

# FTA

FEDERAL TRANSIT ADMINISTRATION

## Maryland Transit Administration (MTA) DBE Compliance Review Draft Report

March 2013

PREPARED BY  
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U.S. Department of Transportation  
Federal Transit Administration

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## SECTION 1 – GENERAL INFORMATION

Grant Recipient: Maryland Transit Administration

City/State: Maryland (DBE Program located in Baltimore)

Grantee Number: 1401

Executive Official: Ralign Wells, Administrator, MTA

On-site Liaison: Paula Cullings, Director, Office of Fair Practices

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Dates of On-site Visit: September 20–22, 2011

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## **SECTION 2 – JURISDICTION AND AUTHORITIES**

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

The Maryland Transit Administration (MTA) is a recipient of FTA funding assistance, including funding from the American Recovery and Reinvestment Act of 2009 (ARRA), 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 MTA’s DBE Program and were the basis for the selection of compliance elements that were reviewed.

## **SECTION 3 – PURPOSE AND OBJECTIVES**

### **PURPOSE**

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. FTA decided to conduct one such review of the Maryland Transit Administration (MTA), with focus being placed on projects using ARRA grant funding.

The primary purpose of the compliance review is to determine the extent to which MTA 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 MTA'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 intended to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, or 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 laws.
- Ensure that only firms that fully meet 49 CFR Part 26'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 MTA 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 MTA’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 MTA’s Disadvantaged Business Enterprise Program Plan from a variety of sources – DBE Program managers, other MTA management personnel, DBEs, and prime contractors.

## SECTION 4 – BACKGROUND INFORMATION

The Maryland Transit Administration (MTA) is a state-operated mass transit administration in Maryland and is part of the Maryland Department of Transportation (MDOT). It is often referred to as MTA Maryland to avoid confusion with other cities' transit agencies that share the initials "MTA." MTA operates a comprehensive transit system throughout the Baltimore-Washington Metropolitan Area.



MTA is an important part of the regional transit network. The system has many connections to other transit agencies of Central Maryland: WMATA, Charm City Circulator, Howard Transit, Connect-A-Ride, Annapolis Transit, Rabbit Transit, Ride-On, and TransIT.

### TRANSIT SERVICES AND ANNUAL RIDERSHIP

MTA operates 77 bus lines serving Baltimore's public transportation needs, along with other services that include light rail, Metro subway, Maryland Area Regional Commuter (MARC) Train, and comprehensive paratransit (mobility) systems. MTA also manages the Taxi Access system and directs funding and statewide assistance to Locally Operated Transit Systems (LOTS) in each of Maryland's 23 counties, Baltimore City, Annapolis, and Ocean City.

#### Bus Services

MTA bus services operate throughout the Baltimore-Washington Metropolitan Area and other parts of the state. These include local bus routes 1 through 99, which serve areas of Baltimore City, Baltimore County, and Anne Arundel County. Neighborhood shuttle routes 97 and 98 serve specific Baltimore City areas. QuickBus service operates a limited-stop BRT service. Commuter and express bus lines, which also operate within other parts of the state, include routes 120 through 995.



#### Rail Services

MTA operates the following rail services: Metro subway, light rail, and MARC. The Metro subway system operates elevated and underground from a corporate and shopping complex in Owings Mills in Baltimore County into the heart of Downtown Baltimore City's business, shopping and sightseeing districts to the Johns Hopkins Medical Center Complex. The 15.5-mile (24.94 km) northwest-southeast bound route includes 14 station stops.

The light rail service travels from a corporate, hotel, and shopping complex in Baltimore County's Hunt Valley, through the suburbs north of Baltimore and northern Baltimore City and into the heart of downtown Baltimore's shopping, sightseeing, dining, and entertainment districts, past the harbor, through southern Baltimore City, and, finally, to BWI Marshall Airport and Cromwell Station/Glen Burnie in Anne Arundel County. There is also a spur to Amtrak's Baltimore Penn Station. The Light Rail operates at-grade for the most part, although it travels on bridges that cross several bodies of water. There are 33 station stops along the 30.0-mile (48.28 km) system.

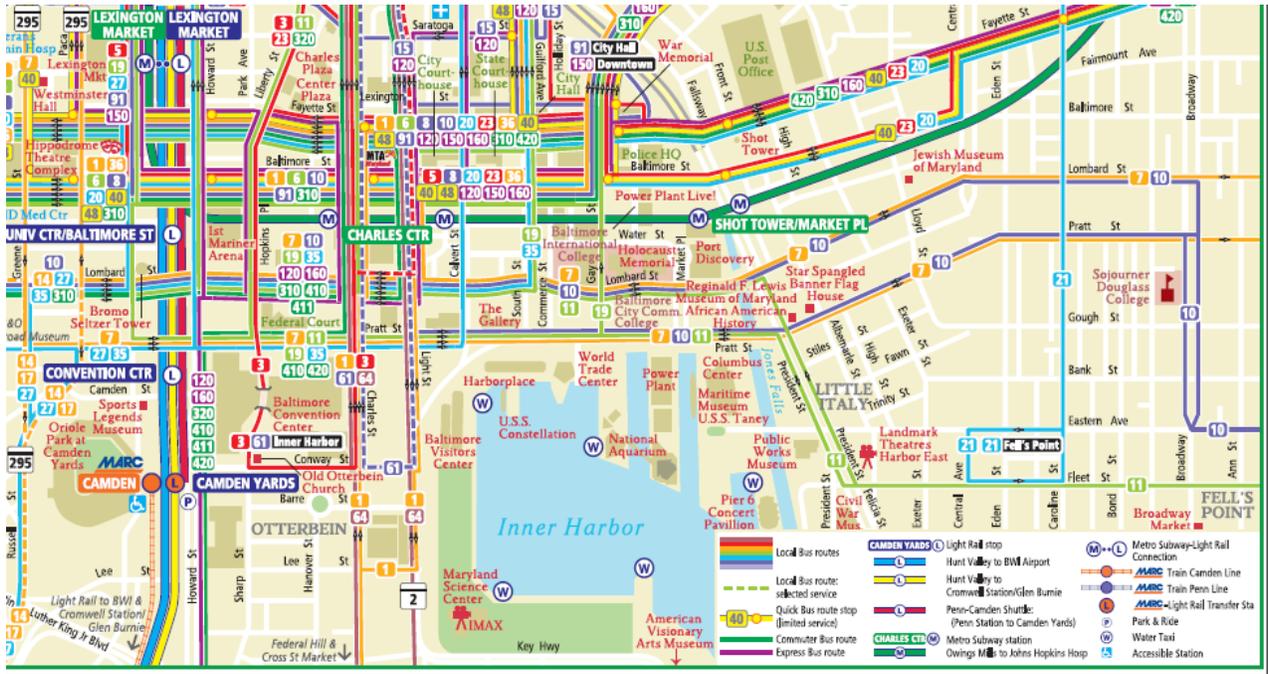
MARC is a regional rail system comprising three lines in the Baltimore-Washington Metropolitan Area. MARC is administered by the Maryland MTA and operated under contract by CSX Transportation and Amtrak. MARC does not operate on weekends, and service is suspended or reduced on select holidays. Some MARC trains are capable of operating at 125 MPH or faster.

### **Mobility Services**

MTA's mobility services include paratransit service and the Taxi Access program. MTA began offering paratransit service for persons with disabilities in 1978. This mobility service is a "non-fixed route" service and consists of a fleet of specially-converted Ford E-Series vans and Ford Crown Victorias. Some service is contracted out to MV Transportation and Veolia Transportation, but all vehicles are owned by MTA.

A sub-service of the paratransit program is MTA's Taxi Access program, designed with technology made by MJM Management. The Taxi Access program ensures that any persons with sufficient physical disabilities that consistently require paratransit service can also qualify for the Taxi Access program. The Taxi Access program allows the bearer of a Taxi Access card to take a taxicab door-to-door within the limits of anywhere MTA paratransit vans go—within 1/3 of a mile of an MTA public transit stop of any kind. Once the trip is complete, total out-of-pocket cost for the customer is \$3.00, and MTA picks up the remainder of the fare, "paying" it to the driver in the form of a voucher that the driver later redeems at his cab company headquarters.

**Figure 1: Baltimore Transit Inner Harbor Map**



Source: MTA website, "Maps," [http://mta.maryland.gov/sites/default/files/MTA\\_AR\\_2010\\_web.pdf](http://mta.maryland.gov/sites/default/files/MTA_AR_2010_web.pdf)

**Annual Ridership**

MTA’s annual ridership across all modes is about 105 million. Two-thirds of these transit trips are on local buses. The Metro Subway has the second highest ridership and accounts for 12.8 percent of all transit trips. MTA’s ridership in Fiscal Year 2010 by transit system is shown in Figure 2.

**Figure 2: MTA Ridership, FY 2010**

Transit System	Annual Ridership	Annual Ridership (%)
Local Bus	69,845,849	66.5
Metro Subway	13,566,823	12.8
MARC Train	8,081,155	7.8
Light Rail	8,712,170	7.8
Commuter Bus, Washington	3,592,281	3.4
Commuter Bus, Baltimore	379,229	0.3
Mobility	1,094,437	1.2
Taxi Access	355,542	0.3
<b>Total (All Modes)</b>	<b>105,627,486</b>	<b>100.0</b>

Source: MTA 2010 Annual Report, [http://mta.maryland.gov/sites/default/files/MTA\\_AR\\_2010\\_web.pdf](http://mta.maryland.gov/sites/default/files/MTA_AR_2010_web.pdf)

## BUDGET AND ARRA FUNDS

### Overall Budget

MTA's budget in FY 2010 was \$916 million. MTA's budget comprises State and Federal funds, as well as revenue from fares and other sources. State funding accounts for the largest portion of the agency's budget (59%); federal funding is the second largest budget source category (27%). Fares account for about 13 percent of MTA's budget. MTA also earns revenue from selling advertising space on its buses, trains, and properties; leasing land to private companies; ticketing illegally parked vehicles on MTA property; and parking garage revenues.

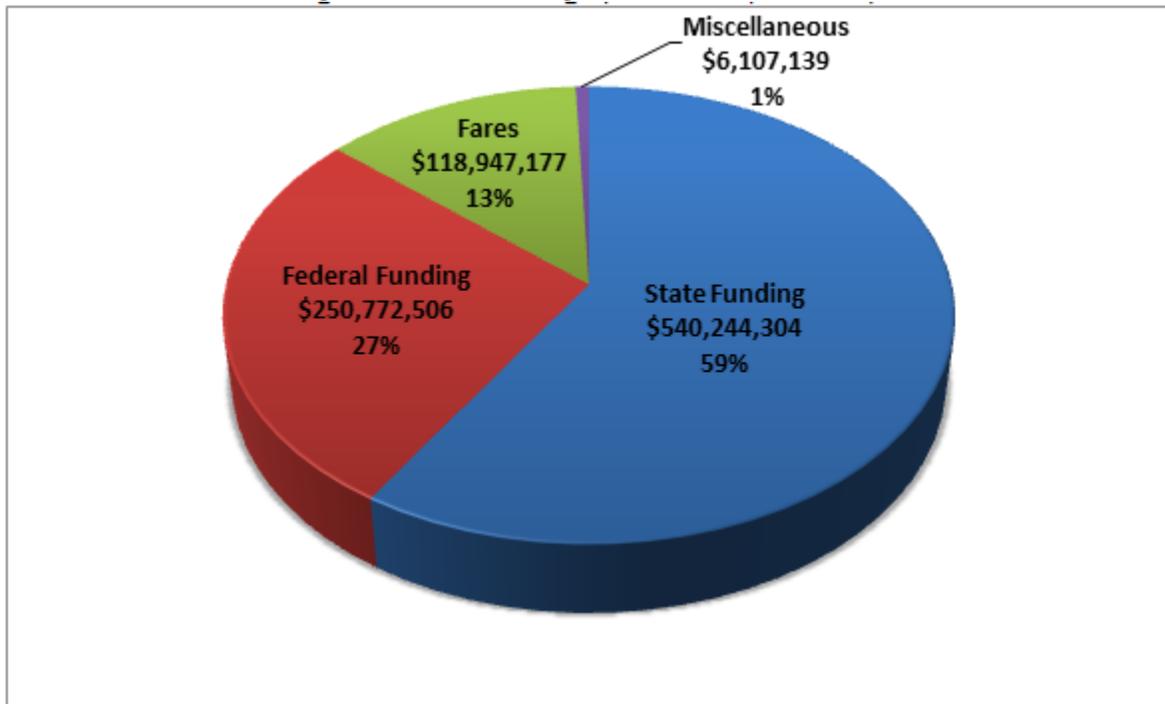
**Figure 3: MTA Budget, FY 2010 (million \$)**

Sources of Funds	Funds and Revenues
State Funding	\$540.2
Federal Funding	\$250.8
Fares	\$118.9
Miscellaneous	\$6.1
<b>Total (All Sources)</b>	<b>\$916.0</b>

Source: MTA 2010 Annual Report,

[http://mta.maryland.gov/sites/default/files/MTA\\_AR\\_2010\\_web.pdf](http://mta.maryland.gov/sites/default/files/MTA_AR_2010_web.pdf)

**Figure 4: MTA Budget, FY 2010 (million \$)**



Source: MTA 2010 Annual Report,

[http://mta.maryland.gov/sites/default/files/MTA\\_AR\\_2010\\_web.pdf](http://mta.maryland.gov/sites/default/files/MTA_AR_2010_web.pdf)

## **ARRA Funds**

The American Recovery and Reinvestment Act (ARRA) of 2009 provided additional transit formula funding for states to use on highway projects. ARRA funding helped to offset the \$2.2 billion in reductions made to the capital program as a result of the 2008 recession. Maryland received \$135.0 million for transit funding from ARRA for MTA; however, favorable highway project bids resulted in savings that could be used for other projects. Approximately \$17.0 million of the bid savings were transferred to MTA, leaving it with \$152.0 million.

The Consolidated Transportation Program (CTP) provides a listing of local ARRA projects and State-funded projects by jurisdiction. The State also received approximately \$10.0 million from 2 ARRA grants, one for Metro and the other for station improvements at Baltimore/Washington International Thurgood Marshall (BWI) airport. With the 2 ARRA grants and transferred highway funding, the total amount of ARRA funding was \$162.0 million as of 2011.

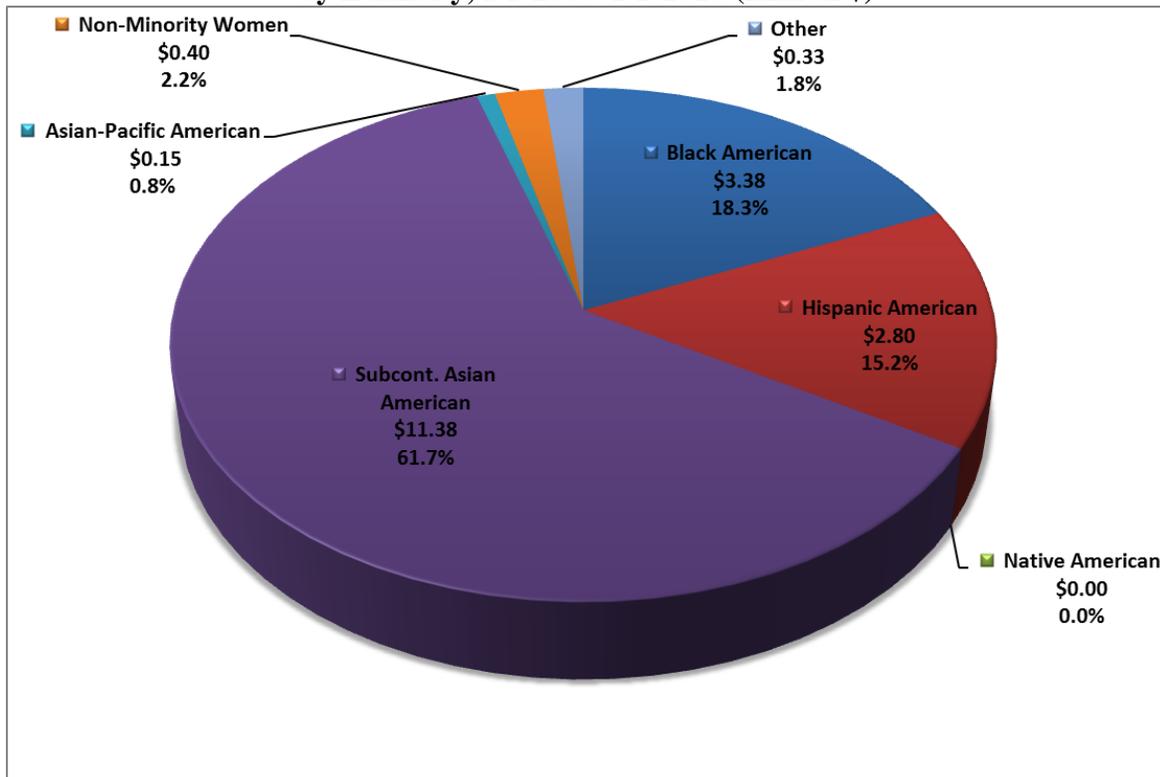
Of the \$162 million in transit funding, MTA received \$118 million and locally-operated transit systems received \$44 million. The State-funded projects involved a number of system preservation-related projects for Metro and bus facilities. Other projects include light rail and MARC station improvements and bus procurement. The local funding focused largely on bus replacements and facility and equipment upgrades.<sup>1</sup>

The Office of Fair Practices provided the review team with reports detailing the award and payment to DBE firms from ARRA-funded projects. Figure 5 shows the monetary value of those contracts by the ethnicity of the recipient between FY 2009 and the present. Subcontinental Asian American contractors led all DBE firms, with 61.7 percent of all ARRA-funded contracts awarded to DBEs. Black and Hispanic American contractors were the next largest ethnic groups of ARRA-funded contract awardees, with 18.3 percent and 15.2 percent, respectively.

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<sup>1</sup> MDOT J00H01 Budget Document, 2011, available at [http://mlis.state.md.us/2011rs/budget\\_docs/all/Operating/J00H01 - MDOT Maryland Transit Administration.pdf](http://mlis.state.md.us/2011rs/budget_docs/all/Operating/J00H01 - MDOT Maryland Transit Administration.pdf)

**Figure 5: MTA’S ARRA-Funded Contracts Awarded to DBE Contractors by Ethnicity, FY 2009–FY 2010 (million \$)**



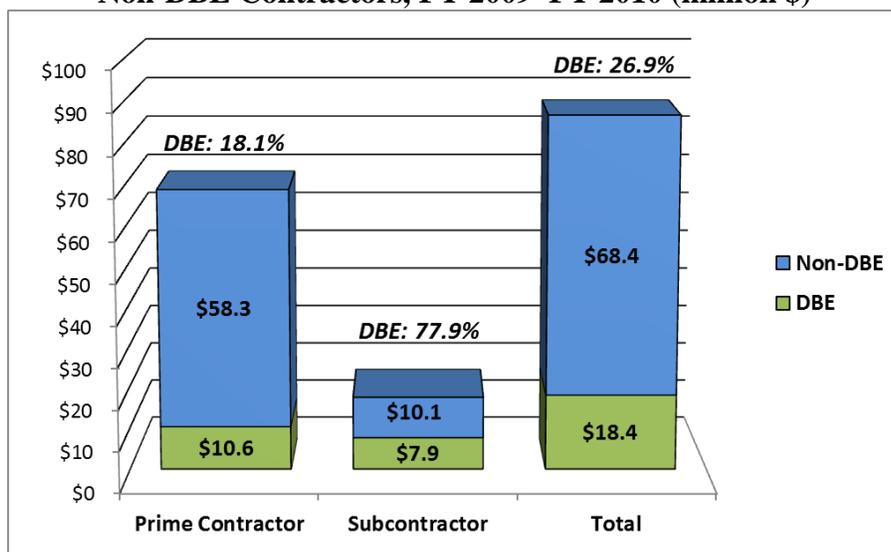
Source: MTA’s ARRA Uniform Report of DBE Commitments/Awards and Payments

Information on the ARRA-funded contracts awarded to DBE and non-DBE contractors is provided in Figure 6. The figure also highlights the share of contracts that DBEs win either as prime contractors or subcontractors. DBE contractors were awarded 18.1 percent of all ARRA-funded prime contracts and 77.9 percent of all ARRA-funded subcontracts. The majority of DBE participation was achieved through race-neutral prime contracts. DBE prime contractors were awarded \$10.6 million, or 57.6 percent of all ARRA-funded contracts. DBEs received an additional \$7.9 million, or 42.9 percent of all ARRA-funded contracts through subcontracts, some of which were awarded through race-conscious subcontract goals.

## **DBE PROGRAM**

MTA’s Office of Fair Practices is responsible for monitoring and enforcing MTA’s internal and external DBE Programs to ensure compliance with appropriate Federal and State laws and regulations. The Office of Fair Practices is one of the main divisions of MTA’s administration, and the director of the office has direct access to the MTA Administrator. The Office of Fair Practices oversees the DBE and MBE programs.

**Figure 6: MTA’s ARRA Funded Contracts Awarded to DBE and Non-DBE Contractors, FY 2009–FY 2010 (million \$)**



Source: MTA’s ARRA Uniform Report of DBE Commitments/Awards and Payments

## RELATIONSHIP BETWEEN MDOT AND MTA

MDOT directs and oversees the planning, construction, and operation of Maryland’s highway, transit, maritime and aviation facilities. It also oversees MTA and the following transportation authorities and administrations:

- Maryland Transportation Authority
- Maryland Port Administration
- State Highway Administration
- Maryland Motor Vehicle Administration
- Maryland Aviation Administration

MDOT’s Office of Minority Business Enterprise (OMBE) is Maryland’s official certification agency for the DBE Program. MDOT administers the DBE participation goal for contracts that receive assistance from the U.S. Department of Transportation (USDOT). The DBE goal for USDOT-assisted contracts is established on a triennial basis. Goals for USDOT-assisted contracts are implemented by the Maryland Transit Administration, Maryland State Highway Administration, and Maryland Aviation Administration. For federal fiscal year 2010, the DBE goal for MTA was 25.9 percent.<sup>2</sup>

<sup>2</sup> MDOT website, “Office of Minority Business Enterprise,” [http://www.mdot.maryland.gov/MBE\\_Program/Webpage\\_Update/testMBEProgramOverview4.html](http://www.mdot.maryland.gov/MBE_Program/Webpage_Update/testMBEProgramOverview4.html)

## **SECTION 5 – SCOPE AND METHODOLOGY**

### **SCOPE**

Implementation of the following 12 required DBE Program components specified by FTA are reviewed in this report:

1. A DBE Program plan signed by a concerned operating administration (OA) [49 CFR 26.21].
2. A signed policy statement that expresses a commitment to the agency's 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]. Additionally, in establishing an overall goal, the recipient must provide for public participation and then provide information on this goal to the public through published notices [49 CFR 26.45].
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 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 MTA by FTA's Office of Civil Rights. The agenda letter notified MTA of the planned site visit, requested preliminary documents, and informed MTA of additional documents needed and areas that would be covered during the on-site portion of the review. It also informed MTA 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 opening conference was conducted at the beginning of the Compliance Review with FTA representatives, MTA staff, and the review team.

Subsequent to the opening conference, a review was conducted of MTA's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer (DBELO) or equivalent. The review team then conducted interviews with MTA officials regarding DBE Program administration, project procurement, grant administration record keeping, monitoring, and legal remedies. The review team also selected a sample of ARRA-funded contracts, which were then reviewed for their DBE elements.

At the end of the review, an exit conference was held with FTA representatives, MTA 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 MTA.

Following the site visit, this draft report was compiled. This report will be amended and resubmitted as a final report after allowing MTA to respond to the report findings and corrective actions.

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

Margaret Griffin  
Civil Rights Officer, FTA Region I  
Transportation Systems Center Kendall Square  
55 Broadway, Suite 920  
Cambridge, MA 02142-1093  
Phone: (617) 494-2397  
[Margaret.Griffin@dot.gov](mailto:Margaret.Griffin@dot.gov)

## SECTION 6 – ISSUES AND RECOMMENDATIONS

### 1. DBE Program Plan

Basic Requirement (49 CFR 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 the Compliance Review, deficiencies were noted with regards to the DBE Program Plan. MTA did not provide a distinct DBE Program Plan. Instead, it provided a large document that was actually a detailed Program Manual and that contained specifics and operating procedures for both the agency's DBE (Federal 49 CFR, Part 26) and MBE (non-federally-funded projects) programs, often blended together. There was no clear and distinct "DBE personality." The updated DBE Program Plan must include detailed descriptions of how MTA will implement 49 CFR Part 26 and update the DBE Program Plan so it stays compliant with the regulations. The updated Program Plan must be either an MTA standalone document or a subsection of the MDOT document. This DBE Program Plan must address MTA's responsibilities under 49 CFR Part 26 as a direct recipient of FTA funds. Some of the changes needed in the DBE Program Plan include updating the policy statement, clearly designating a DBELO, providing a plan for identifying and encouraging use of DBE financial institutions, specifying the actions that will be taken to address overconcentration, and developing business development plans.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MTA must update the DBE Program Plan. The updated DBE Program must comply with the requirements of 49 CFR Part 26. The updated DBE Program Plan must clearly stipulate how it will be kept up to date and circulated.

MTA Response: MDOT administers one DBE Program for all of its modal administrations that receive USDOT financial assistance. During the review period, MTA provided a copy of the previously-approved MDOT Maryland Minority Business Enterprise/Federal Disadvantaged Business Enterprise Program Manual dated March 2000, amended February 2009 (2000 Program Manual). MDOT filed a revised DBE Program Manual (2012 DBE Program Manual) with the Federal Highway Administration (FHWA) several years ago. The 2012 DBE Program Manual addresses (pp. 82-83) the DBE requirements for all three MDOT modal administrations that receive USDOT funds, including MTA.

FTA Response: FTA partially agrees with MTA's response to the noted deficiency. To close this deficiency, MDOT and/or MTA must document the guidelines and procedures that guide MDOT and MTA's application of the DBE Program as it relates to the funds it receives as a direct recipient of FTA. The new text or document must also clearly define the roles of MDOT and MTA relative to implementation of the DBE Program as it relates to subrecipients of FTA financial assistance. The new documentation may be included in MDOT's DBE Program Manual or in a standalone document that complements MDOT's DBE Program Manual, such as a MTA-specific DBE Program Plan. Evidence of clarification of MTA's guidelines and processes must be submitted to FTA within 60 days of the issuance of the final report. The documented guidelines and processes must comply with the requirements of 49 CFR Part 26. The new program language or document

must clearly stipulate how the guidelines and processes will be kept up to date and circulated among relevant stakeholders.

## **2. DBE Policy Statement**

**Basic Requirement** (49 CFR 26.23): Recipients must formulate and distribute a signed and dated DBE policy statement, which states the objectives and the entity's commitment to the DBE Program. This policy must also be circulated throughout the recipient's organization and to the DBE and non-DBE business communities.

**Discussion:** During the Compliance Review, deficiencies were noted with regards to the policy statement. MTA did not provide a distinct DBE Program Plan, which usually contains the required Policy Statement. Instead, MTA provided a large document that was actually a detailed Program Manual and which contained specifics and operating procedures for both the agency's DBE (Federal 49 CFR, Part 26) and MBE (non-federally-funded projects) programs, often blended together. The policy statement for 49 CFR Part 26 contained in this document was outdated and not signed by any recent official. There was no evidence provided to the review team that the policy statement has been disseminated to the DBE and non-DBE business communities served by the MTA.

**Corrective Action and Schedule:** Within 15 days of the issuance of the final report, MTA must update the Policy Statement letter with a current signature. MTA must also provide evidence of the circulation of the Policy Statement within MTA and MDOT (its parent agency) and to the DBE and non-DBE business communities.

**MTA Response:** The 2000 Program Manual included a Policy Statement regarding MDOT's commitment to the DBE Program, which was signed by then-Secretary of Transportation John D. Porcari. The Policy Statement is posted on MDOT's Office of Minority Business Enterprise (OMBE) website as part of the 2000 Program Manual. The 2012 DBE Program Manual includes a new Policy Statement, which was signed by MDOT's Acting Secretary of Transportation Darrell B. Mobley on September 7, 2012. This new Policy Statement has been electronically distributed to MDOT's federally-funded modal administrations, including MTA, as well as its Procurement and Fair Practice offices. The new Policy Statement has also been sent electronically to DBE stakeholders, including certified DBE firms in the MDOT MBE/DBE Directory (See Attachment 1).

**FTA Response:** FTA agrees with MTA's response to the noted deficiency. This deficiency is now considered closed.

## **3. DBE Liaison Officer**

**Basic Requirement** (49 CFR 26.25): Recipients/Grantees must have a designated DBELO who has direct and independent access to the CEO of the recipient organization. The DBELO 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 MTA relative to the requirement for the DBELO. First, the identity of the DBELO for MTA is not clear. As

required by 49 CFR 26, the DBELO is responsible for ensuring grantee compliance with 49 CFR Part 26 for all FTA-funded activity and transit-related functions. The operations and procedures manual—perhaps wrongfully designated as “Program Plan”—makes reference to a position within MDOT as being the DBELO. However, there is no clear identification of the name, contact information, or recent of this person, nor is there any indication of the person’s or position’s direct access to the executive officer of MTA. However, it should be noted that, functionally, it appears that the Director of the Office of Fair Practices (Paula Cullings at the time of the review visit) could be MTA’s DBELO and that she has direct access to the MTA executive officer (Administrator Ralign T. Wells at the time of the review visit).

Second, with regard with the requirements that the grantee provide “adequate staff to properly implement the program,” the MTA Office of Fair Practices appears to be staffed with the equivalent of 2.5 persons, with responsibilities for both federal (DBE) and non-federal (MWBE) compliance duties and ADA compliance duties. This is questionable in terms of “adequacy of staff.” There also appears to be some fragmentation of DBE Program responsibilities usually attributed to the DBELO, such as overall goal-setting and monitoring for compliance. This is consistent with 49 CFR 26 as long as there are clear and understandable lines of coordination and cooperation specified in the DBE Program Plan. Some of these elements will be addressed under other requirements of the 49 CFR Part 26 review.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MTA must formally designate the DBELO in writing within its Program Plan.

MTA Response: MDOT’s organizational structure is similar to that of USDOT. MDOT Headquarters is the overarching department for the following transportation modal administrations: MTA, State Highway Administration (SHA), Maryland Aviation Administration (MAA), Maryland Port Administration (MPA), and Motor Vehicle Administration (MVA). MTA is an independent agency that is also subject to MDOT Headquarters’ policies.

MDOT Headquarters administers one DBE Program and is responsible for policy development, guidance, policy monitoring, and overall goal development. The 2000 Program Manual designates the DBELO in the Policy Statement as the Deputy Secretary, who has direct access to MDOT’s Secretary of Transportation. The 2012 DBE Program Manual identifies the position and title of the DBE Liaison Officer as the Assistant Secretary for Administration at MDOT, Karen Williams Gooden, who also has direct access to MDOT’s Secretary of Transportation. The current DBE Liaison Officer, working in conjunction with each modal administration, including MTA, ensures enforcement and compliance with the DBE Program. At MTA, the Director of the Office of Fair Practices, Paula B. Cullings, monitors compliance with the DBE Program pursuant to policy, regulations, and guidance from MDOT Headquarters. The MTA Director of the Office of Fair Practices has direct access to the MTA Administrator and the DBELO.

FTA Response: FTA partially agrees with MTA’s response to the noted deficiency. As evidenced by the lack of access to the LOTS’ contract files during the site visit, the designation of duties and responsibilities has not been clearly defined as it pertains to MTA’s implementation of DBE regulations (in respect to its subrecipients). To close this deficiency, MTA must submit to FTA an updated DBE Program Manual that clearly identifies the roles and responsibilities to which MTA must adhere in administering the DBE Program as it relates to funds it receives from FTA as a direct recipient and its responsibilities to its various subrecipients. The updated program must also

include details on the specific authorities and responsibilities designated to the Office of Fair Practices and the Office of Local Transit Support (OLTS).

#### **4. DBE Financial Institutions**

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

**Discussion:** During this DBE Compliance Review, a deficiency was found related to minority- and women-owned financial institutions. The requirement to investigate the existence of minority- and women-owned financial institutions was not addressed in MTA's revised 2009 DBE Program Plan.

During the compliance review, MTA provided no evidence that it has made efforts to identify minority- and women-owned financial institutions, use these institutions themselves, or encourage prime contractors to use them.

**Corrective Action and Schedule:** Within 60 days of the issuance of the final report, MTA must provide evidence of a program to identify minority- and women-owned financial institutions (or lack thereof) on a periodic basis and to encourage utilization by MTA and its prime contractors.

**MTA Response:** The MDOT OMBE conducts a thorough investigation during the certification process to identify the extent of services offered by minority- and women-owned financial institutions, and information regarding these DBE firms can be accessed by searching the MBE/DBE Directory. Further, the 2000 Program Manual (p. 123) encourages prime contractors to use minority- and women-owned banks. The updated 2012 DBE Program Manual will similarly encourage the use of minority- and women-owned financial institutions. MDOT also is developing a program to further encourage the use of minority financial institutions. MDOT will provide evidence of this program within 60 days from the final report.

**FTA Response:** FTA agrees with MTA's response. To close this deficiency, MTA must submit to FTA a copy of its new DBE Program Plan that describes MTA's step-by-step procedures to identify minority- and women-owned financial institutions on a regular periodic basis and encourages their use by contractors. MTA must complete these corrective actions within 60 days of receipt of the Final DBE Program Compliance Review Report.

#### **5. DBE Directory**

**Basic Requirement** (49 CFR 26.31): A DBE directory must be available to interested parties that includes 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 the requirement for a DBE directory. MDOT processes all certifications for the State of Maryland and maintains the directory of DBE certified firms. The directory is located on MDOT's website at [www.mdot.maryland.gov/](http://www.mdot.maryland.gov/). The review team viewed the Web-based directory during the site visit. The directory includes the information required by the regulations, including the firm's name,

mailing address, telephone number, and type of work the firm has been certified to perform as a DBE. MDOT updates the electronic version of the directory with any additions and deletions as changes occur in real time.

## **6. Overconcentration**

Basic Requirement (49 CFR 26.33): If the transit agency determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the agency must devise appropriate measures to address this overconcentration.

Discussion: During this Compliance Review, a deficiency was found for the requirement for overconcentration. MTA provided no evidence that it has considered or calculated the industry concentration of DBE contracting. MTA noted that it has had discussions of evaluating DBE overconcentration but, as of the site visit, has not done so. MTA and MDOT staff discussed overconcentration in terms of type of business ownership (i.e., a disproportionate allocation to women-owned firms). This indicated a lack of understanding of the overconcentration requirements.

Corrective Action and Schedule: Within 120 days of the issuance of the final report, MTA (or MDOT on MTA's behalf) should conduct an overconcentration analysis, evaluate the results, and, if appropriate, recommend measures to address overconcentration. For example, overconcentration can be addressed by unbundling tasks and bidding them as race-neutral contracting opportunities.

MTA must also develop a detailed description of how it will monitor against and respond to overconcentration in the updated DBE Program Plan. MTA must conduct an overconcentration analysis within 120 days of the issuance of the final report.

MTA Response: A workgroup comprising employees from MDOT Headquarters, MTA, SHA, and MAA has investigated methods of identifying overconcentration, initiated a process for determining how to identify and measure overconcentration, and developed a proposed plan for addressing the overconcentration regulations for the DBE Program. We are currently obtaining comments on this proposed plan from both DBE and non-DBE stakeholders. MDOT will include the final overconcentration plan in the updated 2012 DBE Program Manual. MDOT also will conduct an overconcentration analysis within 120 days of the issuance of the final FTA report.

FTA Response: FTA agrees with MTA's response. To close this deficiency, MDOT must submit the updated DBE Program Manual that fully describes the process for monitoring and assessing overconcentration within 60 days of receipt of the final report. Additionally, MDOT or MTA must submit the results of the overconcentration analysis and, if appropriate, recommend measures to address overconcentration following the completion of the study.

## **7. Business Development Programs**

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

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

MTA has no formal business development or mentor protégé programs as described in the DBE regulations.

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

### **A) Calculation**

Basic Requirement (49 CFR 26.45): In 2010, 49 CFR Part 26 was amended concerning the outdated requirement for an annual overall DBE goal, which, in previous years, had coincided with the annual federal fiscal year and typical grant year. Instead, beginning with FY 2011, based on a schedule determined by FTA, overall goal documents are now required on a triennial basis. MTA's first triennial overall goal was developed for the period FY 2011–2013, and the new goals were due to FTA by August 1, 2010. The second triennial goal will not be due until August 1, 2013, for the years FY 2014–2016. Both the previous annual goal and now the new triennial overall goal for MTA have been the assumed responsibility of MDOT.

Discussion: During this DBE Compliance Review, no deficiency was found with respect to the requirements for calculation of the newly-required triennial goal. As noted above, MTA's overall DBE goal submitted to FTA historically has been developed by MDOT. Since MDOT also directs the preparation of an agency-wide disparity study, the overall goals are usually extrapolated directly from the study. The current triennial goal, developed and submitted in 2010, was based on the 2006 Disparity Study prepared by NERA and is set at 25.9 percent. However, subsequent to the submission of the last triennial goal, a more recent disparity study has been completed, which, if considered, could lead to a possible adjustment of the current three-year goal. However, such an adjustment is not required.

The triennial goal-setting process, as previously required for annual overall goals, involved a two-step process of, first, developing a base figure for the relative availability of DBEs in the determined market area. After the base figure is obtained, all other relevant evidence must be considered to adjust that figure to more realistically align with the goal/needs of the grantee's DBE community. For the MTA, MDOT used the availability factor from the 2006 Disparity Study for the Step 1 base goal.

*Step 1:* The principal data sources used by the MDOT in Step 1 of its goal-setting methodology are the NERA/MTA 2006 and NERA/MD 2006 studies. For its FFY 2011–2013 DBE goal-setting methodology, MDOT incorporates Step 1 of the NERA/MTA 2006 Study in its entirety. The NERA/MTA 2006 Study developed its baseline availability for MTA using the following six steps: (1) identify the relevant geographic market; (2) identify the relevant product market and associated industry steps; (3) count all businesses in the relevant geographic and product market; (4) identify listed DBEs in relevant markets; (5) verify ownership status of DBEs; and (6) verify ownership status of unclassified firms.

Using MTA contract data from FY2000–2004, the NERA/MTA 2006 Study determined the primary geographic market area to be the states of Maryland and Delaware and the Washington, DC Metropolitan Statistical Area. The study provides estimates of DBE availability for MTA contracts and subcontracts in three main areas: construction, architecture-engineering and other construction-

related professional services (AE-CRS), and maintenance services. To determine industry weights assigned to each SIC Code, the study used expenditure data for MTA's construction, AE-CRS, and maintenance contracts and subcontracts. The dollar value attributable to each SIC code was calculated as a percentage distribution. The resulting percentage figures were used to calculate industry-weighted DBE availability. The resulting industry-weighted DBE availability figures give greater weight to DBE availability from those industries where MTA spends more contract dollars and lesser weight to availability in those industries where fewer dollars are spent.

Next, the NERA/MTA 2006 Study determined the total number of businesses in each relevant SIC code, state, and county from Dun & Bradstreet's *MarketPlace*. This determination was made overall as well as separately for construction, AE-CRS, and maintenance. In identifying DBEs, some were directly identified in Dun & Bradstreet's *MarketPlace* or in the State's MBE/DBE Directory. Other businesses in *MarketPlace* were identified as DBEs by cross-referencing name and address information from numerous regional directories of minority- and women-owned firms collected for the study. This determination was made overall as well as separately for construction, AE-CRS, and maintenance. Finally, to correct for race and gender misclassification, the consultant conducted interviews with a random sample of listed DBEs to verify ownership status. Interviews were also conducted with a random sample of unclassified (presumptively non-certified) firms to determine their ownership status. Race/gender classifications were adjusted to correct for misclassification as estimated from these samples.

Using the approach outlined above, the NERA/MTA 2006 Study determined Step 1 DBE availability in MTA's relevant marketplace to be 25.9 percent for FFY 2007. MDOT is adopting this baseline availability for MTA's FY 2011 through 2013 DBE goals.

*Step 2:* The MTA goal-setting methodology document states that there is insufficient basis to adjust the goal in Step 2. The Program Plan document states, "MDOT has examined all evidence available in its jurisdiction. After careful examination of all relevant factors, MDOT decided not to adjust the Step 1 baseline availability for MTA." Therefore, the Step 1 goal, i.e., 25.9 percent, is also the final triennial goal.

## **B) Public Participation and Outreach**

Basic Requirement (49 CFR 26.45): In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A 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, no deficiencies were found with the requirement for a Public Participation and Outreach. As noted previously, the MTA overall triennial goal is prepared by MDOT. According to the FY 2011–2013 goal-development document, MTA distributed surveys to the local business community using the input to satisfy the required public comment process. In addition, MTA placed a Public Notice in the August 13, 2010, edition of the *Maryland Register*, the July 30, 2010, editions of the *Baltimore Sun* and *Washington Post*, and in several local minority-focused media outlets.

### **C) Transit Vehicle Manufacturers (TVM)**

**Basic Requirement** (49 CFR 26.49): The recipient must ensure that each transit vehicle manufacturer (TVM) complies with the DBE regulations.

**Discussion:** During this DBE Compliance review, a deficiency was found with the requirement for transit vehicle manufacturer. Evidence was presented that MTA does verify TVM requirements for its direct purchases. However, this was not the case for the many subrecipients who use FTA funds via MTA to purchase vehicles. Local transit operators through the agency's LOTS program share the same responsibility for TVM verification, but there was no evidence presented that this was being accomplished.

**Corrective Action and Schedule:** Within 60 days of the issuance of the final report, MTA must require that subrecipients provide TVM approval evidence for their vehicle purchases to MTA. Additionally, MTA must provide evidence of vehicle purchase from approved TVMs within 60 days of final report.

**MTA Response:** The OLTS is responsible for ensuring that subrecipients adhere to all of the federal requirements. OLTS reviews all TVM certifications prior to a subrecipient being awarded a contract to ensure compliance with 49 CFR Part 26. The certificates for TVMs that purchased vehicles during the audit period were reviewed by the OLTS and were found to be in compliance with 49 CFR Part 26.

**FTA Response:** FTA partially agrees with MTA's response to the noted deficiency. MTA has stated that OLTS is responsible for adhering to the TVM requirements; however, it is still unknown if the OLTS has a responsibility to report to the Office of Fair Practices or if it relies on an internal DBE subject matter expert. To close this deficiency, within 60 days of the issuance of the final report, MTA must submit to FTA an updated DBE Program Plan that details the policies and procedures it will follow to ensure that it and its subrecipients procure vehicles from transit vehicle manufacturers who comply with the DBE Program. These policies and procedures must fully document who is responsible for implementing these requirements within the various offices involved.

### **D) Race-Neutral**

**Basic Requirement** (49 CFR 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, a deficiency was found with the requirements for race-neutral participation. MTA has projected a portion of the goal for race-neutral participation based on the DBE share of MTA prime contracts in FY 2005–2009. However, MTA provided little or no evidence that it was monitoring race-neutral percentages or that it was making substantial efforts to meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. For example, MTA assigned the identical awarded grant dollar amount in prime contracts to the total DBE field as well as both the race-conscious and race-neutral subfields in its submitted "ARRA Uniform Reports of DBE Commitments/Awards and Payments."

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MTA must specify the race-neutral measures that will be used as specified in 49 CFR 26.51 including arranging solicitations, times for the presentation of bids, quantities, specification, and delivery schedule in ways that facilitate DBE/small business participation; assistance with bonding and financing; providing technical assistance; information and communications programs; and assist new and start-up firms.

MTA Response: MDOT believes it is in compliance with the race-neutral measures prescribed by 49 CFR 26.51. Race-neutral measures used by MDOT, including its modal administrations, are set forth in the 2000 Program Manual (pp. 133-137) and the 2012 DBE Program Manual (pp. 73-75). As stated in 6.1, MDOT will provide the updated 2012 DBE Program Manual to FTA within 60 days from the final report.

FTA Response: FTA agrees with MTA's response. To close this deficiency, within 60 days of the issuance of the final report, MTA must submit to FTA a copy of the updated DBE Program Plan that provides a detailed description of its race-neutral measures.

### **E) Race-Conscious**

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

Discussion: During this DBE Compliance Review, a deficiency was found with the requirements for race-conscious participation. MTA reports awards with race-neutral and race-conscious percentages. However, MTA did not provide documentation of how or when it evaluates its achievements throughout the year in order to make any adjustments required to contract goals, as described in 49 CFR 26.51(f). For example, MTA assigned the identical awarded grant dollar amount to the total DBE field as well as both the race-conscious and race-neutral subfields in both of its submitted "ARRA Uniform Reports of DBE Commitments/Awards and Payments." This might indicate confusion within MTA and MDOT regarding the difference between the two categories.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MTA must develop an internal summary report of progress toward race-neutral and race-conscious goals. MTA must use this report to evaluate achievements throughout the year to adjust contract goals.

MTA Response: MDOT assesses and reports race-conscious and race-neutral participation on a semi-annual basis with the submission of its semi-annual Uniform Report of DBE Commitments/Awards Payment. Within 60 days from the final report, MDOT will develop an internal report and process to periodically evaluate progress towards race-neutral and race-conscious goals and make any required adjustment to the contract goals based on that progress.

FTA Response: FTA agrees with MTA's response to the noted deficiency. To close this deficiency, within 60 days of the issuance of the final report, MTA's must submit the internal report(s) for evaluating and tracking race-conscious achievement for FY 2012.

## **F) Good Faith Efforts**

Basic Requirement (49 CFR 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 deficiency was found with the requirements for good faith efforts. The 2000 Program Manual (pp. 129-131) and the more recent 2012 DBE Program Manual (pp. 60-62) provide that any prime contractor that demonstrates good faith efforts in compliance with 49 CFR 26.53 and Appendix A must be granted a waiver and must be treated exactly the same as any prime contractor that meets a contract goal. The 2000 and 2012 DBE Program Manuals provide examples of actions prime contractors can take to perform and document a good faith effort who have met the goal.

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

Basic Requirement (49 CFR 26.53): Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate for convenience a DBE subcontractor and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the transit agency's prior written consent.

Discussion: During this Compliance Review, there was a deficiency found in the area of termination for convenience. The MTA Program Plan does not provide current regulatory guidance for modifying or terminating DBE subcontractors on contracts and language protecting against termination for convenience was not included in subcontract agreements the review team examined.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MTA should explain in its Program Plan how it will ensure that prime contractors do not terminate for convenience a DBE subcontractor and then perform the work of the terminated subcontract with its own forces or those of an affiliate without the transit agency's prior written consent.

MTA Response: The 2000 Program Manual (p. 106) provides that prior to removing or substituting a DBE subcontractor, a prime contractor must obtain approval from the procuring administration (i.e., MTA, SHA, or MAA). The 2012 DBE Program Manual (p. 62) similarly protects DBE subcontractors from termination for convenience by requiring the approval of the DBE Compliance Officer before removal or replacement of a DBE. As stated above in its response to item 6.1, MDOT will submit the updated 2012 DBE Program Manual to FTA within 60 days of the final report.

FTA Response: FTA agrees with MTA's response to the noted deficiency. To close this deficiency, MTA must submit FTA evidence that there are documented procedures to ensure that prime contractors do not terminate for convenience a DBE subcontractor and then perform the work of the terminated subcontractor with its own forces or those of an affiliate without the MTA's prior written consent. MTA must complete these corrective actions within 60 days of the receipt of the Final DBE Program Compliance Review Report.

## **H) Counting DBE Participation**

Basic Requirement (49 CFR 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, no deficiencies were found with the requirements for counting DBE participation.

#### I) Quotas

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

Discussion: During this DBE Compliance Review, no deficiency was found with the requirement for quotas. MTA does not use quotas or DBE set-asides.

### 9. Required Contract Provisions

#### A) Non-discrimination

Basic Requirement (49 CFR 26.13): Each contract signed with a contractor (and each subcontract prime contractors sign with a subcontractor) must include the non-discrimination clause specified by the regulations.

Discussion: During the DBE Compliance Review of MTA, deficiencies were found with the requirements for Contract Assurances. MTA's DBE Program Plan indicated that each contract signed with a contractor and each subcontract the prime signs with a subcontractor will include the non-discrimination language of 26.13 in the DBE regulations. Upon review of contracts in MTA's projects, it appears that the necessary non-discrimination clauses do not flow downward to the subcontractors.

In addition, the required contract clause is incorporated by reference to attachments to the contract documents rather than included directly in the contract language. The clause that was included by reference actually referenced 49 CFR Part 23, i.e., the original DBE regulations prior to the 1999 new part 26 and is therefore substantially out of date.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MTA must update the correct clause as stipulated in 49 CFR 26.13 and include it directly in the signed contract documents. MTA must also ensure that subcontract agreements include these non-discrimination clauses. MTA must ensure this clause is also included in contracts related to the LOTS.

MTA Response: MDOT will ensure that the proper non-discrimination language is included in its contracts with prime contractors, subcontract agreements, and contracts related to LOTS within 60 days of the final report.

FTA Response: FTA agrees with MTA's response. To close this deficiency, within 60 days of the issuance of the final report, MTA must submit to FTA documented evidence of its procedures to ensure flow-down of required contract clauses to subcontract agreements. MTA can document its procedures to ensure flow-down in MDOT's Program Manual or a MTA-specific Program Plan. The documentation must describe how these procedures will be applied to MTA's subrecipients.

## **B) Prompt Payment**

**Basic Requirement** (49 CFR 26.29): The recipient/grantee must include a contract clause requiring prime contractors to pay subcontractors for satisfactory performance on their contracts no later than a specific number of days from the time they receive payment from the grantee. This clause must also address prompt return of retainage payments from the prime to the subcontractor (i.e., within a specific number of days after the subcontractor's work is satisfactorily completed).

**Discussion:** During this DBE Compliance Review, deficiencies were found with the provisions for both the Prompt Payment clause and payment of retainage. Prompt payment and retainage were not adequately addressed in MTA's DBE Program.

The Prompt Payment contract clause is incorporated by reference rather than included as language directly in the contract. The clause does not include a specific provision for prompt payment of any retainage as required by 49 CFR 26.29(b) nor establishes appropriate means of enforcement as required by 49 CFR 26.29(d). There was no evidence provided that mechanisms existed to ensure prompt payment clauses were consistently used in subcontract agreements.

**Corrective Action and Schedule:** Within 60 days of the issuance of the final report, MTA must update the clause to include a provision for prompt payment of retainage as required by 49 CFR 26.29(b) and establish appropriate means of enforcement as required by 49 CFR 26.29(d). MTA should also include the revised prompt payment clause directly in signed contact documents. Additionally, MTA should include in the updated DBE Program Plan how it will ensure flow-down of prompt payment clauses in subcontract agreements. This may include a requirement that all signed subcontracts be submitted to MTA to ensure the prompt payment clause is included.

**MTA Response:** MDOT will ensure that its prompt payment clause complies with 49 CFR 26.29(b) and that its enforcement procedures comply with 49 CFR 26.29(d). In addition, MDOT will include the updated prompt payment clause in its signed contracts with prime contractors. MDOT also will update the 2012 DBE Program Manual to include provisions to ensure that prompt payment clauses are included in subcontract agreements. MDOT will update the necessary documents and processes within 60 days from the final report.

**FTA Response:** FTA agrees with MTA's response. To close this deficiency, within 60 days of receipt of the issuance of the final report, MTA must submit to FTA a copy of its new DBE Program Plan and RFP template that describes in detail MTA's procedures to ensure flow-down of the required contract clauses to subcontract agreements. The Program Plan should document how these procedures will be applied to MTA's subrecipients.

## **C) Legal Remedies**

**Basic Requirement** (49 CFR 26.37): Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying the legal and contract remedies under federal, state, and local laws.

**Discussion:** During this compliance review, there were no deficiencies found in the area of Legal Remedies. MTA operates under the larger legal umbrella of MDOT and, therefore, follows MDOT

practices and procedures. However, in any revision to the MTA DBE Program, clear descriptions of these practices should be included to match what actually takes place.

## **10. Certification Standards**

Basic Requirement (49 CFR 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 as part of this process.

Discussion: MTA is a non-certifying member of the Maryland Unified Certification Program (UCP), which is administered by MDOT. No deficiencies were found.

## **11. Certification Procedures**

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

Discussion: MTA is a non-certifying member of the Maryland UCP, which is administered by MDOT. No deficiencies were found.

## **12. Recordkeeping and Enforcement**

### **A) Bidders List**

Basic Requirement (49 CFR 26.11): The recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, and age of firm and annual gross receipts of the firm.

Discussion: During the DBE Compliance Review, it was indicated that MTA compiles a "plan holders list" but not a bidders list. The plan holders list does not collect contractor firm age and annual gross receipts information. Accordingly, the plan holders list does not meet the requirements of a bidders list as described in 49 CFR 26.11. According to MTA, the plan holders list captures all who are interested in a particular contract. This list is open for all. Thus, MTA's DBE Program does address the requirement to compile a bidders list. The draft program plan states that one of the purposes of the bidders list requirement is its potential use in calculating overall goals. A bidders list would include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

Corrective Action and Schedule: MTA must review and verify that it is meeting the requirements of 49 CFR 26.11 within 60 days of the final report. In particular, MTA must start collecting information on firm age and annual gross receipts in its bidders list.

MTA Response: MTA will update the information collected as part of the plan holder's list to include categories for the age of a firm and annual gross receipts. MTA's website is in the process of being updated to include fields for this information. These changes will be effective on or before October 15, 2012.

FTA Response: FTA agrees with MTA's response. To close this deficiency, MTA must submit to FTA evidence of its or MDOT's procedures to collect the additional contractor information required for the bidders list to be compliant with 49 CFR 26.11. These procedures must be described in MTA's new DBE Program Plan, which must be submitted to FTA within 60 days of the issuance of the final report.

## **B) Monitoring**

Basic Requirement (49 CFR 26.37, 26.55): The recipient must include a monitoring and enforcement mechanism to ensure that work allocated to DBEs (at contract award or subsequently) is actually performed by the DBEs to which the work was allocated.

Discussion: During the DBE Compliance Review, MTA outlined its monitoring processes. From a financial point of view, projects are tracked using MTA's Financial Management Information System (FMIS) and Integrated Financial Management Information System (IFMIS). These systems allow MTA to track both prime and subcontractor dollars billed to projects on a monthly basis. The physical observation of on-site work and payroll certification is a collaborative effort between the Office of Fair Practices and the Project Managers. The Project Managers observe the progress of projects in the field. Subcontractors are responsible for bringing problems with payments from primes and other related issues to MTA's attention via the Project Managers. Therefore, monitoring is included as a part of MTA's central DBE Program, but it is not clearly described in any written documentation. Substantial amounts of funds are awarded each year to smaller transit systems that also expend funds for similar activities and projects. Monitoring requirements of the FTA should also follow these funds, i.e., be passed down to the sub-grantees. However, no evidence was presented that there was a clear set of procedures for monitoring the transit subrecipients receiving grants from MTA through the LOTS program.

Corrective Action and Schedule: MTA must review and verify that it is meeting the requirements of 49 CFR 26.37 and 26.55 within 60 days of the final report. In particular, MTA must develop and document a method to monitor DBE work performed for its subrecipients.

MTA Response: The MTA OLTS is responsible for ensuring compliance of its subrecipients. The Regional Planning staff within the OLTS will use the compliance procedures set forth in the updated 2012 DBE Program Manual (pp. 64-71) to monitor transit subrecipients receiving grants through the LOTS program. Further, in an effort to employ the best practices for meeting the requirements of 49 CFR 26.37 and 26.55, MDOT will evaluate these procedures to determine whether any changes should be made to improve the process. MDOT welcomes any best practices advice from FTA regarding this matter.

FTA Response: FTA partially agrees with MTA's response to the noted deficiency. MDOT has not sufficiently detailed whether OLTS is capable of implementing the DBE Program on its own, or whether it should be seeking assistance and guidance from MTA's office of Fair Practices. To close this deficiency, within 60 days of the issuance of the final report, MTA must submit to FTA an updated DBE Program Plan and any related materials describing MTA's procedures to ensure it and its LOTS subrecipients monitor DBE compliance as required by 49 CFR 26.37 and 26.55. The policies and procedures must also describe the responsibilities of the individual offices to implement these rules. MTA must also provide FTA with evidence of documented implementation of the monitoring procedures. The materials submitted may include procurement boilerplates or

contract templates containing descriptions of the mechanisms to ensure compliance, worksite review schedules and checklists, and any other materials produced to comply with this requirement.

C) Reporting to DOT

Basic Requirement (49 CFR 26.11): The recipient must provide data about its DBE Program to FTA on a regular basis. The recipient must transmit the DBE Awards or Commitments and Payments at the intervals stated. In addition, for ARRA funds, the recipient must transmit an ARRA Uniform Report of DBE Commitments/Awards and Payments.

Discussion: During this Compliance Review, there were no deficiencies found with regard to the reporting to DOT requirement. All of the accomplishments reports, including ARRA reports have been developed and submitted in a timely and accurate manner.

## SECTION 7 – SUMMARY OF FINDINGS

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Preliminary Description of Findings	Suggested Corrective Actions	Response Days/Date
1	DBE Program Plan	26.21	Deficiency	MDOT's Program Manual does not provide sufficient detail about how each aspect of the MTA DBE Program is implemented as a direct recipient of FTA grant funds.	Submit to FTA evidence of documented and detailed procedures and guidelines that cover each aspect of a transit-related DBE Program.	May 3, 2013
2	Policy Statement	26.23	Deficiency	Policy Statement letter is out-of-date without current signature. No evidence MTA circulates the policy inside the organization or to the DBE and non-DBE business community.		Closed
3	DBE Liaison Officer	26.25	Deficiency	MDOT's Program Manual does not sufficiently identify who is responsible for implementing all aspects of its DBE Program, including the LOTs program.	Document who is responsible for implementing all aspects of DBE Program, including LOTs program.	May 3, 2013
4	DBE Financial Institutions	26.27	Deficiency	MTA provided no evidence that it has made efforts to identify DBE financial institutions, use these institutions, or encourage prime contractors to use them.	Provide evidence of a program to identify DBE financial institutions on a periodic basis and to encourage use by MTA and its prime contractors.	May 3, 2013
5	DBE Directory	26.31	No Deficiency			Not Applicable
6	Overconcentration	26.33	Deficiency	MTA provided no evidence that it had considered or calculated industry concentration of DBE contracting.	Submit updated DBE Program containing the procedures for conducting an overconcentration analysis.  Conduct overconcentration analysis, evaluate results, and, if appropriate, recommend measures to address overconcentration.	May 3, 2013  120 Days from Final Report
7	Business Development Programs	26.35	No Deficiency			Not Applicable
8	Determining/Meeting Goals					
	A) Calculation	26.45	No Deficiency			Not Applicable
	B) Public Participation and	26.45	No Deficiency			Not Applicable

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Preliminary Description of Findings	Suggested Corrective Actions	Response Days/Date
	Outreach					
	C) Transit Vehicle Manufacturers (TVM)	26.49	Deficiency	MTA provides grants to subrecipients to purchase transit vehicles. Subrecipients are responsible for collecting TVM Certifications for their vehicle purchases. However, MTA provided no evidence that it collects or review certifications and could not document compliance.	Submit updated DBE Program Plan that details responsibility for oversight of the LOTS vehicle purchases and the procedures for compliance with TVM requirements.	May 3, 2013
	D) Race-Neutral	26.51	Deficiency	MTA has projected a portion of its goal for race-neutral participation based on the DBE share of MTA prime contracts in FFY 2005–09. Little or no evidence provided of monitoring race-neutral percentages or substantial efforts to meet maximum feasible portion of overall goal using race-neutral means of facilitating DBE participation.	Submit updated DBE Program Plan that details the race-neutral measures that will be used.	May 3, 2013
	E) Race-Conscious	26.51	Deficiency	MTA reports awards with race-neutral and race-conscious percentages but did not provide documentation of how/when it evaluates its achievements throughout the year to make any adjustments required to contract goals.	Submit internal report for tracking and evaluating race-conscious achievement for FY 2012.	May 3, 2013
	F) Good Faith Efforts	26.53	No Deficiency			Not Applicable
	G) Protecting Against Termination for Convenience	26.53	Deficiency	Guidance for protecting against termination for convenience is outdated in the DBE Program.	Submit an updated DBE Program Plan that details the new policies and procedures.	May 3, 2013
	H) Counting DBE Participation	26.55	No Deficiency			Not Applicable
	I) Quotas	26.43	No Deficiency			Not Applicable
9	Required Contract Provisions					
	A) Nondiscrimination	26.13	Deficiency	Required contract clause incorporated by reference rather than directly included in contract. Clause included by reference refers to 49 CFR 23 and is therefore out-of-date.	Update DBE Program and contract boilerplate clauses as stipulated in 49 CFR 26.13 and include directly in signed contract documents, including LOTS-related contracts; ensure clause is in all prime contracts/subcontracts.	May 3, 2013
	B) Prompt Payment	26.29	Deficiency	Prompt payment contract clause incorporated	Update DBE Program and contract	May 3, 2013

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Preliminary Description of Findings	Suggested Corrective Actions	Response Days/Date
				by reference rather than directly included in contract. Clause does not include a provision for prompt payment of retainage as required by 49 CFR 26.29(b) or establish appropriate means of enforcement as required by 49 CFR 26.29(d).	boilerplate clauses to include provision for prompt payment of retainage as required by 49 CFR 26.29(b) and establish appropriate means of enforcement as required by 26.29(d). Include revised prompt payment clause directly in signed contract documents and submit all subcontract agreements to MTA to ensure inclusion of prompt payment clause.	
	C) Legal Remedies	26.37	No Deficiency			Not Applicable
10	Certification Standards	26.67	No Deficiency			Not Applicable
11	Certification Procedures	26.83	No Deficiency			Not Applicable
12	Record Keeping and Enforcements					
	A) Bidders List	26.11	Deficiency	MTA's bidders list does not collect contractor firm age and annual gross receipts information.	Submit evidence that plan holder's list is updated to include age of firm and annual gross receipts.	May 3, 2013
	B) Monitoring	26.37/26.55	Deficiency	MTA needs to develop a clear set of documented procedures for monitoring the transit subrecipients receiving grants from MTA through LOTS program.	Clarify the oversight role of the Office of Fair Practices with OLTS. Submit evidence of oversight monitoring on direct and subrecipients contracts and worksites.	May 3, 2013
	C) Reporting to DOT	26.11	No Deficiency			Not Applicable

## SECTION 8 – LIST OF ATTENDEES

### Opening Conference Attendees

Name	Position	Organization
Paula Cullings	Director, Office of Fair Practices	MTA
Chris Blake	Assistant to the Administrator	MTA
James Knighton	Director, Procurement	MTA
Byron Smith	Deputy Counsel	MTA
Martin Lee, Jr.	Compliance Officer, Secretary's Office	MDOT
Christine Romans	Deputy Chief Administrator, Chief Financial Officer	MTA
Tawanda Carter	Manager, Capital Programming	MTA
John Gasparine	Program Administrator	MTA
Michele Goldsmith	Title VI Compliance	MTA
Deborah Horsey	EEO Officer	MDOT/MTA
Carolyn Brown	EEO Officer	MTA
Farnese McDonald	EEO Officer	MTA
Randelle Ripton	Technical Lead	FTA
Britney Berry	Equal Opportunity Specialist	FTA
Jonathan Skolnik	Vice President	JFA
Rami Chami	Research Analyst	JFA
Devon Cartwright-Smith	Economist	JFA
Mike Brooks	Research Associate	JFA
Ken Weeden	Principal	KWA
Wilfred Nixon	Vice President	KWA

### Interview Attendees

Department	Name	Title
MTA Accounting	Christine Romans	Deputy Chief Administrator, Chief Financial Officer
	Heidi Tarleton	Financial Manager
	Russ Mueller	Accounting Manager
MTA Capital Planning/Grants Management	Tawanda Carter	Grants Manager
	John Gasparine	Grants Administrator
MTA Procurement	James Knighton	Director
MTA Legal	Byron Smith	Deputy Counsel
MTA Contracting Officers	Vanessa Ashe	Contracting Officer
	Gary Lockett	Contracting Officer
MTA Project Management	Mel Mitzel	Construction Manager
MTA DBE Liaison Officer	Paula Cullings	Director, Office of Fair Practices
	Valerie Moore	DBE Officer
NAACP and DBE Contractor	Tessa Hill-Astin	President, NAACP-Baltimore Branch
	Tyree Huddleston	DBE Construction Contractor, NAACP Advisor
Metro PA/LED Systems Replacement Prime Contractor	Robert Keelor	International Display Systems, Vice President
Metro PA/LED Systems Replacement Prime Contractor	Walter Hill	President, Maryland Sound and Image, Inc.
Bush St. Roof Replacement Prime Contractor	Timothy Caldwell	General Manger, Ruff Roofers

### Closing Conference Attendees

<b>Name</b>	<b>Position</b>	<b>Organization</b>
Ralign Wells	Administrator	MTA
Paula Cullings	Director, Office of Fair Practices	MTA
Valerie Moore	M/DBE Officer, Office of Fair Practices	MTA
Chris Blake	Assistant to the Administrator	MTA
James Knighton	Director, Procurement	MTA
Byron Smith	Deputy Counsel	MTA
Eva Austin	Deputy Secretary	MDOT
Martin Lee Jr.	Compliance Officer, Secretary's Office	MDOT
Christine Romans	Deputy Chief Administrator, Chief Financial Officer	MTA
Tawanda Carter	Manager, Capital Programming	MTA
John Gasparine	Program Administrator	MTA
Deborah Horsey	EEO Officer	MDOT/MTA
Randelle Ripton	Technical Lead	FTA
Britney Berry	Equal Opportunity Specialist	FTA
Jonathan Skolnik	Vice President	JFA
Rami Chami	Research Analyst	JFA
Devon Cartwright-Smith	Economist	JFA
Mike Brooks	Research Associate	JFA
Ken Weeden	Principal	KWA
Wilfred Nixon	Vice President	KWA