Basic Requirement** (49 CFR Part 26.23): Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

**Discussion:** During this DBE Compliance Review, deficiencies were found with the requirements for a policy statement.

The policy statement included in the 2010 revised DBE program outlined the objectives of the DBE program and that it was distributed to all district administrators, district construction engineers, project engineers, and other department officials. The statement also notes that the DBE program manual is circulated throughout the minority, female, and non-minority business communities. The last statement in the plan says the DBE program manual will be updated annually if there are changes and will be given wide distribution.

The policy statement in the Program Plan contained a blank signature space for William D. Ankner, Ph.D. The review team requested the most recently-signed policy statement and was provided the signed policy statement from Dr. Ankner in 2008. Secretary Sherri LeBas was named interim Secretary in February 2010 and was appointed Secretary in June 2010. The DBE Liaison Officer (DBELO) indicated that FHWA did not consider a CEO change as significant to require an updated program or policy statement. The DBELO could not provide any written guidance from FHWA regarding this statement but was planning to have the current Secretary sign the policy statement for the program update in February 2012. However, the "Dear Colleague" letter that FTA sent to DOTD stated that *the DBE Program Plan is not required to have regular updates; changes are required whenever significant changes have occurred (i.e., new CEO/GM, new DBE Liaison Officer, new roles and responsibilities of the DBE Liaison Officer).*

**Corrective Action and Schedule:** Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a schedule plan to update and distribute the DBE policy statement.

**Grantee Response:** The revised/signed DBE Policy Statement was included in the revised copy of the DBE Program submitted in February 2012 to FTA and FHWA. Upon notification from FTA regarding approval of the revised DBE Program, the LA DOTD will disseminate the DBE Policy Statement.

**FTA Response:** FTA agrees with LA DOTD's response to the noted deficiency. To close this deficiency, by January 15, 2013, provide the FTA Office of Civil Rights with evidence that the policy has been distributed, including that it has been posted on LA DOTD's public website.

### **3. DBE Liaison Officer**

Basic Requirement (49 CFR Part 26.25): Recipients must have a designated DBE Liaison Officer who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

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

The DBELO is identified in the DBE Program Plan as the Compliance Program's Director. The contact information is provided in the Program Plan; however, the DBELO is identified by position only and not by name. Stephanie Ducote serves as LA DOTD's Compliance Programs Director and stated that FHWA required only the position title for inclusion in the Program Plan. No FHWA guidance advising this process was provided during the review. Ms. Ducote recalled FTA mentioning the need to include the actual name of the DBELO in the Program Plan during a recent technical assistance visit in the summer of 2011.

The DOTD Compliance Programs and agency wide organizational charts were collected during the review. The Executive and Deputy Personnel report directly to the Secretary and the Compliance Program position is identified in the next hierarchy level with Internal Auditor, Legal, Compliance Investigator, and QC Improvement Program. Ms. Ducote is responsible for oversight of Contract Compliance, Labor Compliance, Title VI, ADA, DBE Contract Administration, DBE Certification, and Title VII/Internal areas.

The Program Plan states that the DBELO has direct, independent access to the Secretary Director of DOTD concerning all DBE matters. The DBELO's responsibilities in the Program Plan note that the DBELO advises the Deputy Secretary on DBE matters and achievement. The Policy statement also notes that the DBELO reports directly to the Deputy Secretary but is not precluded from having direct and independent access to the DOTD Secretary. During the onsite review, the DBELO stated that she has direct and independent access through the Deputy Secretary and meets with him weekly. Ms. Ducote advised the review team that she would rather follow the chain of command and was unable to provide documentation of meetings with the Secretary concerning DBE matters. The Secretary was not present during the onsite compliance review to substantiate the DBELO's independent access.

The Public Transportation Section is responsible for implementing the DBE program for FTA-assisted activities. Donna Lavigne, Public Transportation Administrator, is responsible for developing the overall DBE goals and reporting achievements to FTA. The Compliance Programs Director had been focused more on DBE compliance with FHWA-assisted activities and the Public Transportation Administrator has been focused

on FTA-related DBE compliance. However, the Program Plan states that the DBELO is responsible for ensuring that DOTD complies with all provisions in Part 26. Based on the number of findings during the compliance review, the DBELO needs to provide more oversight and support for Public Transportation section's compliance with DBE regulations. The DBELO advised that she has taken steps to become more involved with DOTD DBE compliance with FTA-related activities and will request a user ID for access to TEAM to monitor FTA activities and correspondence.

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

- update the DBE Program Plan with name of DBELO
- document evidence demonstrating direct and independent contact with the Secretary on DBE related matters
- provide more oversight and support for Public Transportation's compliance with DBE regulations

This plan should detail the resources that will be devoted to ensure that DBE requirements are met.

**Grantee Response:** LADOTD submitted a statement from Secretary Sherri LeBas validating that Dr. Eric Kalivoda, Deputy Secretary, has full authority to meet with the DBELO and to act on matters in her behalf regarding the DBE Program. The DBELO has direct, independent access to the Secretary / Deputy Secretary concerning DBE program matters. A copy of LA DOTD organizational chart showing the DBELO's position in the organization is attached.

**FTA Response:** FTA partially agrees with LADOTD's response to the noted deficiencies. To close this deficiency, by January 15, 2013, provide the FTA Office of Civil Rights with an updated DBE Program Plan that includes a revised organization chart showing the direct and independent access between the DBELO and the Secretary. Also by January 15, 2013, submit evidence of the DBELO's oversight and support of Public Transportation's DBE activities.

#### **4. 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 encourage prime contractors to use these DBE financial institutions.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for financial institutions.

The supportive services contractor assists DOTD with identifying and encouraging prime contractors to use DBE financial institutions. The contract provisions also include a statement encouraging contractors to use these institutions. The DBE Program Plan indicates that DOTD thoroughly investigated the existence of these institutions and identified three minority-owned and controlled banks in Louisiana.

## **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 as soon as changes are made and must be available to contractors and the public upon request.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for a DBE directory.

The DBE Directory is on the DOTD website and lists all the DBE firms certified by the Louisiana Unified Certification Program. The firm's contact information and the type of work the firm is certified to perform as a DBE are identified in each profile. The NAICS code is included in the profile, including some category codes that further identify the firm's capabilities. The name of the certifying organization is also included in the profile.

## **6. Overconcentration**

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirement for overconcentration.

The Program Plan discusses actions that DOTD would take if certified DBE firms are so concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work. There was no information about whether overconcentration existed or how it would be monitored by DOTD.

The DBELO thought that the DBE Supportive Services contractor reviewed overconcentration. The contractor's final report and the request for proposals to procure their services were provided to the review team. The final report included a section entitled "Deficient Areas of Specialization," which encompassed areas of work where DBE assistance and recruitment is needed. The report also discussed areas where DBE firms are "under-certified," in which firms perform the types of work in the deficient areas but the area is not included in their certification. The review team found no evidence that the Supportive Services contractor analyzed overconcentration or that it was included in the scope of work for services in its contract with DOTD.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan outlining how overconcentration is analyzed and how often it is reviewed.

**Grantee Response:** The LA DOTD will enter into a professional services contract by May 30, 2012, with a consulting firm to manage the DBE Supportive Services Program. The professional services contract requires that this consultant firm conduct a survey. This survey will determine if overconcentration exists, and the LA DOTD will continue to reevaluate annually.

**FTA Response:** FTA agrees with LADOTD's response to the noted deficiency. To close this deficiency, by January 15, 2013, provide the FTA Office of Civil Rights with a copy of the executed scope of work that details the activities that the consultant will undertake to identify overconcentration. Also, by January 15, 2013, include an update within the DBE Program Plan that details when the surveys are completed and when LA DOTD will evaluate the results.

## **7. Business Development Programs**

Basic Requirement (49 CFR Part 26.35): The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion: During this DBE Compliance Review, the area of area of Business Development Programs (BDP) did not apply.

DOTD does not participate in a Business Development Program in accordance with Appendix C of the DBE regulations, which requires term limits in developmental and transitional stages. The Program Plan indicates that DOTD does not intend to establish or use a mentor-protégé program as a remedy to address overconcentration.

New DBE regulations require that the recipient must include an element to structure contracting requirements to allow competition by small businesses. Reasonable steps should be made to eliminate obstacles to the participation of small businesses, including unnecessary bundling of contracting requirements that may preclude them from participating as prime or subcontractors. This element section must be submitted to FTA by February 28, 2012. The DBELO indicated progress is underway on this small business element and a new Program Plan will be submitted by the deadline.

## **8. Determining/ Meeting Goals**

### **A) Calculation**

Basic Requirement (49 CFR Part 26.45): To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is achieved, all other relative evidence must be considered in an adjustment of this figure to match the needs of the specific DBE community.

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

Information was collected on DOTD overall DBE goals submitted to FTA on September 3, 2009, for the FY 2010 goal; June 30, 2010, for the FY 2011 goal; and on August 1, 2011 for the FY 2012 goal. The goals were 0% for fiscal years 2010 and 2011 and 2% for fiscal year 2012. The DBELO, Stephanie Ducote, submitted the FTA DBE goal for FY 2011, and the Public Transportation Administrator, Donna Lavigne, submitted the FTA DBE goal for FY 2012.



FTA reviewed the goal methodology submitted on August 1, 2011. In a letter dated August 5, 2011, FTA requested that DOTD submit an updated methodology by October 5, 2011, addressing several areas of concern. A revised DBE goal methodology was submitted to FTA on October 4, 2011. The DOTD was scheduled to submit a three-year DBE goal for FY 2012–2014 by August 1, 2011. The Public Transportation Administrator was unaware of the three-year DBE goal requirement and included only one fiscal year in the methodology. The methodology used by DOTD for the August 1 and October 4 submissions are broken down in the Step 1 and 2 processes below.

#### Step 1: Determining the Base Figure

DOTD noted that approximately \$13,581,238 in FTA grants would be awarded in fiscal year 2012 to Public Transportation. Of this amount, \$13,512,936 was anticipated to have contracting opportunities. The Public Transportation contracts to be issued included Intercity Bus to/from Baton Rouge and New Orleans, Statewide Training and Technical Assistance, Rural Transportation Operating Assistance, and JARC, New Freedom, MPO, and ARRA funds. The review team advised DOTD to ensure that the dollars included in these specified categories to sub-recipients actually provided contracting opportunities. DOTD was also advised to include in the goal-setting process all its direct contracting opportunities that were anticipated to go to prime contractors and consultants.

In the August 1 methodology, DOTD noted that 91 firms were certified with transportation planning and commercial and institutional building construction capabilities, but only 2 had pursued FTA-funded contracts and subcontracts. The overall goal was 2% for the year beginning October 1, 2011. No information was included on how DOTD arrived at 2% DBE participation.

In the revised October 4 methodology, DOTD included a section for Step 1, base figure determination. The availability data sources were identified as the LA UCP DBE directory and the Division of Administration, Office of State Purchasing database. DOTD identified 134 DBEs in the UCP directory and 563 total firms in the Division of Administration. DOTD stated in the methodology that the number of DBEs was divided by the number of all businesses to obtain the base figure. This equation would be approximately 24%; however, DOTD still included the 2% goal in the revised methodology. The Public Transportation Administrator could not document how the 2% DBE participation was determined.

#### Step 2: Adjusting the Base Figure

The August 1 methodology did not address a Step 2 adjustment. The revised October methodology included a Step 2 adjustment section. It was stated that the adjusted overall goal reflected changes that were due to several considerations. The considerations listed did not provide a numerical methodology to explain how the base figure was adjusted or any correlation to the 2% overall goal.

#### Meeting DBE Goals

In accordance with new DBE guidelines, DOTD will need to conduct an analysis of the semi-annual reports to see if overall DBE goals were achieved. If goals were not achieved, an explanation outlining the factors explaining why the overall goal was not

met must be prepared and made available for FTA review within 90 days of the end of the fiscal year. The FTA DBE goal for FY 2011 was 0%; however, the goals moving forward may have a higher percentage.

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

- submit a three-year goal for Public Transportation opportunities
- include all contracting opportunities for Public Transportation and sub-recipients
- add weighting, if appropriate
- provide an accurate Step 1 process
- accurately address considerations for a Step 2 process

This plan should detail who will be developing and reviewing goal submissions and what data sources will be used.

**Grantee Response:** The LA DOTD Public Transportation Section developed and submitted an updated Goal to FTA Region VI for FY 2011, 2012, and 2013 on February 7, 2012. The LA DOTD Public Transportation section compared overall business availability for mass transportation, transit planning, and commercial and institutional building construction and the number of LADOTD DBEs that are certified and capable of performing transit and transit-related contracts. We used the LA DOTD UCP directory and the Division of Administration, Office of State Purchasing (DOA) database. To establish a base figure, LA DOTD Public Transportation looked at the FTA-funded projects budgeted for award in FY 2011–2013 and their corresponding NAICS codes. We examined the evidence available to us and determined that an adjustment to the base figure established is not needed to arrive at our overall goal. Historical information with successful DBE or non-DBE subcontractors was not available. The updated DBE Methodology and supporting documentation were uploaded in TEAM on February 7, 2012.

**FTA Response:** FTA does not agree with the response to the noted deficiencies. LA DOTD did not sufficiently document the processes it undertook within the updated goal methodology submitted in TEAM on February 7, 2012. LA DOTD was originally scheduled to submit a goal for FY 2012–2014; however, the submitted goal referenced FY 2011–2013. LA DOTD has also failed to document what evidence was used as a consideration for a Step 2 adjustment. Finally, LA DOTD's goal methodology was attached as five independent documents that detract from the documents flow, with no evidence that they were considered as a whole. FTA finds it necessary to require LA DOTD to undertake the goal setting process again; therefore, FTA is moving LA DOTD to the next goal-setting cycle. While the goal submission for FY 2014–2016 is not due until August 1, 2013, LA DOTD should begin the information-gathering process immediately. FTA will require LA DOTD to provide incremental updates to track its progress. By January 15, 2013, LA DOTD must provide a spreadsheet of all direct and sub-recipient FTA-assisted contracts issued between October 1, 2010, and September 30, 2012; the values of those contracts; and the type of contract (service or supply) for each. This finding area will remain open pending the completion and submission of LA DOTD's FY 2014–2016 DBE goal methodology, due August 1, 2013.

## **B) Public Participation**

Basic Requirement (49 CFR Part 26.45): In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A published notice announcing the overall goal must be available for 30 days. The public must be notified that the recipient is accepting comments on the goal for 45 days following the date of the notice.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirement for Public Participation and Outreach.

DOTD advertised the FY 2012 DBE goal on August 2, 2011, through several local media. The notices advised the public that the goals were available for inspection at DOTD headquarters for 30 days and that comments would be accepted for 45 days from the date of the notice. The review team advised the Public Transportation Administrator and the DBELO that goals should be advertised no later than June 15 in order to give 45 days for comment before the goal is due on August 1.

There was no discussion about the consultation process for the FY 2012 FTA DBE goal methodology. The DBE Program Plan includes what is described as public participation forums in various sectors of the state to solicit input on establishing the department's overall DBE goal. The DBELO indicated that a consultation process had not been done in the past for FHWA or FTA goals. A consultation process was completed for the past FHWA DBE goal methodology; however, the DBELO stated that it was conducted after the goal was submitted to FHWA. No consultation process was conducted for the FTA goal methodology. The DBELO plans to ensure that this consultation process is conducted in accordance with the regulations on future goal submissions.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a plan to conduct a consultation process for input in developing the DBE goal and publish goals for comment no later than June 15.

**Grantee Response**: The LA DOTD Public Transportation Section submitted an updated DBE Goal for the FYs 2011, 2012, and 2013 on February 7, 2012. Within 30 days of notification of approval of the FTA DBE Goal, the LA DOTD Public Transportation section will post an advertisement regarding Public Participation Meetings to be held in Shreveport and Baton Rouge. The advertisement will state the date, time, and location of these meetings. These meetings will be completed within 30–45 days. For future goals, the Public Transportation section will conduct consultations and publish goals using the following timeline.

<b>Public Transportation Consultation and Goal Publishing Timeline</b>	
<b>Date</b>	<b>Process</b>
May 1	Conduct consultations with area business and community organizers to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Public Transportation's efforts to establish a level playing field for the participation of DBEs.
June 1	Publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that LA DOTD Public Transportation will accept comments on the goals for 45 days from the date of the notice. The notice shall be posted in the following publications: <i>Town Talk, News Star, City Business, American Press, Times Picayune, The Advocate, Daily Advertiser, Shreveport Times, and Shreveport Sun.</i>
	The overall goal submission to FTA will include a summary of information and comments received during the public participation process and our responses.
August 1	Submit 3 Year DBE Goal to FTA.

**FTA Response:** FTA agrees with LADOTD's response to the noted deficiency. However, since LA DOTD has been moved within the goal-setting cycle, this finding will now be closed upon submission and review of LADOTD's FY2014–2016 goal methodology, due August 1, 2013. Incremental updates on the public participation process must be submitted prior to submission of the overall goal. By May 15, 2013, provide FTA with documentation confirming that consultative meetings have been held.

**C) Transit Vehicle Manufacturer (TVM)**

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

Discussion: During this DBE Compliance review, deficiencies were found with the requirement for transit vehicle manufacturers.

Vehicle purchases for sub-recipients are made through the Division of Administration. An invitation for bid for FTA-modified vans and buses (Solicitation 2238638) was sent to the vehicle manufacturers on the State purchasing list in March 2010. A notice was sent to potential bidders outlining the required FTA certifications. The purchasing file included a signed DBE certification from National Bus Sales and Leasing on March 23, 2009, certifying compliance requirements of Section 23.67 of 49 CFR Part 23. The contract provisions also included a contract assurance clause that referenced 49 CFR Part 23.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a schedule and plan for updating DBE Certification language for TVMs in State procurement boilerplates and for verifying TVM approval status on FTA's website.

**Grantee Response:** The LA DOTD Public Transportation section has implemented the following procedures to ensure that vehicle manufacturers have filed for certification to bid and has submitted current DBE status.

The LA DOTD Public Transportation section will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of Section 26.49. Below is a timeline to ensure that each Transit Vehicle Manufacturer (TVM) is authorized to bid.

<b>FTA Vehicle Procurement Procedures and Timeline</b>	
<b>Date</b>	<b>Bid Process</b>
June 1	Review and revise vehicle specifications and FTA Certifications.
June 15	Review current list of TVMs on State contract and current TVMs listed on FTA’s website to ensure that each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of 49 CFR Part 26.49 in order to be eligible to bid on federally-funded contracts. This list will be reviewed periodically to reflect the actual status of TVM DBE goals.
June 20	Submit vehicle specifications to the Louisiana Division of Administration Office of State Purchasing for review and approval and provide a list of approved TVMs.

**FTA Response:** FTA partially agrees with LA DOTD’s response to the noted deficiency. To close this deficiency, by January 15, 2013, submit to FTA’s Office of Civil Rights the updated TVM certification language to be used in FTA-funded transit vehicle procurements. Because FTA’s listing of TVMs can change more frequently than annually, a process should be put into place for the Office of State Purchasing to review the TVM listing of FTA’s Office of Civil Rights website prior to awarding each contract of this nature. An effective practice for this is to create a checklist for procedures to implement while undertaking a vehicle procurement. By January 15, 2013, LADOTD must detail the method for verifying compliance with this section within its DBE Program Plan.

**D) Race-Neutral DBE Participation**

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

Discussion: During this DBE Compliance Review, deficiencies were found in the area of race-neutral participation.

The goal methodology submitted to FTA on August 1, 2011, included the statement, “... we foresee some prospect of achieving DBE participation through race-conscious or race-neutral means.” The letter FTA sent to DOTD on August 5, 2011, requested a race-conscious and race-neutral breakdown. The statement was removed in the revised methodology sent to FTA on October 4, 2011. However, there was no mention of what

portion of the overall goal would be achieved through race-neutral or race-conscious means in the revised methodology.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a schedule and plan for including the portion of the overall goal to be achieved through race-neutral means.

**Grantee Response:** All DBE goals will be accomplished through race-neutral means.

**FTA Response:** FTA does not agree with LADOTD's response to the noted deficiency. LA DOTD's response does not adequately document what analysis was used to justify the use of race-neutral measures alone, nor does it document what race-neutral measures will be used. This finding will be closed upon submission and review of LADOTD's FY2014–2016 goal methodology, due August 1, 2013. This submission must provide analytical support for LADOTD's race-neutral/race-conscious projection.

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

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for race-conscious participation on overall and contract goals.

The overall DBE goal methodology did not include information on a percentage of the overall goal to be achieved through race-conscious measures. The Public Transportation Administrator indicated that DBE goals are not included in contracts due to low availability of DBE firms that provide public transit services. No FTA-funded contracts reviewed during the on-site visit included DBE goals.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a schedule and plan for including the portion of the overall goal to be achieved through race-conscious means. If the DOTD intends to use race-conscious goals, also include information on how those conducting FTA-funded procurements will be instructed to include and administer race-conscious goals correctly.

**Grantee Response:** The entire goal is race-neutral and, therefore, no percentage of the overall DBE goal will be met through race-conscious means.

**FTA Response:** FTA does not agree with LADOTD's response to the noted deficiency. . The Official DOT guidance states *"a recipient must not only submit its projections to DOT, but also its basis for the projection. This consists of a sound analysis of the recipient's market and the race-neutral measures it employs, on the basis of which the recipient realistically can project attaining a certain amount of DBE participation without the use of contract goals or other race-conscious measures. The analysis cannot be simply guesswork or based on a hope or policy preference. It must rest on information about the real world of contracting in the recipient's contracting area"*. This finding will

be closed upon submission and review of LADOTD's FY2014–2016 goal methodology, due August 1, 2013. This submission must provide analytical support for LADOTD's race-neutral/race-conscious projection.

**F) Good Faith Efforts**

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

Discussion: During this DBE Compliance Review, no deficiencies were found in the area of GFE requirements.

The Public Transportation Administrator advised the review team that DBE goals are not included in DOTD or sub-recipient FTA-assisted contracts. The contracts reviewed did not include DBE goals or information pertaining to good faith efforts. The DBE goal methodology and the Program Plan did not address use of contract goals for FTA-assisted opportunities. It appears that DOTD is operating a race-neutral program for FTA-assisted contracts and, therefore, would not include GFE determinations.

**G) Counting DBE Participation**

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for counting DBE participation.

DOTD entered into a contract with Alliance Transportation Group for a Statewide Technical Assistance for Transit (STAT) contract (#689045) on February 17, 2010. Alliance Transportation Group was listed in the Louisiana DBE directory in the NAICS code for engineering services only. The firm had requested that DOTD expand its certification to include planning services in a letter to the certification officer on August 17, 2011. The certification was not expanded, although documentation was provided showing that the firm had performed work in this area and had additional certifications from its home UCP state. The DBE firm was not certified in the area of work that is performed on the DOTD contract, and DOTD continued to count this work towards DBE participation.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA's Office of Civil Rights a plan to ensure that controls are in place to appropriately count DBE participation for the areas of work firms are certified to perform as a DBE.

**Grantee Response:** The Public Transportation section will review the UCP Directory monthly to ensure that DBEs who participate in FTA-funded projects are appropriately coded according to the NAICS codes.

**FTA Response:** FTA agrees with LADOTD’s response regarding the process of monthly verification; however, upon review of Attachment 1 of the February 28, 2012, DBE Program Plan, it was noted that the incorrect counting reference to joint venture is noted on page G-2 of a Goal Project. It states that a joint venture will be counted as “that portion of the dollar value with a joint venture equal to the percentage of the ownership and control of the DBE partner in the joint venture. 49 CFR Part 26.55(b) states *“When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.”* By January 15, 2013, provide a revised DBE Program Plan that includes the process for counting verification and a revised statement regarding counting of joint ventures.

## **H) Quotas**

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

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for quotas.

No evidence of the use of quotas or set-aside contracts by DOTD was found during the site visit.

## **9. Required Contract Provisions**

### **A) Contract Assurance**

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for Contract Assurances.

DOTD states in its DBE program that it will ensure that the contract assurance clause found in 26.13 of the DBE regulations is placed in every DOT-assisted contract and subcontract. The review team examined two prime contracts, one DBE subcontract, five subrecipient contracts, and four non-DBE subrecipient subcontracts for compliance with contract assurance clause inclusion. The contract assurance language was either incorrect or missing from the two prime contracts, and the sub-recipient agreements did not contain the proper assurance language.

Only one subcontract examined, Jerome Fitch Construction, included the proper contract assurance. The DOTD prime contract with Alliance Transportation Group referenced 49 CFR Part 23, and the prime contract with S.W. Leader did not include contract assurance language. The five subrecipient agreements examined for the City of Franklin, City of West Monroe, Claiborne Parish, St. Martin Parish, and Vermilion Parish all included a contract assurance clause; however, the appropriate language as required by the DBE regulation was not found in the clause. The assurance language was not found in the



subcontracts with S.W. Leader, Homer Electric, Southern Constructors, or Traxler Construction.

The prime and subcontracts reviewed are listed in the chart below:

<b>Prime Contractor</b>	<b>Project</b>	<b>Contract No.</b>	<b>DBE / Subcontractor</b>
Alliance Transportation Group	Statewide Technical Assistance for Transit	689045	S.W. Leader
City of Franklin	ARRA Vehicle Garage and Generator	741-21-001	None
City of West Monroe	ARRA Vehicle Garage and Generator	741-37-0125	Traxler Construction Company, Inc. (non-DBE)
Claiborne Parish Police Jury	ARRA Vehicle Garage and Generator	741-14-0117	Homer Electric Company, LLC (non-DBE)
City of Franklin	ARRA Bus Garage	LA-86-X001	Jerome Fitch Construction, Inc. (non-DBE)
St. Martin Parish	ARRA Vehicle Garage and Generator	741-50-0117	Southern Constructors (non-DBE)
S.W. Leader	LA SWIFT Monitoring Services - Statewide	698114	None
Vermillion Parish	Public Transit Operating Assistance Program	LA-18-X029	None

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

**Grantee Response:** To ensure that all FTA-assisted contracts and subcontracts include the correct language, the Public Transportation Section will review the FTA website for applicable clauses annually and monitor the website periodically prior to executing any agreements.

The Public Transportation section will ensure that the following clause is placed in every FTA-assisted contract and subcontract:

*The contractor 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 FTA assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this*

*contract, which may result in termination of this contract or such other remedy as LA DOTD deems appropriate.*

**FTA Response:** FTA partially agrees with LA DOTD's response to the noted deficiency. While LA DOTD has updated the boilerplate language in the February 28, 2012, DBE Program Plan (pg. G-1 for No Goal Projects and pg. G-1 for Goal Projects) and has stated that it will review FTA's website to ensure that DOT requirements have not changed, LA DOTD has not provided a mechanism for ensuring that the clauses are included within the contracts that it or its sub-recipients award to prime and subcontractors. To close this finding, by January 15, 2013, submit an update within its DBE Program that details the processes put into place to monitor and track that contracts issued by LA DOTD and its sub-recipients include this clause in their FTA-funded contracts and subcontracts.

### **B) Prompt Payment**

Basic Requirements (49 CFR Part 26.29): The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

Discussion: During this DBE Compliance Review, deficiencies were found with regard to the requirements for prompt payment and return of retainage.

#### *Prompt Payment*

The DBE Program Plan states that DOTD will include a prompt payment clause in each DOT-assisted prime contract. DOTD has a 14-day prompt payment clause, and the DBE Program Plan states that the following clause is to be included in each US DOT-assisted contract:

*The contractor shall promptly pay subcontractors and suppliers, including DBE, their respective subcontract amount within 14 calendar days after the contractor receives payment from DOTD for the items satisfactorily performed by the subcontractors in accordance with Louisiana Revised Statute 9:2784.*

The prompt payment clause was included in the subcontract with S.W. Leader and stated that the subcontractor was to be paid within 10 days. The Alliance Transportation and S.W. Leader prime contracts did not include a prompt payment clause. No prompt payment language was found in the five subrecipient agreements examined for the City of Franklin, City of West Monroe, Claiborne Parish, St. Martin Parish, and Vermilion Parish. The associated subcontracts were inconsistent with the DBE Program Plan. The Homer Electric subcontract did not include a prompt payment clause. The Jerome Fitch, Southern Constructors, and Traxler subcontracts included a prompt payment clause that stated 30 days, which is inconsistent with the DOTD policy of 14 days.

#### *Return of Retainage*

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

DOTD's policy on withholding retainage on contracts is currently inconsistent. The policy states that retainage is not withheld from the prime and cannot be withheld from a subcontractor. However, in discussions with DOTD staff, the Public Transportation section routinely withholds five percent from contracts and acknowledges that some prime contractors withhold retainage from subcontractors. Further, there is no provision or process for the incremental acceptance of work for retainage.

The Alliance contract stated that five percent retainage would be withheld, but the contract did not include a timeframe for the return of retainage or for incremental acceptance. The associated DBE subcontract with S. W. Leader states that *"reimbursement for this subcontract will be in accordance with the articles presented in the Provisions of this contract and the prime contract."* The subcontract does not include a timeframe for return of retainage, nor does it include incremental acceptance. S.W. Leader's contract stated that five percent was being withheld, which is inconsistent with the current DBE Program Plan's policy that no retainage is to be withheld by the contractor. Retainage was not withheld from the S.W. Leader prime contract.

The five subrecipient agreements with the two cities and the three parishes reviewed did not include language for return of retainage or for incremental acceptance. The Homer Electric and Southern Constructors subcontracts also did not include prompt payment or incremental acceptance language. The subcontract with Jerome Fitch stated that retention would be paid 30 days after incremental acceptance, and the Traxler subcontract stated that final payment would be made within 30 days of the issuance of the architect's final Certificate of Payment. Both are inconsistent with the current DBE Program Plan.

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

- a policy for the return of retainage is clearly defined in the DBE program
- no conflicting language exists in subcontracts regarding prompt payment
- non-DBE prompt payment and return of retainage is monitored
- prompt return of retainage clauses are included in subcontract agreements
- incremental acceptance of portions of work is described in DBE program and implemented

This plan should include how these policies will be communicated to DOTD and subrecipient personnel.

**Grantee Response:** To ensure that all FTA-assisted contracts and subcontracts include the prompt payment clauses in agreements, the Public Transportation section will review all

contracts and subcontracts annually prior to executing any agreements. The Public Transportation staff will maintain a compliance log to document contractor performance.

The Public Transportation section will include the following clause in each FTA-assisted prime contract, and it will apply to payments made to both DBE and non-DBE subcontractors:

*Subcontractor and Supplier Payments:*

*The prime contractor agrees to pay each subcontractor under this prime contract within fourteen (14) calendar days after receiving payment from LA DOTD for amounts previously invoiced for work performed or materials furnished under the contract. Failure to pay subcontractors within fourteen (14) days will be considered in the review of the contractor's performance of the contract and may result in the withholding of payment to the contractor.*

The LA DOTD has reviewed the DBE Program Plan and has updated the plan to include the following retainage policy that reflects the Public Transportation functions.

*Retainage:*

*The Contractor agrees to return retainage payments to each subcontractor within fourteen (14) days after the subcontractor's work is satisfactorily completed.*

**FTA Response:** FTA partially agrees with LADOTD's response to the noted deficiencies. The retainage language cited in the February 28, 2012, DBE Program Plan differs from the response given to the draft report of this compliance review, as it states that LA DOTD does not withhold retainage and that contractors may not withhold retainage. By January 15, 2013, clarify to FTA's Office of Civil Rights how return of retainage will be managed. Also by January 15, 2013, submit an update within the DBE Program that details how LA DOTD will ensure that sub-recipients are including the correct prompt payment and return of retainage language in the FTA-funded contracts that they award.

### **C) Legal Remedies**

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirement for legal remedies.

The agreements between grantees and DOTD include DBE provisions that the grantee shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of all third-party contracts and sub-agreements supported with Federal assistance. Failure by the grantee to carry out these requirements is considered a material breach of the agreement that could result in termination of the agreement or other remedies as the DOTD deems appropriate. The

agreements state that these requirements must be incorporated by reference in all subcontracts entered into by the grantee. However, the references or the remedies language was not included in the subcontracts reviewed.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the FTA’s Office of Civil Rights a plan to include the legal remedies in subcontract agreements as required by the DOTD grant agreements with sub-recipients.

**Grantee Response:** The LA DOTD will bring to the attention of the US DOT any false, fraudulent, or dishonest conduct in connection with the program so that US DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the US DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in USC 26.109. The LA DOTD also will consider similar action under its legal authority, including responsibility determinations in future contracts. This legal remedy will be included in the LA DOTD DBE Program.

**FTA Response:** FTA does not agree with LADOTD’s response to the noted deficiencies. By January 15, 2013, submit to FTA’s Office of Civil Rights the processes that will be put into place to ensure that legal remedies are included in all FTA-funded contracts and subcontracts, including those awarded directly by LA DOTD and those awarded by LA DOTD’s sub-recipients.

**10. Certification Standards**

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for Certification Standards

The review team examined the following DOTD certification files for compliance with certification requirements:

<b>Firm Name</b>	<b>Status</b>	<b>Deficient-Area</b>
Larwood Construction, LLC	Denied	No
H-worth Elevator Service, LLC	Denied	No
Alliance Transportation Group, Inc.	New certification	Yes – SBA Size
Hebert’s Trucking & Equipment Service	Existing certification	Yes - PNW
SCK Trucking & General Construction	Removal	Yes – PNW
Brown Drywall & Coating, Inc.	Removal	Yes – Directory and PNW

Alliance Transportation Group, Inc., was certified on April 4, 2010, under the business code for Engineering services. On April 19, 2011, the firm submitted a request to change

its primary business code from Engineering to Planning and add two additional business codes to its current designation. DOTD sent a letter to the firm on August 19, 2011, accepting its annual update submission; however, DOTD did not oblige the request to change the NAICS code designation as requested.

Upon review of the Small Business Size element, the reviewers noted that Alliance exceeds the business size standard for Engineering and has no other NAICS codes. According to the DBE Program Plan, all DBEs are required to submit a written affidavit regarding any changes that would affect their eligibility in the program, including the ability to meet the size standard requirements. In 49 CFR Part 26.65(a), *“To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.”* The size standard in the certification section of DOTD’s DBE Program Plan also has \$20.41 million rather than the current standard of \$22.41million and must be updated.

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

- update the DBE program with current size standards
- address Alliance’s certification status by removal or adding applicable NAICS codes

**Grantee Response:** The Department’s DBE Program has been corrected to reflect the current size standard of \$22.41 million. The Alliance Transportation Group, Inc., certification status has been corrected and the appropriate NAICS codes have been assigned.

**FTA Response:** FTA partially agrees with LADOTD’s response to the noted deficiency. The language cited in the February 28, 2012, DBE Program Plan under “No Change” Affidavits and Notices of Change states the amount to be \$22,400,000, not \$22,410,000. By January 15, 2013, provide the FTA Office of Civil Rights additional locations of the discussion of business size standards in the DBE Program Plan and correct the existing reference in the No Change Affidavit to the correct dollar figure.

## **11. Certification Procedures**

Basic Requirements (49 CFR Part 26.83): The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient’s review must include performing an on-site visit and analyzing the proper documentation.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for Certification Procedures.

The review team found deficiencies with the personal net worth (PNW) statements. The review team found that PNWs for Hebert’s Trucking & Equipment Service, SCK Trucking & General Construction, and Brown Drywall & Coating, Inc., were either

inaccurate and/or there was no documented PNW calculations or analysis included in the files. The review team suggested that DOTD staff use a PNW calculation worksheet, which would document its calculations and any corrections it has made to PNW statements.

Brown Drywall & Coating, Inc., was one of the removal files reviewed on site. The firm was removed on November 17, 2011. The review team performed an electronic search in the UCP DBE Directory on December 13, 2011, and found that the firm was still listed. DOTD's DBE Program Plan states that it revises its directory monthly. According to 49 CFR Part 26.81(g), the UCP must update the electronic DBE directory as soon changes such as additions, removals, and other changes are made.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a schedule and plan to address PNW analysis and documentation concerns and timely updates to the UCP directory.

**Grantee Response:** A PNW analysis worksheet has been developed and will be used on all new applications and on currently-certified firms during each annual renewal. DBE Certification staff will routinely check to ensure that all changes made to the UCP DBE Directory are made on a timely basis.

**FTA Response:** FTA agrees with LA DOTD's response to the noted deficiency. To close this deficiency, by January 15, 2013, provide the FTA Office of Civil Rights with a completed PNW analysis worksheet to demonstrate that it is in use correctly.

## **12. Record Keeping and Enforcements**

Basic Requirement (49 CFR Part 26.11, 26.55): The recipient must provide data about its DBE program to the FTA on a regular basis. This information must include monitoring of DBE participation on projects through payments made to DBE firms for work performed. The recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion: During this DBE Compliance Review, deficiencies were found with the FTA requirements for maintaining the bidders list, monitoring, and reporting.

### *Bidders List*

The DOTD uses an internal database (SUBS) of firms that have express an interest in, proposed on, or bid for DOTD work. The database includes the required bidders list information to meet Part 26.11. In addition to a bidders list, the system assists DOTD in monitoring work for FHWA-assisted projects.

There is no current mechanism in the system to capture contractors and consultants that express interest in FTA-assisted opportunities. The DBELO stated that the system will be phased out in March 2012 and that it will move to software DOTD acquired from AASHTO that is state-highway-specific. DOTD must determine how the Public Transportation projects will be captured and maintained for a bidders list.

### *Monitoring*

As a result of the State Management Review, the Public Transportation Section included information from their State Management Plan regarding the following monitoring procedures:

*Each local recipient must take necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts. Recipient must track and report DBE participation levels achieved, including sufficient documentation in the recipient's, sub-recipient's, or contractor's files to substantiate efforts undertaken to meet DBE obligations. Quarterly reports will be submitted to the State to assess the recipient's progress toward projected contract awards and overall goals.*

The procedures also included a DBE Activity timeline for the local recipients to submit ARRA information for quarterly reports.

An Attachment was also included in TEAM that described project monitoring and on-site reviews:

*DOTD Program administrative personnel mail a detailed Annual Compliance Review to all recipients prior to the beginning of the new fiscal year. A thorough review of these completed forms is conducted by program personnel. DOTD program personnel then schedule site visits for the fiscal year giving top priority to those agencies which appear to be experiencing problems or noncompliance. However, all agencies receive on-site reviews at a minimum of once every three years. The recipients are monitored very closely through the Annual Compliance Review questionnaire and the reports which are submitted monthly. Any time a problem is detected an on-site review is scheduled immediately. During the site visits, the program managers consult with recipients on matters of record-keeping, operations, scheduling, and other aspects of their respective programs.*

The guidelines state that DBE compliance is one of 18 areas reviewed during the on-site review process. The Public Transportation section had developed these procedures in response to a previous FTA oversight review and had not implemented the DBE monitoring procedures as of the date of the Compliance Review. A running tally of DBE commitments or achievements was also not maintained for FTA-assisted contracts. The program managers are responsible for financial activity reports in specific FTA-funded programs. The Public Transportation Administrator will ensure that these program managers will also monitor DBE activity in their respective programs.

### *Reporting*

The Public Transportation section had not submitted semi-annual or ARRA reports prior to 2011. The 2011 semi-annual and ARRA reports examined by the review team included only dollars awarded to DBEs directly from DOTD or by subcontracts and did



not include all prime contracts and subcontracts. The Public Transportation Administrator was unable to produce backup documentation as requested by the review team. The Public Transportation section has completed the 2011 semi-annual and ARRA reports in TEAM. For compliance with reporting requirements, DOTD will need to implement monitoring procedures for collection of DBE activity, ensure that ARRA activity is also included in semi-annual reports, report only the federal share, and report all prime and subcontracts awarded by DOTD and its sub-recipients.

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

- information for transit-related activity is captured and maintained for bidders list requirements
- effective monitoring and reporting mechanisms are in place and performed by staff to monitor and report work on sub-recipients’ FTA-funded contracts
- procedures are implemented for accurate and complete collection and reporting of data for semi-annual and ARRA DBE reports to FTA

**Grantee Response:**

*Bidders List:*

The LA DOTD maintains a bidders list in a mainframe program (SUBS). The SUBS bidders list does not currently include a bidders list for Public Transportation projects. SUBS is being replaced with CRLMS, which is in the very early months of an 18-month implementation process. The DBELO and the Public Transportation section staff are working with LA DOTD’s IT section to ensure that the Public Transit bidders are included in CRLMS. In the interim, the Public Transportation section has created a form to capture the information from sub-recipients to create and maintain a bidders list. This list will be maintained in a separate database and updated quarterly.

*Monitoring:*

The LA DOTD has created a form to capture contracting activity and monitor DBE participation monthly. LA DOTD Public Transportation staff will conduct site visits to sub-recipients to monitor DBE activities.

*Reporting:*

LA DOTD revised the State Management Plan to reflect the following timeline for ensuring accurate completion of DBE reporting in TEAM. All reports prior to 2011 were resubmitted in TEAM.

<b>DBE Activity – Timeline</b>	
By December 10, March 10, June 10, September 10	Send request for DBE activities to transit agencies.
By January 1, April 1, July 1, October 1	Review and compile DBE activities for all transit agencies.
By January 10, April 10, July 10, October 10	Submit DBE activities <b>quarterly</b> in TEAM for ARRA projects.
By June 1 and December 1	Submit DBE activities <b>semi-annually</b> in TEAM for all FTA projects.

**FTA Response:** FTA agrees with LADOTD's response to the noted deficiencies. To close the deficiencies, by January 15, 2013, provide to the FTA Office of Civil Rights with:

- information from the current system in place demonstrating that a bidders list is being compiled
- a copy of the bidders list for public transportation
- information on how site visits for DBE compliance will be documented
- evidence that the monitoring process has occurred on projects underway between April 1, 2012, and September 30, 2012
- an updated organizational chart depicting who is responsible for DBE efforts, including monitoring work sites
- supporting documentation (i.e., quarterly or other back-up analysis) for the December 1, 2012, semi-annual report submission

## Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date
1. Program Plan	26.21	D	Does not include new requirements and updates are needed	Submit updated DBE program and State Management Plan.	January 15, 2013
2. Policy Statement	26.23	D	No signed statement from current Secretary	Submit proof of policy statement's dissemination, including listing on the public website.	January 15, 2013
3. DBE Liaison Officer	26.25	D	Questions about direct access, oversight of FTA activities	Submit revised organization chart within DBE Program. Submit evidence of DBELO's assistance with the oversight of compliance transit activities.	January 15, 2013
4. Financial Institutions	26.27	ND			
5. DBE Directory	26.31	ND			
6. Overconcentration	26.33	D	Additional information needed to satisfy requirement	Submit scope of work for consultant with details of overconcentration analysis functions. Submit update within DBE Program that details timing for overconcentration-related activities.	January 15, 2013
7. Business Development Programs	26.35	N/A			
9. Determining / Meeting Goals					
A. Calculation	26.45	D	Inadequate goal setting methodology	Submit spreadsheet detailing contracting activity between October 2012 and September 2012.  Submit triennial goal methodology for FY 2014–2016.	January 15, 2013  August 1, 2013
B. Public Participation	26.45	D	No consultation process; late publishing of goals	Submit evidence of consultation for FY 2014–2016 goal methodology.	May 15, 2013
C. TVM	26.45	D	Incorrect reference to DBE regulations	Submit update within DBE Program that details verification process for TVMs.	January 15, 2013
D. Race-Neutral	26.51	D	Race-neutral not addressed in goal setting	Provide analytical support of race-neutral/race-conscious split with FY 2014–2016 goal methodology.	August 1, 2013
E. Race-Conscious	26.51	D	Race-conscious not addressed in goal setting	Provide analytical support of race-neutral/race-conscious split with FY 2014 2016 goal methodology.	August 1, 2013
F. Good Faith Efforts	26.53	ND			

<b>Requirement of 49 CFR Part 26</b>	<b>Ref.</b>	<b>Site Visit Finding</b>	<b>Description of Deficiencies</b>	<b>Submit Corrective Action Plan and Schedule for the following:</b>	<b>Response Days/Date</b>
G. Counting DBE Participation	26.55	D	Counting participation for DBE not certified in area of work	Submit update within DBE Program that details how counting DBE credit will be verified.	January 15, 2013
H. Quotas	26.43	ND			
10. Required Contract Provisions					
A. Contract Assurance	26.13	D	Contract assurance language incorrect/missing in some prime/subcontract agreements	Submit mechanism for monitoring and tracking inclusion of contract assurance language within prime and sub-contracts.	January 15, 2013
B. Prompt Payment	26.29	D	Retainage in Program Plan different in practice for FTA activities	Reconcile return of retainage rules within DBE Program and other contract-related documents.	January 15, 2013
C. Legal Remedies	26.37	D	No legal remedy language in subcontracts as required in grant agreements	Submit plan to ensure that legal remedies are referenced in prime and subcontracts issued directly and by sub-recipients.	January 15, 2013
11. Certification Standards	26.67	D	DBE firm exceeds size standard	Update language related to business size standards within DBE Program	January 15, 2013
12. Certification Procedures	26.83	D	Incomplete evaluation of PNW statements	Submit updated PNW forms and worksheets	January 15, 2013
13. Record Keeping and Enforcements					
A. Bidders List	26.11	D	No bidders list for Public Transportation functions	Submit a copy of the bidders list for Public Transportation	January 15, 2013
B. Monitoring	26.37 26.55	D	Not following procedures outlined in State Management Plan  Not monitoring sub-recipient DBE activities	Submit schedule and plan to implement procedures from State Management Plan  Submit evidence that site visits have occurred	January 15, 2013  January 15, 2013
C. Reporting	26.11	D	Inaccurate reports	Submit supporting data for contract activity issued between April–September 2012	January 15, 2013

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

## Section 8 – List of Attendees

Name	Organization	Title	Phone	Email
<b>FTA:</b>				
Randelle Ripton	FTA Office of Civil Rights	DBE Technical Lead	(202) 366-5086	Randelle.Ripton@fta.gov
<b>DOTD Members:</b>				
Remy Graves	DOTD	DBE Certification Manager	(225) 379-1762	remy.graves@la.gov
Stephanie Ducote	DOTD	Compliance Programs Director	(225) 379-1363	stephanie.ducote@la.gov
Donna Lavigne	DOTD	Public Transportation Director	(225) 379-3060	donna.lavigne@la.gov
Phil Jones	DOTD	Deputy Assistant Secretary, Intermodal	(225) 379-3030	phil.jones@la.gov
Bernie Nobles	DOTD	Program Manager	(225) 379-3059	bernie.nobles@la.gov
Krystal Kaufman	DOTD	Public Transit Specialist 4	(225) 379-3066	krystal.barkley@la.gov
Kay Ryall	DOTD	Program Manager	(225) 379-3058	kay.ryall@la.gov
Michelle Horne	DOTD	Program Manager	(225) 379-3057	michelle.horne@la.gov
Mike Watts	DOTD	Program Manager	(225) 379-3062	mike.watts@la.gov
Harold Beck	DOTD	Public Transit Supervisor	(225) 379-1762	harold.beck@la.gov
Cheryl Duvieilh	DOTD	Executive Counsel	(225) 379-1009	cheryl.duvieilh@la.gov
Terry Meliet	DOTD	Accountant Manager I	(225) 379-1681	
Babs Mooney	DOTD	Accountant III	(225) 379-1679	
Debra Lang	DOTD	Rural Program Manager	(225) 379-1679	debrah.lang@la.gov
<b>Prime Contractor Representative:</b>				
J.D. Allen	Alliance Transportation Group (DBE)	Vice President	(337) 310-7020	JDAllen@emailatg.com
<b>Sub-recipient:</b>				
Othella Hughes	Plaquemines Parish Govt.	Community Action Superintendent	(618) 426-3325	ppcaa@bellsouth.net
<b>DBE Subcontractor Representative:</b>				
Sharon Leader	S.W. Leader, Inc. (DBE)	President	(504) 895-2303	leaderno@aol.com
<b>Milligan &amp; Co, LLC:</b>				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	(215) 496-9100	Bsumpter@milligancpa.com
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Habibatu Atta	Milligan & Co., LLC	Reviewer	(215) 496-9100	Hatta@milligancpa.com
Kristin Szwajkowski	Milligan & Co., LLC	Reviewer	(215) 496-9100	Kszwajkowski@milligancpa.com
<b>Prime Contractor Representative:</b>				
Luis Spinola	Omega Contracting, Inc.	President and CEO	(214) 689-3815	Luiss@azteca-omega.com
Jeffrey Heimer	Omega Contracting, Inc.	Vice President	(214) 689-3815	Jeffh@azteca-omega.com
Chris Inglis	Mass Electric Construction Company.	Project Manager	(972) 905-1030	CInglis@masselec.com
Alfonso Armenta	Mass Electric Construction Company.	District Compliance Manager	(972) 505-4794	Aarmenta@masselec.com
Rick Mertz	Journeyman Construction, Inc.	Project Manager	(512) 247-7000	Rmertz@journeymanco.com
<b>DBE Subcontractor Representative:</b>				
Luis Spinola	Rama Enterprise, LLC	President	(817) 303-9681	Luisrs@rama-ent.com
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Janet Witter	CT&S	President	(972) 554-9629	Jwitter@ctands.com
<b>Interested Parties:</b>				
Charles O'Neal	Dallas Black Chamber of Commerce	President	(214) 421-5200	Cro@dbcc.org
Gabriella Quezada	Greater Dallas Hispanic Chamber of Commerce	President	(214) 523-3413	Quezada@gdhcc.org
<b>Milligan &amp; Co., LLC:</b>				
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Habibatu Atta	Milligan & Co., LLC	Reviewer	(215) 496-9100	Hatta@milligancpa.com
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