



F E D E R A L T R A N S I T A D M I N I S T R A T I O N

Metropolitan Washington Airports Authority
DBE Program Compliance Review

April 2016
Federal Transit Administration



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology – This report details the findings of a Compliance Review of the Metropolitan Washington Airports Authority's (MWAA) Disadvantaged Business Enterprise (DBE) program implementation. The Compliance Review examined this agency's DBE program procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and MWAA. In addition, the following entities were interviewed as part of this review: MWAA officials, the Greater Washington Hispanic Chamber of Commerce, Minority Chamber of Commerce, National Association of Minority Contractors, prime contractors, and subcontractors. The three-day review included interviews, assessments of data collection systems, and review of program and contract documents.

MWAA's DBE Program includes the following positive program elements –

Positive Program Elements

- MWAA has applied DBE Program requirements on Phase 1 and Phase 2 of the Dulles Corridor Metrorail Project; it has set project-specific DBE goals, and has initiated an overall DBE compliance and monitoring program for the Project.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- MWAA does not have an updated DBE Policy Statement, and the policy statement is not posted on the website or circulated internally and externally.
- MWAA does not have a process to encourage contractors to utilize DBE financial institutions.

The Program has the following substantive deficiencies –

Substantive Deficiencies

- MWAA's DBE certification management software, and electronic DBE data transfer system for the Virginia UCP require updating.
- Semi-annual reports are incorrect and have been submitted late.
- MWAA is not implementing its Good Faith Efforts procedure to ensure that bidders have met DBE goals.

MWAA's DBE participation for the Dulles Corridor Metrorail Project Phase 1 was reported over a period of six years. According to MWAA's calculation, the goal attainment was reported at 28.77%, exceeding the overall 13.24% project-specific goal. MWAA attributes the increased participation to its outreach efforts and on-going communication and collaboration with the prime contractors performing on the project.

The review team examined Phase 1 semi-annual reports to verify the goal attainment. It was found that MWAA did not consistently report DBE dollars against total prime contract dollars, but in most cases reported DBE dollars against total subcontract dollars, while reporting zero dollars for prime contracts. Consequently, total subcontract dollars exceed the total prime contract

dollars. This method of reporting could result in an overstatement of the overall percentage for DBE goal attainment.

A 25% project-specific goal was established for Phase 2 of the Dulles Corridor Metrorail Project. Based upon the semi-annual DBE reports submitted, as of the June 1, 2015 report, the cumulative goal attainment is at 53.05%. Notwithstanding, this report highlight several steps to help ensure the DBE program is implemented in good faith.

I. General Information

This chapter provides basic information concerning this Compliance Review of the Metropolitan Washington Airports Authority (MWAA). Information on MWAA, the review team, and the dates of the review are presented below.

Grant Recipient:	Metropolitan Washington Airports Authority
City/State:	Washington, DC
Grantee Number:	6603
Executive Official:	John Potter, President and Chief Executive Officer
On-site Liaison:	Richard Gordon, Manager, Department of Supplier Diversity
Report Prepared By:	Milligan and Company, LLC
Dates of On-site Visit:	October 20 – 22, 2015
Compliance Review Team Members:	Lillie Claitt, Lead Reviewer Habibatu Atta Kristin Szwajkowski

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

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

3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a Compliance Review of MWAA's DBE Program is necessary.

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

This Compliance Review is not solely designed to investigate discrimination against individual DBE firms or complainants; or to adjudicate these issues on behalf of any party.

3.2 Objectives

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

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

The objectives of this Compliance Review are to:

- Determine whether MWAA is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of MWAA's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies; and document the compliance status of each component.
- Gather information and data regarding the operation of MWAA's DBE Program Plan from a variety of sources, including DBE program managers, other MWAA management personnel, DBEs, prime contractors, and other stakeholders.

4. Background Information

The purpose of this section is to provide an understanding of MWAA's operations and scale. The section highlights MWAA's services, budget, and the history of its DBE program.

4.1 Introduction to MWAA and Organizational Structure

The Metropolitan Washington Airports Authority (MWAA) grew out of the Metropolitan Washington Airports Act of 1986, which provided for the transfer of Washington Dulles International Airport and Ronald Reagan Washington National Airport from the Federal Aviation Administration to MWAA under a 50-year lease. The Federal government remains as the leaseholder. MWAA is responsible for operation of, and capital improvements to, the two airports. MWAA is also currently engaged in a design-build project to extend the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system 23.1 miles to connect the Dulles Corridor in northern Virginia with the greater Washington, DC area, enabling travel to Dulles International Airport. MWAA is working in partnership with the Virginia Department of Transportation, the Virginia Department of Rail and Public Transportation, Fairfax County, and Loudoun County to fund the design and construction of the new rail line. Upon completion, it will be transferred to WMATA for operation and maintenance.

The project originated outside of MWAA with a Comprehensive Agreement dated June 11, 2004 between the Virginia Department of Rail and Public Transportation and Dulles Transit Partners. On March 24, 2006, a Memorandum of Understanding was signed that transferred control of the project to MWAA by assigning it the Comprehensive Agreement and providing it control over other formerly state-run entities, such as the Dulles Toll Road, for use in funding the rail expansion project.

The Dulles Metrorail Project is a two-phase effort. Phase 1 extended WMATA service 11.7 miles from the West Falls Church, VA Station to Reston, VA. Phase 2 will extend the line from Reston through Dulles International Airport and into Loudoun County. FTA funded Phase 1 of the project with \$900 million in Section 5309 New Starts and \$75 million in Surface Transportation Funds. The FTA grants for the Dulles Corridor Metrorail Project marked the first use of federal funds for a public transit project by MWAA. The total Phase 1 Project costs exceeded \$3 billion. This project is substantially complete, and was turned over to WMATA in July 2014 for operation.

While Phase 2 will not be funded with direct FTA grants, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan funds of \$1.28 billion were approved and finalized in August 2014, which would require MWAA to comply with FTA procurement requirements in accordance with 49 CFR Part 80.9, Credit Assistance for Surface Transportation Project, Federal Requirements.

MWAA fosters the inclusion of small, local, minority, and women-owned businesses in the business and procurement opportunities of the Airports Authority through three programs. The programs consist of the federally mandated Disadvantaged Business Enterprise (DBE), Airport Concessions Disadvantaged Business Enterprise (ACDBE), and the MWAA-created Local Disadvantaged Business Enterprise (LDBE) program. These programs are administered by the Department of Supplier Diversity (formerly known as the Equal Opportunity Programs (EOP)

Department). The DSD is responsible for performing the functions of DBE certification (as a member of the Virginia Unified Certification Program), pre-award and post-award DBE/LDBE contract compliance, and outreach to the small, minority and women-owned business community. The DSD is led by a Department Manager who also serves as MWAA's DBELO. The organizational chart provided at the site visit indicates that the department currently has sixteen positions, (eight permanent full-time positions and eight contractor positions). Two of the permanent positions are currently vacant.

4.2 Budget and FTA-Assisted Projects

MWAA has one mega project currently underway, Dulles Corridor Metrorail Project (DCMP), Phase 2, a multi-year construction project that is the continuation of Phase 1. The Project will span from Fairfax County, Virginia, to Dulles International Airport, and beyond the airport to Route 772 in eastern Loudoun County, Virginia. The Design-Build Package will include the rail line, stations, and systems elements for all of Phase 2 (approximately 11.4 miles).

DCMP Phase 2 is funded through contributions from the Commonwealth of Virginia, the County of Fairfax, the County of Loudoun, the Northern Virginia Transportation Authority and the Metropolitan Washington Airports Authority (MWAA). The Project has also been approved for a loan for up to \$1.278 billion, pursuant to a Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan Agreement between MWAA and the United States Department of Transportation, acting by and through the Federal Highway Administrator. The TIFIA Loan is dated August 20, 2014, with a Maturity Date of October 1, 2044. As evidence of repayment, MWAA has issued Dulles Toll Road Junior Lien Revenue Bonds (TIFIA Series 2014) to the TIFIA Lender. In addition, the County of Fairfax and the County of Loudoun have been approved for TIFIA program loans for the project.

MWAA's Phase 2 Project is funded as follows:

Funding Source	Funding Amount	(x1000)
State: Commonwealth of Virginia ¹	\$	323,300
Local: Fairfax County ²	\$	522,039
Local: Loudoun County ³	\$	274,893
Northern Virginia Transportation Authority	\$	33,000
Airports Authority (Aviation Funds) ⁴	\$	234,795
Airports Authority (Dulles Toll Road) ⁵	\$	1,390,198
Subtotal:	\$	2,778,236

Notes:

1. The total of \$323.3 million does not include \$259 million that has been provided by the Commonwealth to pay interest on Dulles Toll Road revenue bonds.
2. The Fairfax County contribution is 16.1% of the total Rail Project (Phase 1 + Phase 2).
3. The Loudoun County contribution is 4.8% of the total Rail Project budget (Phase 2 + Phase 2).
4. The Airports Authority contribution is 4.1% of the total Rail Project budget (Phase 1 + Phase 2).
5. The Airports Authority contribution to the Project from Dulles Toll Roll Revenues is not limited by amount or percentage of Project costs. The amount represents the expected net proceeds from debt secured by Dulles Toll Road Revenues.

4.3 DBE Program

Richard Gordon, Manager, Department of Supplier Diversity, is designated as the DBE Liaison Officer (DBELO) for MWAA. According to the DBE Program Plan, he has overall responsibility for monitoring and enforcing the DBE Program to ensure compliance with appropriate federal and state laws and regulations. Mr. Gordon has direct access to MWAA's President/Chief Executive Officer, John Potter. The DBELO is responsible for developing, implementing and monitoring the DBE Program in coordination with other appropriate MWAA staff and officials. Some of his duties and responsibilities include: managing the work of subordinate and contract staff in carrying out DBE Program activities; coordinating with other MWAA departments to determine overall DBE goals, gathering and reporting statistical data and other information as required by DOT; identifying contracts and procurements so that DBE goals are included in solicitations; reviewing third party contracts and purchase requisitions for compliance with the program, representing MWAA with the Virginia UCP; approving certification or denial decisions; and advising the President and CEO on DBE matters and achievements.

MWAA has implemented a race conscious / race neutral program from its inception in 1986. The DBELO indicated that the agency commissioned a disparity study in the late 1980s. In the recent goal setting methodology for the DCMP Phase 2, MWAA reviewed a local disparity study commissioned by the State of Maryland.

5. Scope and Methodology

5.1 Scope

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

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to MWAA DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by MWAA as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed, made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (not) exists and address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]

- A shortfall analysis and corrective action plan when MWAA did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include MWAA seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- A non-discrimination and a prompt payment clause are in all FTA-assisted contracts and a prompt payment verification process. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65 -26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

5.2 Methodology

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

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

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

- Most current DBE Program plan
- DBE goal methodology submissions
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years
- A Memorandum of Understanding or similar documents indicating MWAA's participation in the Unified Certification Program (UCP)
- A list of FTA-assisted contracts awarded during the current and previous fiscal years
- A list of DBE firms that have worked on FTA-assisted projects sponsored by MWAA
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by MWAA

- Procedures for monitoring all DBE program participants to ensure compliance with the DBE requirements, including but not limited to, a prompt payment verification process, a process for ensuring work committed to DBEs is actually performed by DBEs, and any DBE complaints against the agency or its prime contractors during a specified time period.

The on-site DBE Compliance Review of MWAA took place from October 20 to 22, 2015. An opening conference was conducted at the beginning of the Compliance Review with FTA representatives, MWAA staff, and the review team. The following people attended the meeting:

Federal Transit Administration

Anita Heard	FTA Equal Opportunity Specialist
Janelle Hinton	FTA Program Analyst
Antoinette Davis	FTA Equal Opportunity Specialist
Britney Berry	FTA DBE Coordinator
Jennifer Riess	FTA Equal Opportunity Specialist
Lynn Bailey	FTA Region III Civil Rights Officer

Metropolitan Washington Airports Authority

John E. Potter	President and Chief Executive Officer
Jerome L. Davis	Executive Vice President and Chief Revenue Officer
Andrew Rountree	Chief Financial Officer
Mark Adams	Deputy Chief Financial Officer
Richard Gordon	Manager, Department of Supplier Diversity
Steven Baker	Vice President, Customer and Concessions Development
Jane Kee	Manager, Internal Controls & Compliance

Milligan and Company, LLC

Lillie Claitt	Lead Reviewer
Sandra Swiacki	Director
Habibatu Atta	Reviewer
Kristin Szwajkowski	Reviewer

Following the opening conference, the review team examined MWAA's DBE Program Plan and other documents submitted by the DBE Liaison Officer. The team then conducted interviews with MWAA regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from its diversity, procurement, legal and finance offices. A sample of contracts was then selected and reviewed for their DBE elements. A sample of DBE certifications were reviewed to see if the requirements were met. Additional interviews with prime contractors, subcontractors, and interested parties were also conducted

At the end of the review, FTA representatives, MWAA staff and the review team convened for the final exit conference. At the exit conference, initial findings and corrective actions were discussed with MWAA. Attending the conference were:

Federal Transit Administration

Anita Heard	FTA Equal Opportunity Specialist
Janelle Hinton	FTA Program Analyst
Antoinette Davis	FTA Equal Opportunity Specialist
Britney Berry	FTA DBE Coordinator
Jennifer Riess	FTA Equal Opportunity Specialist
Lynn Bailey	FTA Region III Civil Rights Officer

Metropolitan Washington Airports Authority

John E. Potter	President and Chief Executive Officer
Jerome L. Davis	Executive Vice President and Chief Revenue Officer
Andrew Rountree	Chief Financial Officer
Mark Adams	Deputy Chief Financial Officer
Julia Tesoriero Hodge	Deputy Vice President, Corporate Risk & Strategy
Richard Gordon	Manager, Department of Supplier Diversity
Steven Baker	Vice President, Customer and Concessions Development
Jane Kee	Manager, Internal Controls & Compliance
Joseph Grantham	Director, Project Controls & Contracts

Milligan and Company, LLC

Lillie Claitt	Lead Reviewer
Habibatu Atta	Reviewer
Kristin Szwajkowski	Reviewer

Following the site visit, a draft and final report was compiled and transmitted to MWAA for comments on February 26, 2016. The final report incorporates MWAA's responses and identifies the remaining open corrective actions.

5.3 Stakeholder Interviews

This section discusses information gathered during interviews with community representatives, stakeholder groups, and contractors regarding MWAA's DBE Program.

Prior to the on-site, the Review interviewed Capital Rail Constructors (JV), Interlock Steelworkers, Jacobs Engineering Group and Crystal Steel Fabricators, Inc.

The interview questions included:

- *What is your contracting experience with the organization?*
- *Give a brief description of your current/active contract.*
- *What is the dollar value of your contract?*
- *What are the payment terms?*
- *How much have you been paid to date?*
- *How is your working relationship with the prime or subcontractor?*
- *Have there been any contract issues?*

According to the primes and the subcontractors, they have not experienced any performance or payment issues on their respective contracts, and MWAA has a cooperative working relationship with the DCMP Project Team.

The prime contractors were familiar with MWAA's DBE Program and the DBE requirements for the Dulles Corridor Metrorail Project. Each prime contractor provided an overview of how they solicited DBEs for participation on the project. Strategies included establishing a website dedicated to the DCMP to post information about the project including the DBE goal, DBE outreach events, a link to the VA UCP website, subcontracting opportunities, and the status of subcontract awards. The prime contractors stated that there have not been any DBE performance issues or DBE substitutions on their respective contracts and that MWAA conducts on-site inspections, and monitors DBE participation.

In response to a prompt payment question, one prime contractor stated that its subcontractors are paid seven days after receipt of payment from MWAA. The contractor stated that MWAA withholds a standard 5% retainage on the contract, and the same percentage is withheld from subcontractors. The second prime contractor stated that subcontractors are paid within ten days of receipt of payment from MWAA, and retainage is not being withheld on the contract. Both prime contractors indicated that DBEs are considered for change order work. One prime contractor stated that they consider DBEs for change order work if the work allows time to solicit DBEs, and if it is the same work and the same subcontractor performing the work.

The DBE subcontractors interviewed were also familiar with MWAA's DBE Program. Each DBE subcontractor stated that they were contacted by the prospective prime contractor via email or fax to submit a bid. The subcontractors stated that there have been no disputes regarding work performance or progress payments. The DBE subcontractor stated 10% was withheld from progress payments, and all invoices, including retainage withheld was paid in full. According to both DBE subcontractors, MWAA has not conducted any on-site monitoring regarding their firm's participation on the contracts.

The review team also contacted business advocacy organizations regarding their interaction with MWAA on DBE Program issues. The purpose of this activity was to invite the organizations to participate in interviews to determine how MWAA presents its DBE Program to external stakeholders.

Four organizations were contacted to participate in the stakeholder interviews:

- Greater Washington Hispanic Chamber of Commerce (GWHCC): supports the economic development of the Washington, DC metropolitan region by facilitating the success of Latino and other minority-owned businesses and the communities they serve through networking, advocacy, education, and access to capital
- Minority Chamber of Commerce (MCC): core mission includes business education, networking, and facilitating trade and investment worldwide
- National Association of Minority Contractors (NAMC): provides access, advocacy and development for members in collaboration with strategic alliances
- Association of Builders and Contractors (AB&C): pro-business association representing construction and construction-related firms.

Representatives from three of the agencies agreed to participate - GWHCC, MCC, and NAMC. The interview questions presented were:

1. *Are you familiar with the agency's DBE Program?*
2. *Have you been requested to participate in the development of or comment on the agency's DBE goal?*
3. *Is your organization made aware of contracting/subcontracting opportunities on the agency's contracts? If so, how?*
4. *How often is your organization contacted to provide referrals for the agency's contracting opportunities?*
5. *Do you participate in any outreach efforts organized by the agency?*
6. *What is your view of the effectiveness of the agency's DBE Program?*
7. *Are you aware of any concerns about the DBE Program from members?*
8. *Do you have any suggestions for the agency to improve their DBE Program?*

The representatives of the three organizations were unable to speak to the effectiveness of MWAA's DBE Program. However, each organization expressed two similar issues with the DBE Program: (1) they would like more coordination with MWAA to promote partnering and outreach efforts with their respective agency; and (2) there is too much paperwork required to become certified as a DBE.

Each organization indicated that they were familiar with MWAA, and somewhat familiar with the DBE Program. Two of the organizations indicated that information about pre-bids and contracting opportunities are received via email or fax. One representative stated that its organization is contacted two to three times per month with requests for referrals. One representative noted that its membership has not provided much feedback on MWAA's DBE Program to date, and another indicated that MWAA's DBE Program is only briefly spoken of during informational meetings. One organization noted that the only communication from MWAA to its membership about contracting/subcontracting opportunities was at a new member reception earlier in the year.

6. Findings and Advisory Comments

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

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

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

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

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

6.1 DBE Program Plan

Basic Requirement

(49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE Program. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

Discussion

During this compliance review, no deficiencies were found with the requirement for DBE Program Plan.

MWAA's DBE Program Plan was submitted in October 2007, and revised in August 2011 to include the Fostering Small Business Participation element. The revised DBE Program Plan contains all of the requirements set forth in the DBE regulations, and was approved by FTA in June 2013. Several corrective actions and recommendations listed in this report will require additional updates to the program plan.

6.2 DBE Policy Statement

Basic Requirement

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

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Policy Statement.

The policy statement included in the revised DBE Program Plan states the objectives and commitment to the DBE Program; however, it is signed by the former President and CEO, and dated September 14, 2007. The policy statement is not located on the website, and there was no verification that the policy was distributed internally and externally.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights evidence that the Policy Statement is signed by the current President and CEO, incorporated in the revised DBE Program Plan, posted on MWAA's website, and disseminated internally and externally.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for DBE Liaison Officer.

The DBE Program identifies Richard Gordon, Manager Department of Supplier Diversity, as DBELO, responsible for implementing all aspects of the DBE Program, including the DBE compliance and monitoring activities for the Dulles Corridor Metrorail Project. The department's name was changed in July 2015 from Equal Opportunity Programs, to the Department of Supplier Diversity (DSD). MWAA's DBE Program indicates that Mr. Gordon has direct and independent access to the Chief Executive Officer concerning DBE Program matters. An organization chart dated July 2015 was provided to the review team, and displays Mr. Gordon's position in the organization. This organization chart is an update to the chart contained in the revised DBE Program Plan. Mr. Gordon stated that he meets with the President and CEO monthly regarding various DBE program matters.

The DSD organization chart indicates the DBELO has a current headcount of fifteen positions that assist in administering the DBE Program - seven permanent positions, and eight contractor support positions that report to him. Two of the permanent positions are currently vacant.

The permanent staff positions include the certification supervisor, certification specialist, two compliance specialists, administrative assistant, data analyst/technician, and outreach specialist. The certification supervisor oversees the performance of two contractor certification specialists. MWAA's three-year consultant contract for certification assistance is set to expire at the end of December 2015. The DBELO indicated that the contract will not be renewed and that MWAA plans to hire permanent employees for the certification specialist positions.

The contractor support staff includes the following:

Located in DSD Offices	Located in DCMP Project Office
2 – Certification Specialists	1 – Compliance Manager – DBE/Davis Bacon
1 – Compliance Specialist	1 – Compliance Specialist
2 – Administration Assistants	1 – Equal Opportunity Program Compliance

The DBELO is responsible for overseeing DBE compliance, monitoring, and reporting activities for the Dulles Corridor Metrorail Project (DCMP), Phase 1 and Phase 2. The DBELO stated that he coordinates with the DCMP Project Management team to ensure overall DBE compliance, and is in daily communication with the Compliance Manager regarding DBE compliance matters. There do not appear to be any apparent conflicts of interest.

6.4 DBE Financial Institutions

Basic Requirement (49 CFR Part 26.27)

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

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Financial Institutions.

MWAA's DBE Program states that it has identified twelve minority and women-owned banks and community development financial institutions in the Greater Washington, DC Metro area. The review of the list contained in the revised DBE Program Plan, indicate a total of nine financial institutions were identified (three were listed twice). Subsequent to the on-site, MWAA provided a list of financial institutions that it has depository banking relationships with in various capacities. Of the fifteen financial institutions, two are minority-owned.

Operations:

Bank of America
M&T Bank

Trustee/Custodial Services:

M&T/Wilmington Trust

Linked Deposit Program (Certificates of Deposit from banks with an "Outstanding Community Reinvestment Act Rating):

<i>Bank of America</i>	<i>PNC Bank</i>
<i>BB&T Bank</i>	<i>TD Bank</i>
<i>City First Bank*</i>	<i>Wells Fargo</i>
<i>Industrial Bank of Washington*</i>	

Local Deposit Program (Certificates of Deposit from banks in the region with "Satisfactory" Community Reinvestment Act rating):

<i>Access National Bank</i>	<i>John Marshall Bank</i>
<i>Chain Bridge Bank</i>	<i>Premara Bank</i>
<i>Eagle Bank</i>	

(*Minority-owned banks)

The DBE Program indicates that language will be included in federally-assisted solicitations encouraging contractors to use banks that are controlled by socially and economically disadvantaged individuals. It also states that the list of such financial institutions will be provided to bidders, proposers and contractors upon request. The solicitation documents reviewed did not contain language encouraging the use of minority-owned financial institutions.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights evidence of efforts to encourage bidders, proposers, and contractors to use DBE financial institutions.

6.5 DBE Directory

Basic Requirement (49 CFR Part 26.31)

A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Directory.

MWAA is a certifying agency in the Commonwealth of Virginia Unified Certification Program (VUCP), and maintains a database of all firms it identifies as eligible to participate as DBEs. MWAA uses a certification management system called EOP2. The DBELO stated that the system was customized in 2005, but is now obsolete. A solicitation was recently issued for the purchase of new software.

In accordance with the VUCP agreement, the Virginia Department of Small Business and Supplier Diversity (DSBSD) hosts the DBE Directory on its website. The directory provides the DBE name, address, phone number(s), type of work (by NAICS) each DBE is certified to perform, and the certifying agency. The review of the directory online indicates that it reflects certified vendors as of 12:00 AM the day of inquiry.

According to the Virginia UCP Agreement, MWAA is required to submit updates to the UCP Directory monthly via electronic transmission. However, due to an unresolved Information Technology (IT) issue, DBEs recently certified by MWAA have not been updated in the directory. At the time of the review, three newly certified firms listed below were not updated in the directory, and two firms that had been removed were still listed.

Firm	Type	Date of Approval / Removal
DDE, Inc.	New	July 6, 2015
F & L Construction	New	July 29, 2015
RJ Washington Company	New	February 20, 2015
M S Construction	Removal	January 17, 2014 (<i>letter of intent</i>)
Sheladia Associates	Removal	October 19, 2015

During the on-site, MWAA was advised that an alternative method for updating the directory should have been considered. At the October 22, 2015 exit conference, the FTA instructed MWAA to identify a solution to the issue and update the DBE Directory within the next thirty days.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights evidence that the Virginia UCP DBE Directory has been updated with current DBE certification information, and a process to ensure that future updates are transmitted to the host website timely.

6.6 Overconcentration

Basic Requirement (49 CFR Part 26.33)

The recipient must determine if overconcentration of DBE firms exists and address the problem, if necessary.

Discussion

During this compliance review, no deficiencies were found with the requirement for Overconcentration. However, an advisory comment is made regarding the requirement.

MWAA's DBE Program states that it has not identified overconcentration as an issue.

The analysis for this determination was completed in conjunction with MWAA's DBE goal setting process for the Dulles Corridor Metrorail Project (DCMP), Phase 2. According to the revised goal submission, dated August 20, 2013, MWAA reviewed current, past and projected DBE participation levels for similar federally-assisted contracts, and determined that there was no overconcentration in the award of contracts. MWAA considered the prevailing capacity of DBE firms; the existing level of demand for design and construction services relative to other projects in the Metropolitan Washington area which might compete for DBE participation; and the increased capacity of heavy highway construction-related DBE firms from their involvement in DCMP, Phase 2 contracts.

MWAA indicated that it will continue to periodically evaluate project data to ensure that overconcentration does not exist.

Advisory Comment

It is recommended that MWAA establish a process for conducting the overconcentration analysis including a timeframe for its completion.

6.7 Business Development Programs

Basic Requirement (49 CFR Part 26.35)

The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion

During this compliance review, no deficiencies were found with the requirement for Business Development Programs.

MWAA does not have a formal business development or mentor protégé program as described in the DBE regulations. The DBE Program states that MWAA offers a number of outreach events to the small business and DBE community to disseminate information on current and upcoming contract solicitations.

6.8 Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45)

To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

Discussion

During this compliance review, no deficiencies were found with the requirement for Calculation of Goals.

MWAA established project-specific goals for Phase 1 and Phase 2 of the Dulles Corridor Metrorail Project, and followed similar steps in the goal setting methodology for both phases.

A 13.24% project-specific goal was established for Phase 1, with an 11.74% race conscious / 1.5% race neutral split.

Step One: Determining the Base Figure

The base federal share for Phase 1 was projected to be approximately \$900 million, minus the value of transit vehicles (\$70,241,000), for a net base total of \$829,759,000 available for DBE participation opportunities. The summary of work for Phase 1 consisted principally of professional services such as preliminary and final engineering and design services, program and construction management services, right of way, land acquisitions and improvements, systems construction services, site work construction, construction support facilities, yard and shop expansions, five (5) stations, guide way and track elements. Applicable NAICS codes were identified for the various elements of work.

MWAA identified its local market area as Virginia, Maryland and the District of Columbia. To determine the relative availability of ready, willing and able DBEs for Step One, MWAA summarized the total number of firms in its procurement database, and included the Washington Metropolitan Area Transportation Authority (WMATA) procurement database (eliminating any duplication). The certified DBE data sources comprised the Virginia, District of Columbia and Maryland UCP Directories (overlap in certified DBEs from the directories were eliminated). The analysis identified a total of 6,957 for all firms, and a total of 921 DBEs ready, willing, and able to perform work in the applicable NAICS codes. The total number of DBEs divided by the total number of all firms resulted in a relative DBE availability calculation of 13.24%.

Step Two: Adjusting the Base Figure

MWAA considered several factors that could support adjustment of the Step 1 goal, including:

- a. The Project size and prevailing capacity of DBE firms – 2002 Economic Census data was used to measure average Sales and Receipts for all firms with paid employees in the Commonwealth of Virginia, whose owners are reported to be Caucasian females or minorities. The analysis suggested that the average annual capacity of individual DBE firms fell between \$800,000 and \$3 million. MWAA projected approximately \$22 million annually in anticipated DBE expenditures for DCMP Phase 1. Although the projected DBE dollars was high, the agency believed it was reasonable to anticipate that DBE firms have sufficient total capacity to perform Project work, provided that a sufficient number of Project tasks are of a size that is manageable for DBE firms.
- b. The extant level of demand for design and construction services, relative to other projects in the Metropolitan Washington area which might compete for DBE participation – MWAA considered seven competing projects in the Washington Metropolitan Area (which included MWAA CCP (Aviation Projects), National Harbor Project, Inter-County Connector Project, DC Public Schools CIP, Washington Suburban Sanitary Commission CIP, WMATA, and VDOT (NOVA Mega Projects & BRAC)), and concluded that the projects may be in various stages/phases of start-up or completion during the term of the DCMP Phase 1 Project, and likely would not all impose high levels of demand on DBE capacity at the same time;
- c. Findings from relevant disparity studies – MWAA reviewed data presented in two regionally-based studies: (1) Procurement Disparity Study of The Commonwealth of Virginia – Final Report, MGT of America, Inc., dated January 12, 2004, and (2) Race, Sex and Business Enterprise: Evidence from the State of Maryland, Department of Transportation (Final Report) – NERA Economic Consulting, dated March 7, 2006. The disparity studies indicated that there was continuing discrimination against MBEs and WBEs, but did not provide specific information on a recommended level of participation that should be achieved.

MWAA concluded from its review and analysis, that none of factors considered supported an adjustment of the Step One goal.

MWAA determined the race neutral goal calculation based on historical data in which DBE goals were exceeded over a five year period (FFYs 2002 – 2006). The data included MWAA's median race neutral experience with DBE participation through the Airport Improvement Program (AIP), combined with WMATA's median race neutral experience over the same five year period. The comparison of the difference in MWAA's goal attainment for the AIP projects and WMATA's goal attainment yielded an average median difference of approximately 1.5% (the average of 2% + 1% + 1.5% = 4.5 / 3 = 1.5%). Thus, the race conscious / race neutral split for the DCMP, Phase 1 was set at 11.74% RC and 1.5% RN.

MWAA established a 25% project-specific overall DBE goal for Phase 2 of the Dulles Corridor Metrorail Project (DCMP). Phase 2 is the continuation of the DCMP, Phase 1-- to connect the major activity centers of the Dulles Corridor (including Tysons Corner, Reston and the Dulles International Airport) to the downtown Washington, D.C., core of the Metrorail system.

The Phase 2 project-specific goal consists of 20% race-conscious measures and 5% race-neutral measures, and covers the duration of the Phase 2 Project. The goal and methodology was initially submitted in August 2012; however, after FTA review, a revision was required. The revised goal and methodology was submitted on August 20, 2013, and received FTA approval on August 26, 2013.

Step One: Determining the Base Figure

The total value of Phase 2 of the DCMP is projected to be \$2.9 billion, and the value of federally-funded contracts subject to the project-specific DBE goal is projected to be approximately \$922.67 million. The summary of work for Phase 2 is identified as: Guideway and Track Elements; Stations; Support Facilities; Yard and Shops; Sitework and Utilities; Train Systems; Right-of-Way and Property Acquisition; Design and Engineering Services; and Contingency. The applicable NAICS codes for the project work categories are:

- 221 – Utilities
- 236 – Construction of Buildings
- 237 – Heavy & Civil Engineering
- 238 – Specialty Trade Contractors
- 541 – Professional, Scientific & Technical Services

MWAA defines its local market area as the Metropolitan Statistical Areas of the District of Columbia, Virginia, West Virginia and Maryland. To determine the relative availability of ready, willing and able DBEs, MWAA created a table summarizing the total number of all firms and certified DBEs located in its local market area. The U.S. Census Bureau's County Business Patterns was used to obtain the estimated number of all firms providing services in the applicable NAICS codes (as the denominator), and the state Unified Certification Program (UCP) DBE Directories were used to identified DBEs (as the numerator). The state UCPs included the Commonwealth of Virginia, the District of Columbia, and the State of Maryland. The analysis identified a total of 45,465 for all firms, and a total of 3,907 DBEs ready, willing, and able to perform work in the applicable NAICS codes. The total number of DBEs divided by the total number of all firms resulted in a calculation of 8.59% for a relative DBE availability.

MWAA applied a weighting calculation in Step One, utilizing the following steps: (1) divided the number of DBEs available to perform work within a particular NAICS code, by the total number of all firms available to perform work within the NAICS code = relative availability; (2) multiplied

the percentage of relative DBE availability to perform work in each NAICS code, by the proportion of work to be awarded in each NAICS code = weighted base figure; (3) the percentages were added together to arrive at a 20.9% total Base Figure.

Step Two: Adjusting the Base Figure

To determine if an adjustment was appropriate, MWAA considered information from the following sources:

- Historical data on past participation on Phase 1 of the Dulles Metrorail Project;
- DBE goals and achievements of similarly-situated agencies in the local area (i.e. WMATA);
- The accuracy of the statistical information about the availability of DBEs;
- MWAA's Master Bidders List;
- Competing projects that could negatively affect DBE participation; and,
- Public Agency and Local Area SWAM resource lists

MWAA also considered data presented in a regionally-based study entitled, *The State of MBE and WBE Evidence from Maryland DOT Disparity Study (Final Report)*, conducted by NERA Economic Consulting, dated, February 17, 2011. The study found both statistical and anecdotal evidence of business discrimination against MBEs in the private sector of Maryland's marketplace.

MWAA's goal methodology indicated that the State of Maryland conducted a study of M/WBE availability and utilization in state procurement and the private business sector for a five year period, 2005 to 2009. Similar to MWAA, Maryland's relevant geographic market was determined to consist of the State of Maryland, the State of Delaware, and the Washington, D.C. Metropolitan Statistical Areas (including the District of Columbia, the State of Maryland, and parts of northern Virginia and West Virginia). The study included a random sample of firms in Maryland's geographic market area, which demonstrated that prime contractors who used MBEs on public sector contracts with goals rarely hired or even solicited such firms on projects without goals, either public or private.

MWAA elected to utilize its past (historical) participation as a basis for adjusting the Step One goal, specifically, DCMP, Phase 1. The goal setting methodology indicated that the cumulative DBE participation, *at that time*, was \$238,708,487 or 28.77%, compared to the established 13.24% DBE goal. In addition, the DCMP Phase 1 DBE participation included all tiers of DBE subcontractor participation in construction, program management, engineering, inspections and material supply.

MWAA compared the Phase 1 past DBE participation (28.77%) to the Phase 2 Step One goal (20.9%) as the basis for its adjustment to the Base Figure. MWAA indicated that both numbers represent overall DBE project specific numbers. The Step Two adjustment was illustrated as:

Phase 2 - Step One Calculation (Base Figure)	=	20.90%
Phase 1 - Historical DBE Participation	=	<u>28.77%</u>
Total		49.67% / 2 = 24.84%

Thus, MWAA concluded that the Step One goal should be adjusted to 25 percent to reflect a more tailored goal for the project.

MWAA determined the race neutral portion of the overall 25% goal based on an examination of DCMP, Phase 1 DBE participation. MWAA's methodology stated the Phase 1 cumulative DBE participation as \$238,708,487 or 28.77%, compared to the 13.24% established project-specific DBE goal. The methodology stated that in May 2011, (based on MWAA's race conscious measures) DCMP, Phase 1 DBE commitments were at approximately \$200 million or 24%, and as a result, the FTA advised MWAA to discontinue the use of race conscious measures. Therefore, the difference between the 13.24% established goal and 24% goal attainment was not viewed as race neutral participation.

MWAA concluded that due to the nature, size and complexity of the anticipated contracts and subcontracts for Phase 2, the best estimate for race neutral participation was the difference between Phase 1's 24% race conscious achievement, and the cumulative 28.77% DBE participation achieved to date, which equaled approximately 5 percent race neutral participation. Thus, the race conscious / race neutral split for the DCMP, Phase 2 was set at 20% RC and 5% RN.

B) Public Participation

Basic Requirement (49 CFR Part 26.45)

In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

Discussion

During this compliance review, deficiencies were found with the requirement for Public Participation.

MWAA's FFY 2013 goal methodology included a public participation section that discussed the consultation and published notice process. MWAA's goal methodology indicated that it consulted with minority, women's and general contractor groups, community organizations, and other organizations on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MWAA's efforts to establish a level playing field for the participation of DBEs.

The goal methodology indicated that MWAA staff consulted with the following organizations: (1) the Washington DC Metropolitan Area Chapter of the National Association of Minority Contractors; (2) Virginia Minority Supplier Development Council; (3) Maryland/Washington Minority Contractors Association; (4) Maryland/District of Columbia Minority Supplier Development Council; (5) Virginia Department of Minority Business Enterprise; (6) Maryland Department of Transportation; (7) Virginia Department of Transportation; and (8) District

Department of Transportation. The DBELO stated that individual meetings were held with the organizations between the months of June 2012 and August 2012.

Proof of publication was not included in the DBE goal methodology submission. However, subsequent to the on-site, the DBELO provided proof of publication in the following five newspapers:

- | | |
|--------------------------------|----------------------------|
| • The Washington Post | July 22 – August 5, 2012 |
| • The Richmond Times Dispatch | July 22 – August 5, 2012 |
| • The Afro American Newspapers | July 28 – August 4, 2012 |
| • The Baltimore Sun | August 5 – August 11, 2012 |
| • The Washington Informer | July 26 – August 9, 2012 |

The DBELO stated that proof of the goal posting on MWAA's website is no longer available. He stated that the website was updated a year ago, and the posting was removed.

A 30-day comment period took place from July 22, 2012 through September 5, 2012. MWAA indicated that no written comments from contractors, individuals, or organizations were received during the comment period. The DBELO stated that comments received from consultations with business organizations and agencies were favorable and concurred with the 25 percent DBE goal.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights a process ensuring that the notice announcing the overall goal is published on the MWAA's official website for the entire period the project goal is in effect, and that documentation is maintained in the file.

C) Race-Neutral DBE Participation

Basic Requirement (49 CFR Part 26.51)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Race-Neutral DBE Participation.

As discussed in the Goal Calculation section above, MWAA anticipates achieving 5% race neutral DBE participation in Phase 2 of the Dulles Corridor Metrorail Project. MWAA has indicated that it will continue to exert best efforts to achieve meaningful race-neutral participation by expanding outreach efforts to identify, certify, and assist DBE firms and other small businesses to participate in the procurement process.

Strategies to encourage race neutral participation are discussed in the goal methodology to include unbundling of contracts, assistance in overcoming bonding and financing limitations, aggressive outreach, and technical assistance. MWAA's race neutral strategies also include arranging its solicitations, times for the presentation of bid specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses. MWAA established a 1.5% race neutral goal for DCMP Phase 1; however, the goal attainment was only .33%.

MWAA stated that it has on-going communication and meetings with DBEs and other small businesses through outreach events to provide information on current and upcoming solicitations. A schedule of MWAA's outreach reach events was provided evidencing a total of twenty activities conducted in 2014 and 2015 to promote the DBE Program and present information on contracting opportunities in Airports and Rail projects. The outreach included two events specifically focusing on DBE opportunities and requirements for the DCMP Phase 2, Package A – Design Build Rail Contract (March 2014) and DCMP Phase 2, Package B – Rail Yard and Maintenance Facility (April 2015).

D) Race-Conscious DBE Participation

Basic Requirement (49 CFR Part 26.51)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Race-Conscious DBE Participation.

The DBE Program establishes that MWAA “will use contract goals to meet any portion of the overall goal that it does not project being able to meet using race-neutral means”. MWAA's contract goals are established so that, over the period to which the overall goal applies, cumulatively the goal is projected to be met.

MWAA provided two lists identifying the contracts awarded during Phases 1 and 2 of the Dulles Corridor Metrorail Project. The lists contained the following information: contract name and number, prime contractor, award date, contract amount, DBE goal, DBE subcontractor and scope of work, DBE subcontract amount, and total DBE payments. Based upon MWAA's contract award information, the tables below summarize the DBE commitments for each project phase.

Dulles Corridor Metrorail Project – Phase 1 Contract Awards

Award Date	Prime Contractor	Contract Name & Number	DBE Goal	Prime Contract Amount	Total DBE Contracts Amount	DBE %
6/11/2004	Dulles Transit Partners	Right of Way - #8-07-0007	10%	\$ 12,694,000	\$ 207,239	2%
7/18/2007	Jacobs Carter Burgess	Program Management - #8-07-C001	15%	\$ 190,567,897	\$ 34,444,763	18%
11/15/2007	Dulles Transit Partners	Utility Relocation - #8-07-0007	10%	\$ 152,216,599	\$ 12,443,164	8%
8/15/2008	Dulles Transit Partners	Design Build - #8-07-C004	10%	\$ 2,039,000,000	\$ 287,449,670	14%
7/15/2009	CTI Consultants	Special Inspections - #8-09-C005	25%	\$ 9,580,190	\$ 2,346,810	24%
Total				\$ 2,404,058,686	\$ 336,891,646	14%

Dulles Corridor Metrorail Project – Phase 2 Contract Awards

Award Date	Prime Contractor	Contract Name & Number	DBE Goal	Prime Contract Amount	Total DBE Contracts Amount	DBE %
11/30/2009	Dulles Rail Consultants	Preliminary Engineering - #8-09-C009	RN	\$ 48,882,409	\$ 7,638,813	16%
5/14/2013 & 11/1/2013	Capaital Rail Constructors (JV)	Package A - Design Build Rail - #8-13-C001	14%	\$ 1,233,800,508	\$ 149,726,424	12%
7/17/2013	Jacobs Engineering Group	Project Management - #8-13-C002	25%	\$ 54,716,354	\$ 10,287,902	19%
11/1/2013	Atlantic Contracting and Materials	Package S - Soil Stockpile Relocation - #8-13-C006	25%	\$ 6,347,797	\$ 1,385,955	22%
4/18/2014	Professional Service Industries	Special Inspection Services - #8-14-C003	15%	\$ 7,779,343	\$ 1,086,798	14%
7/29/2014	Hensel Phelps	Package B - Rail Yard and Maintenance Facility - #8-14-C001	14%	\$ 252,989,000	\$ 6,978,780	3%
Total				\$ 1,604,515,411	\$ 177,104,672	11%

The DBELO stated that the contract goals were established based upon possible subcontracting elements, the type and location of the work, and the availability of DBEs to perform the type of work. Based upon the awarded contracts information reviewed, cumulatively, MWAA's overall race-conscious DBE commitments for DCMP Phases 1 and 2 equals 14% and 11%, respectively.

E) Good Faith Efforts**Basic Requirement (49 CFR Part 26.53)**

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

Discussion

During this compliance review, deficiencies were found with the requirement for Good Faith Efforts.

MWAA's DBE Program Plan documents its good faith efforts procedures. The good faith efforts section of the DBE Program Plan states that MWAA will treat a bidder/offeror's compliance with good faith efforts requirements as a matter of responsiveness. A bidder/offeror is considered responsive when it commits to meeting the DBE contract goal by submitting a signed "Contract Participation Form (Exhibit D)". All other matters with respect to DBE participation are treated as a matter of responsibility.

The Contract Participation Form lists the name and address of each DBE firm that will participate on the contract; a description of the work each DBE will perform, and the dollar amount of the participation. In addition, within three days of the Contracting Officer's request (prior to award), the bidder/offeror is required to submit a written and executed "Letter of Intent" (Exhibit E) for each approved DBE the bidder/offeror has committed to use on the contract. MWAA requires the Letter of Intent to be signed by the bidder/offeror and DBE as documentation from the DBE that it is participating in the contract as provided in the prime contractor's commitment in the Exhibit D participation form.

MWAA's DBE Program states that it is the obligation of the bidder/offeror to make good faith efforts. This is demonstrated by the bidder/offeror either meeting the DBE contract goal or documenting good faith efforts. Examples of good faith efforts, as found in Appendix A, of 49 CFR Part 26, are contained in MWAA's solicitation documents. The Department of Supplier Diversity is responsible for determining whether a bidder/offeror has or has not documented sufficient good faith efforts to be regarded as responsive. MWAA's administrative reconsideration official is identified as John E. Potter, President/CEO. According to the DBELO, the reconsideration process has not been utilized.

The solicitation documents for the DCMP Phase 2, Package A – Design Build Rail and Package B – Rail Yard and Maintenance Facility contracts include an Exhibit 23.2 – "Disadvantaged Business Enterprise Participation", which requires the bidder/offeror to submit a "DBE SUBCONTRACTOR MANAGEMENT PLAN". For example, the requirement states:

"The Contractor's good faith efforts to achieve this Contract's DBE goals shall include implementation of the DBE Subcontractor Management Plan submitted by Contractor prior to award of this Contract. Beginning October 1, 2013 and each year thereafter for the duration of this Contract, the Contractor shall submit an annual update to the DBE Subcontractor Management Plan."

Instructions for the DBE Subcontractor Management Plan outlines specific requirements for the contractors' responsibility in monitoring DBE participation and strategies to be employed by the contractors to achieve the contract DBE goal.

However, based upon the review of MWAA's DCMP, Phase 2 awarded contracts information, it appears that the individual contract goals are not being met.

Capital Rail Constructors (JV) – Package A, Design Build – DBE Goal: 14%, DBE Commitment: 12% - In accordance with the solicitation document and executed contract, the prime contractor submitted an initial DBE Subcontractor Management Plan demonstrating its commitment to meeting the 14% DBE goal. The submittal was approved by MWAA. The prime contractor is required to submit annual updates for MWAA's review and approval, to show continued commitment for meeting the overall contract DBE goal. The review team examined Capital Rail Constructors' current DBE Subcontractor Management Plan, submitted for FFY 2015, and found that the contractor has increased its DBE commitment to 14.81% (see below, Table 2.4.3e - Summary of Anticipated DBE Subcontractor Work).

Table 2.4.3e - Summary of Anticipated DBE Subcontractor Work Planned for the Life of the Project (provided by Capital Rail Constructors - (Package A), 10/1/14 – 9/30/15 annual update)

Description of Work	DBE Value	Percent of DBE Value of \$1.18B
Professional Services - General Requirements	\$76,435,745.30	6.48%
Roadway Improvements/Site Work/Drainage & SWM	\$17,460,383.87	1.48%
Line & Track/Rail Systems/Utilities	\$41,723,514.60	3.54%
Stations	\$39,070,172.16	3.31%
Totals	\$174,689,815.93	14.81%

Jacobs Engineering Group – Program Management – DBE Goal: 25%, DBE Commitment: 19%

- The DBELO stated that the contract is based on annual task directives, and DBE commitments are submitted in accordance with subcontractable elements in the requested tasks. He stated that Jacobs Engineering Group was required to submit with its proposal, documentation of its commitment to meet the 25% DBE goal. A copy of the consultant's good faith efforts documentation was requested, but was not provided.

Atlantic Contracting and Materials – Package S – Soil Stockpile Relocation – DBE Goal: 25%, DBE Commitment: 22% - The DBELO stated that the contractor originally exceeded the DBE goal with a commitment of 33%; however, following MWAA's review of the DBE trucking company participation on the contract, it was determined that the firm was not performing a commercially useful function, and a portion of the subcontract dollars was disallowed. As a result, Atlantic Contracting and Materials DBE commitment was reduced to 22%, and the contract is completed.

Professional Service Industries – Special Inspection Services – DBE Goal: 15%, DBE Commitment 14% - Information was not provided regarding this contractor's documentation of good faith efforts submitted and reviewed by MWAA.

Hensel Phelps – Package B, Rail Yard and Maintenance Facility – DBE Goal: 14%, DBE Commitment: 3% - Similar to the Package A, Design Build contract, the prime contractor was required to submit a DBE Subcontractor Management Plan demonstrating its commitment to meeting the 14% DBE goal. The DBELO stated that Hensel Phelps submitted a Plan that MWAA approved. However, a copy of the Plan was not provided. The DBELO stated further that Hensel Phelps' current DBE Subcontractor Management Plan was currently in review; however a copy of that plan was not provided for review. Based on the contract information available, Hensel Phelps' contract does not have sufficient DBE participation to meet the 14% DBE goal, and it appears that MWAA is unable to provide the status of the contractor's current level of DBE commitment.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights a process for ensuring that DBE goals and commitments are being met and documented in accordance with the agency's Good Faith Efforts procedures.

F) Protecting Against Termination for Convenience

Basic Requirements (49 CFR 26.53 and 26.13)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Protecting Against Termination for Convenience.

MWAA's DBE Program states that a prime contractor must notify the Contracting Officer when the need for a DBE substitution arises; a written request must be submitted, and the request requires MWAA's prior approval.

MWAA's contract documents contain Exhibit 23.2 - "Disadvantaged Business Enterprise Participation" section that provides the requirements for "Post Award Substitution", and instructions for removal/termination of a DBE subcontractor. The contract outlines procedures the prime contractor must follow, including the requirement that the DBE subcontractor be afforded at least 5 business days to respond to the notice of removal/termination. The contract document further states that if the request to replace/remove/terminate a DBE subcontractor is approved, the prime contractor must make good faith efforts to replace the DBE with another certified DBE and shall not self-perform the work/services.

The DBE Participation section of the contract states that if the prime contractor is found to be non-compliant, MWAA will impose appropriate sanctions, including, but not limited to withholding payments or termination of the contract if corrective action is not taken within forty-eight hours (or such other time period deemed appropriate by the Contracting Officer) after notification by the Contracting Officer.

During the interviews with the DBELO and MWAA staff, there was no indication of any DBE being terminated from either the DCMP Phase 1 or Phase 2 contracts.

G) Counting DBE Participation

Basic Requirement (49 CFR Part 26.55)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Counting DBE Participation.

MWAA's DBE Program states that it will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The DBE Participation section of the contract document states the rules MWAA will apply in determining whether DBE participation will meet the DBE goal, such as:

- only the value of work actually performed by a DBE will be counted toward the goal
- the DBE must perform a commercially useful function and be certified by the Virginia UCP
- the cost of materials or supplies purchased from a DBE regular dealer will count at 60% credit toward the DBE goal

The DBE/MBE/WBE Contract Participation Form (Exhibit D) provides the information MWAA uses to determine how DBE participation is counted, and whether the prime contractor has met the DBE contract goal or must submit good faith efforts.

The review team's examination of MWAA's solicitation documents did not indicate any DBE counting issues. The DCMP Phase 2, Package A – Design Build Rail Contract, includes the prime contractor's summary of DBE participation, designating each DBE subcontractor's task, the dollar value of the work, and how the participation was being counted, at either 100% or 60% credit toward the DBE goal.

H) Quotas

Basic Requirements (49 CFR Part 26.43)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Quotas.

No evidence of the use of quotas by MWAA was found during the on-site visit.

The DBE Program states that MWAA's implementation of its "Small Business Program" will include set-asides open to all "other" small business enterprises regardless of race, gender or geographic locations.

6.9 Shortfall Analysis and Corrective Action Plan

Basic Requirement (49 CFR Part 26.47)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Shortfall Analysis and Corrective Action Plan.

MWAA has project-specific DBE goals established for DCMP Phase 1 and Phase 2. Semi-annual DBE reports were submitted from FFYs 2009 – 2015. The reports are uploaded in TEAM as portable document formats (PDFs). The project-specific goal for DCMP Phase 1 is 13.24% (11.74% RC/1.5% RN), and for DCMP Phase 2 is 25% (20% RC/5%NC).

MWAA informed the review team that DCMP Phase 1 was completed, and stated in its goal setting methodology for Phase 2 that the goal attainment for Phase 1 was 28.77%. The review team examined Phase 1 semi-annual reports to verify the goal attainment, and assessed the reported DBE attainment for Phase 2. A summary of the totals reported, as of June 1, 2015 is as follows:

DCMP Phase 1

Total Prime Contract Dollars	\$946,000,628
Total DBE Contract Dollars	\$250,112,843
DBE Goal Attainment ($\$250,112,843 / \$946,000,628$) = 26.44%	

DCMP Phase 2

Total Prime Contract Dollars	\$266,184,616
Total DBE Contract Dollars	\$141,204,865
DBE Goal Attainment ($\$141,204,865 / \$266,184,616$) = 53.05%	

Based on the information provided in the reports, it appears that MWAA would not be required to conduct a shortfall analysis and corrective action plan for the Dulles Corridor Metrorail Project.

It was noted that MWAA did not consistently report DBE dollars against total prime contract dollars, but in most cases reported DBE dollars against total subcontract dollars, while reporting zero dollars for prime contracts. Further detail regarding this observation is discussed in Section 6.14 - Record Keeping and Enforcements of this report.

6.10 Transit Vehicle Manufacturers (TVMs)

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 before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

Discussion

During this compliance review, no deficiencies were found with the requirement for Transit Vehicle Manufacturers (TVMs).

MWAA does not purchase vehicles, but has a relationship with the Washington Metropolitan Area Transit Authority (WMATA) for the purchase of vehicles.

The review of MWAA's TIFIA Loan Agreement indicates that WMATA will be providing vehicles for DCMP Phase 2. The Loan Agreement references cooperative agreements between MWAA and WMATA, and contains an exhibit entitled "DCMP Phase 2 Packages A, S, and B Master Schedule - Summary from Baseline Schedule", which specifies a WMATA Vehicle Delivery Schedule of August 2014 through August 2018. The review team could not determine, within the agreement, the number or type of vehicles to be delivered. The review team requested additional information regarding the MWAA / WMATA relationship/agreement; however, it was not forthcoming at the preparation of this report.

6.11 Required Contract Provisions and Enforcement

A) Contract Assurance

Basic Requirements (49 CFR Part 26.13)

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

Discussion

During this compliance review, deficiencies were found with the requirement for Contract Assurance.

MWAA's DBE Program states that it 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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

The review team examined two federally-funded prime contracts that MWAA awarded in FFY 2013 and two associated DBE subcontracts. The two contracts examined were:

Prime Contractor	Project	Contract Number	DBE Subcontractor
Capital Rail Constructors (JV) Awarded – 5/14/13 and 11/1/13	DCMP Phase 2- Package A, Design Build Rail Contract	8-13- C001	Interlock Steelworkers Incorporated
Jacobs Engineering Group Awarded – 7/17/13	DCMP Phase 2, Project Management Contract	8-13-C002	Chaves and Associates

The contract assurance language found in both the prime contracts and subcontracts states:

“Contractor agrees and assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Subcontract supported with Federal assistance derived from U.S. DOT or FTA or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. Contractor agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all Subcontracts supported with Federal assistance derived from U.S. DOT. Each Subcontract Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). Upon notification by U.S. DOT to Contractor of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 et seq.”

This statement differs from the assurance language in the DBE Program and is not verbatim as required by 49 CFR Part 26.13. Furthermore, MWAA's DBE Program does not include a process for ensuring that the appropriate clauses are included in every federally funded contract and subcontract.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil a process for ensuring that the contract assurance language is placed in every federally funded contract and subcontract.

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 compliance review, deficiencies were found with the requirement for Prompt Payment.

Prompt Payment

MWAA's DBE Program states that the prime contractor agrees to pay subcontractors for satisfactory performance within 10 days following receipt of payment from MWAA.

Prompt payment language was included in the DBE section of the two DCMP Phase 2 prime contracts examined; however, the clause stated that the prime contractor is required to pay its subcontractors, for satisfactory performance of work, no later than 30 days after receipt of payment from MWAA. The clause further states that a finding of non-payment is a material breach of the contract, and MWAA *"may, at its option, increase allowable retainage or withhold progress payments unless and until the prime contractor demonstrates timely payment of sums due subcontractors"*.

Both DBE subcontracts examined contained prompt payment language. The clause appeared in the *General Terms*, and DBE section of the subcontracts; however the payment terms were different in each section.

In the Chaves And Associates subcontract, the General Terms state that the contractor agrees to pay its subcontractors within 10 days following receipt of payment from MWAA (which agrees with the DBE Program statement), and the DBE section states that the contractor is required to pay its subcontractors no later than 30 days after receipt of payment from MWAA.

In the Interlock Steelworkers Incorporated subcontract, the prompt payment language in the General Terms of the subcontract states: *"Partial payments shall be due on or about the 7th day following receipt of payment from the Owner by CRC provided Subcontractor is in compliance with the terms of this Subcontract."* However, the language in the DBE section states that the subcontractor will be paid no later than 30 days upon satisfactory performance of work.

Subsequent to the on-site visit and review of the DBE subcontracts discussed above, to further examine the payment verification and closeout process for prompt payment, the review team randomly selected three DBE subcontractors from the DCMP Phase 1, Design Build Contract (Dulles Transit Partners) – Amtrac Railroad Contractors of Maryland, ARM Construction dba American Construction, and Crystal Steel Fabricators, Inc. MWAA was requested to provide the prime contractor's record of payments to the selected DBE subcontractors, evidencing the

payment dates and amounts paid. At the completion of this report, the information had not been provided.

Retainage

In June 2003, USDOT issued a Final Rule on DBE that contained new requirements for prompt return of retainage. According to the Final Rule, if an agency chooses to hold retainage from a prime contractor, 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.

MWAA's DBE Program states that the prime contractor agrees to return any retainage withheld from subcontractors within 10 days after the subcontractor has satisfactorily completed its work. The DBE Program further states that any delay or postponement of payment by the prime contractor may not take place without MWAA's prior approval. MWAA considers a finding of non-payment of retainage a material breach of the contract, with the same remedies as cited in the contract's payment section.

The solicitation and contract documents state that MWAA is committed to equitable treatment and meaningful utilization of, and timely payment and return of retainage to, DBE Subcontractors in accordance with the applicable subcontract and legal requirements

The retainage clause included in the DBE section of the two prime contracts state that the *"Contractor is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed"*. Although neither prime contractor withheld retainage, both DBE subcontracts examined contained retainage language. The retainage clause appeared in the General Terms, and the DBE section of the subcontracts; however, similar to prompt payment, return of retainage requirement was different in each section.

Chaves And Associates Subcontract - the General Terms state that the prime contractor agrees to return any retainage withheld from subcontractors within 10 days after the subcontractor has satisfactorily completed its work (which agrees with the DBE Program statement). The DBE section states that the prime contractor is required to return any retainage payments to the subcontractor within 30 days after the subcontractor's work related to the contract is satisfactorily completed.

Interlock Steelworkers Incorporated Subcontract - the return of retainage language under General Terms states:

"Final payment, subject to withholdings permitted hereunder, shall not be due until after the last of the following to occur: after Subcontractor's work has been completed and approved by the Owner, the entire Project is complete, all final payment prerequisites under the Contract Documents have been satisfied, satisfactory proof of payment of all amounts owed by Subcontractor in connection with this Subcontract has been provided, Article 13 has been complied with, and CRC has been paid in full for the entire Project."

However, the DBE section states that the contractor is required to return any retainage payments to the Subcontractor within 30 days after the subcontractor's work related to the contract is satisfactorily completed.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil a process for ensuring that the prompt payment language and return of retainage language in every USDOT-funded contract and subcontract is consistent and in compliance with the DBE Program. In addition, MWAA must submit the DBE subcontractor payment information requested for DCMP Phase 1, for completion of the payment verification analysis.

C) Legal Remedies

Basic Requirements (49 CFR Part 26.37)

Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

Discussion

During this compliance review, no deficiencies were found with the requirement for Legal Remedies.

The DBE Program states that:

“When a contractor is found to be in non-compliance, and informal resolution procedures have failed to demonstrate that the contractor has made every effort to resolve the issue(s) of non-compliance, the Authority will employ all necessary and reasonable actions under its contracting authority to ensure that the DBE requirements are enforced. These actions are outlined in our contracting manual and include actions that range from withholding of payments, up to and including termination of the contract.”

The contracts and subcontracts reviewed contain language that states, *“If the Contractor is found to be in non-compliance, the Authority may impose appropriate sanctions, (including, but not limited to, withholding of payments or termination of the contract in accordance with the DEFAULT clause) if corrective action acceptable to the Authority is not taken within forty-eight (48) hours (or such other time period deemed appropriate by the Contracting Officer) after notification by the Contracting Officer”*.

The Default clause of the contract is located in *Section 25.2 “Owners’ Remedies for Contractor Event of Default”*, and stipulates that MWAA shall suspend contractor payments unless and until the default is cured (25.2.1), and should the contractor fail to cure the default, MWAA may pursue other rights and remedies that may be available, such as, terminating all or part of the contract by delivering a Notice of Termination (25.2.2).

There was no evidence that MWAA has utilized any of its legal remedies to enforce contract compliance.

6.12 Certification Standards

Basic Requirements (49 CFR Part 26.67- 26.71)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Certification Standards.

The State of Virginia Unified Certification Program (VUCP), dated May 2005, established the certification process for determining whether a potential DBE firm is socially and economically disadvantaged according to regulatory standards. A copy of the Agreement is an attachment to this report.

The two certifying members in the VUCP are the Virginia Department of Small Business & Supplier Diversity (formerly, Department of Minority Business Enterprise), and MWAA's, Department of Supplier Diversity (formerly, Equal Opportunity Programs Department).

An overview of the Virginia UCP and DBE certification requirements is found on MWAA's website under "Doing Business with the Airports Authority" -- *Contracting Opportunities > Supplier Diversity > Disadvantaged Business Enterprise (DBE) Certification*. The ACDBE and DBE forms are located on the website and downloadable in Adobe Acrobat PDF. The forms available on the website are:

- DBE Certification Application Form
- DBE Application Supporting Documents Checklist
- DBE Affidavit of Certification Form
- DBE Personal Financial Statement Form
- Affidavit of No Change – DBE Firms
- Affidavit of No Change – ACDBE Firms

The Certification Supervisor was interviewed on-site and responded appropriately to questions pertaining to certification standards of Subpart D (§26.67 – §26.71), and certification procedures of Subpart E (§26.81 – §26.91). The Certification Supervisor also provided a flowchart describing MWAA's certification review process which included, receipt of the application, preparation of the file, document review, on-site review, and the "certification decision" of approval or denial.

6.13 Certification Procedures

A) On-site Visits and Document Review

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 compliance review, deficiencies were found with the requirement for On-site Visits and Document Review.

MWAA has an established procedure for the review of DBE certification applications that includes conducting an on-site review, requesting a home state on-site report, and the review of the certification application and supporting documents.

The review team examined seven certification files for compliance with certification requirements:

Firm Name	Status	
DDE, Inc. dba Generation Cable Corp.	New certification	<i>Interstate - GA</i>
F & L Construction	New certification	<i>Interstate - MD</i>
RJ Washington Company	New certification	<i>Interstate - MD</i>
Phoenix Engineering	Existing certification	<i>Interstate - MD</i>
Noah's Ark Trucking, LLC	Denial	<i>VUCP - MWAA</i>
MS Construction & Remodeling, Inc.	Removal	<i>VUCP - MWAA</i>
Sheladia Associates, Inc.	Removal	<i>Interstate - MD</i>

On-site Visits

MWAA provided the reviewers with a copy of its "DBE Certification On-Site Review" questionnaire. The questionnaire is a seven page report containing fifty questions pertaining to the ownership, management and control of the firm; the firm's history, and the owner(s) knowledge of the business.

Of the seven files reviewed, four contained the required on-site visit documentation: DDE, Inc., dba Generation Cable Corp., F&L Construction, RJ Washington, and MS Construction & Remodeling, Inc. The reviewers examined the completed DBE Certification On-Site Review questionnaire in one Virginia UCP certification file processed by MWAA – MS Construction & Remodeling, Inc. The Noah's Ark Trucking, LLC file was incomplete; therefore, an on-site visit was not conducted by MWAA.

Two files did not include on-site visit documentation: Phoenix Engineering and Sheladia Associates, Inc. The original DBE certification file for Phoenix Engineering could not be located, and there was no indication that MWAA contacted the home certifying state to obtain on-site visit documentation.

The Sheladia Associates certification file contained a summary of an on-site visit, prepared by Maryland Department of Transportation. The summary was dated January 28, 2008 and indicated that the on-site visit occurred on January 4, 2008. The complete on-site visit documentation was not found in the file.

Document Review

MWAA provided the reviewers with a flow chart of its application review process. The flow chart indicates MWAA's review process entails the examination of twenty-plus documents, including personal and corporate tax returns.

Five of the firms were missing personal and business tax returns (see the following tables):

Personal Tax Returns

Firm	Type	Tax Year
F & L Construction	New	2014
RJ Washington Company	New	2011
Phoenix Engineering	Existing	2011, 2013, and 2014
M S Construction	Removal	2010, 2011, 2012, and 2013
Sheladia Associates	Removal	2005, 2006, 2007, 2008, 2009, and 2014

Business Tax Returns

Firm	Type	Tax Year
F & L Construction	New	2014
RJ Washington Company	New	2011
Phoenix Engineering	Existing	2013, and 2014
M S Construction	Removal	2010, 2011, 2012, and 2013
Sheladia Associates	Removal	2008, 2009, 2010, 2011, and 2012

F&L Construction filed personal and business tax filing extensions for the 2014 tax year; however, there was no documentation in the file indicating that MWAA contacted the firm to request the completed tax returns. In addition, F&L Construction's 2014 business tax return was required to determine the firm's continued size standard eligibility in four NAICS codes in which it is currently certified. Specifically, the reviewers found that as of tax years 2011, 2012 and 2013, the firm's average gross receipts totaled \$13.9 million, which is close to the \$15 million size cap for NAICS codes 238130, 238150, 238910, and 238320.

30-Day Notification

The DBE regulation requires a recipient or UCP to advise each applicant within 30 days from receipt of the certification application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. MWAA's application review process includes the request for additional information, if required.

Four of the files reviewed did not contain a notification letter. Three files contained a request for additional information thirty-eight, forty-seven, and sixty-four days, respectively, from receipt of the application.

90-Day Determination

The DBE regulation requires a recipient or UCP to make decisions on applications for certification within 90 days of receiving all information from the applicant firm. The time period may be extended for no more than an additional 60 days, upon written notice to the firm.

The review team could not determine the time frame of MWAA's certification determination for two new certification files examined. There was insufficient information to determine when the application was considered complete. DDE, Inc., dba Generation Cable Corp, was approved 203 days from date of application receipt. RJ Washington Company was approved 103 days from date of application receipt.

Corrective Actions and Schedule

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

- A process for ensuring that on-site visits are documented in the certification file.
- A process for ensuring that certification files include all of the required documents necessary to properly evaluate DBE certification eligibility.
- A process for how business size will be monitored, and procedures for the removal of NAICS codes and firms that exceed the designated size standards.
- A process and schedule to ensure that the 30 day notification is performed.
- A process to ensure that the certification determination is conducted within the 90 day timeframe.

B) Annual Affidavit

Basic Requirement (49 CFR Part 26.83)

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

Discussion

During this compliance review, deficiencies were found with the requirement for Annual Affidavits.

MWAA's certification review process includes the requirement that DBE firms submit an annual affidavit affirming their DBE status. The DBE certification letter advises the firm of its Annual Review Date, and informs the firm that the Affidavit of No Change is required on an annual basis to affirm their DBE status. The DBE is also advised to notify MWAA of any material changes that may affect its DBE eligibility, such as change in firm's ownership, management or control, and further advised that the affidavit is available for download on the website.

Three review files did not contain the annual Affidavit of No Change for the years shown below; nor was correspondence in the files requesting the outstanding form(s) and supporting documents.

Firm	Type	Year Annual Affidavit Required
M S Construction	Removal	2011 and 2012
Sheladia Associates	Removal	2011, 2012, and 2014
Phoenix Engineering	Existing	2013

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights a process for ensuring that annual Affidavits of No Change are collected and maintained in the certification files.

C) Interstate Certification

Basic Requirement (49 CFR 26.85)

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

Discussion

During this compliance review, deficiencies were found with the requirement for Interstate Certification.

MWAA's certification review process includes the receipt and review of interstate certification applications. The process comprises two options: (1) accept the certification without further proceedings, and (2) not accept the certification application, and the applicant firm provides all relevant documentation. The process requires: (1) a request from the Home State to provide an onsite report, (2) a determination on whether the Home State certification is erroneous, and (3) the process must be completed with 60-days.

Two review files were interstate certifications – Phoenix Engineering, and Sheladia Associates.

In both files, the reviewers found documentation that the firms had been certified in their home states; however, the files did not contain the required on-site visit documentation. It was noted that the original DBE certification file for Phoenix Engineering could not be located. There was no indication that MWAA contacted the home state to obtain a copy of the on-site visit document to include in the new file.

The Sheladia Associates certification file included a summary of the on-site visit. The summary was dated January 28, 2008 and indicated that the on-site visit occurred on January 4, 2008. The original on-site visit documentation was not found in the file.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MWAA must submit to the FTA Office of Civil Rights a process for ensuring that the interstate certification review process is followed.

D) Certification Appeals

Basic Requirements (49 CFR 26.86)

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

Discussion

During this compliance review, no deficiencies were found with the requirement for Certification Appeals.

MWAA's Applicant Review process includes the process for handling certification denials, removals and appeals. According to the flow chart, the certification appeals process is initiated by the denied firm. Decisions made by MWAA are considered "pending" until the US Department of Transportation (USDOT) provides a decision on the issue in dispute. Appeals are to be written within 90 days of a decision, MWAA must submit records to the USDOT within 20-days of request.

The reviewers examined one certification denial - Noah's Ark. The review team found that MWAA followed the denial process as required by §26.86. The firm applied for certification on October 15, 2013. On November 21, 2013, MWAA sent an email to the firm stating that their application was not complete. It was missing many of the required documents. The firm needed to submit the documents by December 6, 2013. MWAA sent a follow up letter on December 11, 2013 stating that they still had not received the requested documents. On January 27, 2014, a denial letter was sent to the firm for "failure to cooperate", and was advised of the right to appeal the decision, to either MWAA, or to the USDOT. Noah's Ark appealed to the USDOT, and MWAA's decision was upheld by the USDOT (letter dated July 30, 2015).

6.14 Record Keeping and Enforcements

Basic Requirement (49 CFR Parts 26.11 and 26.37)

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

Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion

During this compliance review, deficiencies were found with the requirement for Record Keeping and Enforcements.

Reporting DBE Participation

In preparation for this compliance review, MWAA provided copies of its semi-annual Uniform Reports of DBE Commitments/Awards and Payments for DCMP Phase 1 and 2. Reports were submitted for Phase 1 in FFY 2009 through the first half of FFY 2015, and for Phase 2 in FFY 2014 and the first half of FFY 2015. The DBELO stated that MWAA does not use the FTA's electronic grants management system to submit reports, but instead, uploads the documents in TEAM as portable document formats (PDFs).

Two of MWAA's semi-annual reports reviewed were submitted by the June 1 due date: June 1, 2010 and June 1, 2015. All other reports were submitted late (see chart below).

Federal Fiscal Year	Report Due June 1 (For Period: October 1 – March 31)	Report Due December 1 (For Period: April 1 – September 30)
	<i>Date Submitted</i>	<i>Date Submitted</i>
2009	July 9, 2010	June 1, 2010
2010	June 1, 2010	<i>Date Missing</i>
2011	<i>Report Missing</i>	<i>Report Missing</i>
2012	March 5, 2013	March 5, 2013
2013	February 12, 2014	February 12, 2014
2014	March 27, 2015	March 27, 2015
2015	June 1, 2015	--

MWAA reported its "total contract awards" in both Column 8A and 9A of the Uniform Reports of DBE Commitments/Awards and Payments. Some reports contained zero dollars for prime contract awards, and total dollars for subcontract awards. Specifically, over a six-year reporting period (FFYs 2009 – 2014), MWAA regularly reported its DBE contract dollars; however, total prime contract dollars were only reported (the first and second half of FFY 2009, and the second half of FFY 2014). All other report periods indicated subcontract dollars only for total contract awards (see chart below). The DBELO could not provide rationale or documentation substantiating the process used to submit the Uniform Report information.

The DBELO stated that the DCMP Compliance Manager collects the data using Excel spreadsheets. The data is obtained from the prime contractor's DBE Participation Form, the DBE Letter of Intent, and the Invoice Attachment Form. Worksheets are created for each prime contract to include the contractor name, the contract amount, payments, and designated subcontractors. A back-up worksheet is created to capture subcontractor information, such as subcontract dollar amounts, payments, and DBE detail to include ethnicity and gender. It was unclear how the data is manipulated to generate the required information for preparing the Uniform Report.

The tables below summarize the examination of information submitted by MWAA in its semi-annual Uniform Report of DBE Commitments/Awards and Payments for DCMP Phase 1 and Phase 2.

DCMP Phase 1 - Semi Annual DBE Report Summary					Overall Goal: 13.24%		
FFY	Total Prime Contract Dollars	Total Subcontract Dollars	DBE Subcontract Dollars		Total DBE Dollars	R/C 11.74%	R/N 1.5%
			R/C	R/N			
2009	\$ 902,515,500	\$ 329,387,415	\$ 49,037,086	\$ -	\$ 49,037,086	3.98%	
2010	\$ -	\$ 225,282,656	\$ 64,184,459	\$ -	\$ 64,184,459	0.00%	
2011	\$ -	\$ -	\$ -	\$ -	\$ -		
2012	\$ -	\$ 173,502,417	\$ 66,124,872	\$ 4,018,159	\$ 70,143,031	0.00%	
2013	\$ -	\$ 74,782,280	\$ 23,154,517	\$ 1,716,731	\$ 24,871,248	0.00%	
2014	\$ 43,485,128	\$ 139,496,084	\$ 38,731,329	\$ 590,773	\$ 39,322,102	90.43%	
*2015	\$ -	\$ 36,132,580	\$ 2,554,917	\$ -	\$ 2,554,917	0.00%	
Totals	\$ 946,000,628	\$ 978,583,432	\$ 243,787,180	\$ 6,325,663	\$ 250,112,843	26.44%	0.67%

DCMP Phase 2 - Semi Annual DBE Report Summary					Overall Goal: 25%		
FFY	Total Prime Contract Dollars	Total Subcontract Dollars	DBE Subcontract Dollars		Total DBE Dollars	R/C 20%	R/N 5%
			R/C	R/N			
2014	\$ 266,184,616	\$ 723,309,077	\$ 78,599,226	\$ -	\$ 78,599,226	29.53%	
*2015	\$ -	\$ 151,147,850	\$ 62,605,639	\$ -	\$ 62,605,639	0.00%	
Totals	\$ 266,184,616	\$ 874,456,927	\$ 141,204,865	\$ -	\$ 141,204,865	53.05%	0.00%

The DBELO stated that MWAA's DBE reports reflect the total dollar value of each contract awarded, and not the federal share.

In addition to late submission of Semi-Annual Reports, MWAA's reports appear to be incomplete and the agency may be reporting information incorrectly. Specifically:

1. Uniform Report data does not correspond with MWAA's list of contracts awarded for DCMP Phases 1 and 2. For example, DCMP Phase 1 has a total of five prime contract awarded, and Phase 2 has a total of six prime contracts awarded. The Uniform Reports reflect two prime contract awards for DCMP Phase 1, and three prime contract awards for Phase 2.
2. Total prime contract and DBE subcontract dollars contained in the Uniform Reports do not correspond with the totals in MWAA's list of awarded contracts for DCMP Phases 1 and 2.
3. Total Subcontract dollars reported in the Uniform Reports far exceed total Prime Contract dollars.
4. Total DBE dollars are not consistently calculated against Total Prime Contract dollars, but in most cases DBE dollars are calculated against Total Subcontract dollars, and zero dollars are reported for Prime Contracts.

Consequently, MWAA's method of reporting could result in an overstatement of its DBE goal attainment. Based on the assessment of MWAA's contract awards and semi-annual report information, it appears that the agency's goal attainment for DCMP Phase 1 and Phase 2 would be more reflective of the actual contract award information, which would be:

DCMP	Total Prime Contract Dollars	Total DBE Contract Dollars	DBE Goal Attainment
Phase 1	\$2,404,058,686	\$336,891,646	14.01%
Phase 2	\$1,604,515,411	\$177,104,672	11.04%

Monitoring

MWAA has implemented a process for monitoring and documenting DBE participation and compliance. The DBELO explained that there is separate compliance monitoring for the Airport projects, and the Rail Project (DCMP).

According to the DBE Program, every DOT-assisted contract is monitored to ensure that DBE subcontractors are on the job; that they are performing the work as approved; and that payments are made to DBEs consistent with previously approved work plans.

The DBE Program states the following specific procedures are established to monitor compliance after contract award:

- *The Department of Supplier Diversity (DSD) participates in preconstruction and pre-award meetings to communicate post-award DBE reporting and other requirements*
- *All contractors must submit a monthly Invoice Attachment Report Form (Exhibit J), documenting current contract amount and payment to DBEs*
- *The DSD verifies with the DBE the contract amount and payment to the DBE reported by the contractor. The verification forms request information to confirm scope of services, contract amount and starting date of the DBE contract. DBE subcontractors must complete and return verification forms to DSP's Post Award Administrator. Appropriate follow-up is conducted to ensure that responses are received. Where no response is received, follow-up notices are issued.*
- *The DSD conducts periodic site visits to verify that DBE subcontractors are actually on the job.*
- *The DSD maintains communication with the Resident Engineer to keep abreast of contract progress.*
- *The DSD may conduct an in-depth audit of payroll records, prime contractor work reports, etc. to verify DBE performance.*
- *The DSD facilitates the resolution of payment and work performance disputes with the support of the Procurement and Contracts Department and the Legal Office.*

DCMP Phase 1 and Phase 2 are monitored in accordance with the procedures outlined in MWAA's DBE Program Plan. The DBELO works closely with the project management team to ensure that the contractors adhere to the requirements of the DBE Program. The DBELO has weekly DBE progress meetings with the Project's Compliance Manager to keep abreast of the day-to-day DBE monitoring activities and/or issues, and has monthly meeting for the review of

contractors' monthly DBE reports, invoice payment forms and to address any DBE compliance issues.

MWAA utilizes the following tools to monitor and document DBE participation and compliance:

- DBE Participation/Commitment form: This form is updated once a year and is signed by the prime contractor.
- Letter of Intent: provided by the contractor and submitted for approval of DBE subcontractors. The letter is signed by the prime and DBE subcontractor.
- Daily Inspector Reports: maintained and provided information pertaining to the contractors on the job site.
- Owner Controlled Insurance Forms: utilized to track contractors working on the job site. The Daily Inspector Report form has recently been updated to include a verification/certification signature of the individual conducting the on-site monitoring visit.
- Invoice Attachment Form: used to monitor DBE payments and the percentage of work completed. The form is also used together with a signed confirmation letter from the DBE that all payments have been received, and is used to verify final payment and release of any retainage.

The Procurement and Contracts Department personnel also provide support in monitoring contract compliance, by taking contract enforcement action when a contractor is in non-compliance with DBE requirements.

Bidders List

The DBE Program states that MWAA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on federally-funded contracts. According to the DBE Program, the bidders list will include the name, address, DBE, non-DBE status, age, and annual gross receipts of firms. The DBE Program states that the information will be collected through the DBE and Local Disadvantaged Business Enterprise (LDBE) certification process, through the on-line registration process from firms obtaining plans and proposals for solicitations and through outreach events sponsored by external organizations and MWAA sponsored outreach events.

The DBELO indicated that MWAA's Bidders List is developed as firms register on-line to obtain plans and solicitations. The review team examined the MWAA website's "Current Contracting Opportunities", "Registration & Plan Holders" page, and found the following information contained in the Plan Holders List:

- Contractors Name
- Primary Contact
- Street Address
- City, State, Zip
- Phone Number

- Fax Number
- How the Plan Holder intends to participate in the solicitation –
 - Prime
 - Joint Venture
 - Subcontractor
 - Supplier
 - Other

No other bidders list containing DBE and non-DBE information, as stated in the DBE Program was provided for review.

Corrective Actions and Schedule

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

- A plan to ensure that semi-annual DBE reports are submitted accurately and timely
- Evidence that a bidders list is being compiled in accordance with §26.11(c).

7. Summary Findings

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	ND	-	-
2.	Policy Statement	26.23	D	DBE Policy Statement does not reflect the current President and CEO; not posted on website, or circulated internally and externally.	Within 60 days of the issuance of the final report
3.	DBE Liaison Officer	26.25	ND		
4.	Financial Institutions	26.27	D	Has not encouraged contractors to use DBE financial institutions.	Within 60 days of the issuance of the final report
5.	DBE Directory	26.31	D	Due to an unresolved IT issue, DBEs recently certified and/or removed from the program have not been updated in the Virginia UCP DBE Directory.	Within 60 days of the issuance of the final report
6.	Overconcentration	26.33	AC	It is recommended that MWAA establish a process for conducting the overconcentration analysis, and include a timeframe for its completion.	
7.	Business Development Programs	26.35	ND	-	-
8. Determining / Meeting Goals				-	-
8.a	Calculation	26.45	ND	-	-

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
8.b	Public Participation	26.45	D	Notice announcing overall DBE goal not posted on the MWAA's official website, and documentation is not maintained in the file.	Within 60 days of the issuance of the final report
8.c	Race-Neutral	26.51	ND	-	-
8.d	Race-Conscious	26.51	ND	-	-
8.e	Good Faith Efforts	26.53	D	Does not have process to ensure that DBE goals and commitments are met	Within 60 days of the issuance of the final report
8.f	Counting DBE Participation	26.55	ND	-	-
8.g	Protecting Against Termination for Convenience	26.53	ND	-	-
8.h	Quotas	26.43	ND	-	-
9.	Shortfall Analysis and Corrective Action Plan	26.47	ND	-	-
10.	TVM	26.49	ND	-	-
11.Required Contract Provisions and Enforcement				-	-
11.a	Contract Assurance	26.13	D	Contract assurance was not found in contract and subcontracts reviewed	Within 60 days of the issuance of the final report
11.b	Prompt Payment	26.29	D	Prompt payment and return of retainage clauses are not consistent with the DBE Program Plan; and Requested DBE payment information for DCMP Phase 1 was not provided	Within 60 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
11.c	Legal Remedies	26.37	ND	-	-
12. Certification Standards		26.67-26.71	ND	-	-
13. Certification Procedures				-	-
13.a	Onsite Visit / Document Review	26.83	D	Personal & Business Tax Returns missing from certification files	Within 60 days of the issuance of the final report
13.b	Annual Affidavit	26.83	D	Annual Affidavits are not contained in certification files	Within 60 days of the issuance of the final report
13.c	Interstate Certification	26.85	D	Does not have a process to ensure interstate certification on-sites reports are maintained in the file	Within 60 days of the issuance of the final report
13.d	Certification Appeals	26.86	ND	-	-
14. Record Keeping and Enforcements				-	-
14.a	Bidders List and Reporting DBE Participation	26.11	D	Bidders list located on website does not contain adequate contractor information	Within 60 days of the issuance of the final report
			D	DBE semi-annual reports are incorrect and submitted late	
14.b	Monitoring	26.37	ND	-	-

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

8. Attachments



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, D.C. 20590

August 7, 2015

Mr. John Potter
President and Chief Executive Officer
Metropolitan Washington Airports Authority
1 Aviation Circle
Washington, DC 20001

Dear Mr. Potter:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Metropolitan Washington Airports Authority (Airports Authority) has been selected for a review of its overall DBE program to take place October 20 – 22, 2015.

The purpose of this review will be to determine whether the Airports Authority is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, and an exit conference. The reviewers will complete the on-site portion of the review within a three-day period. FTA has engaged the services of Milligan & Company, LLC (Milligan) of Philadelphia, PA to conduct this compliance review. The Milligan team and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled **Tuesday, October 20, 2015, at 9:00 a.m.**, to introduce the Milligan team and FTA representatives to the Authority. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. Please let us know if you will designate a member of your staff to serve as

the Airports Authority's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Electronic copies of documents are preferred. Please upload them to Milligan's file transfer protocol (FTP) site. Your reviewer will reach out to you concerning the use of the FTP site. Please be prepared to designate a point of contact for your agency, for which user access should be provided. You also have the option of sending the documents to the following contact person:

Sandra Swiacki
Milligan & Company, LLC
105 N. 22nd St.
Philadelphia, PA 19103
Phone: 215-496-9100, ext. 120
Email: sswiacki@milligancpa.com

We request the exit conference be scheduled for **Thursday, October 22, 2015, at 2:00 p.m.** to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to the Airports Authority, will be considered public documents subject to release under the Freedom of Information Act, upon request.

The Airports Authority representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Brian Whitehead, Program Manager for this compliance review, at 202-366-3051 or via e-mail at brian.whitehead@dot.gov.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day
Program Manager for Policy & Technical Assistance

cc: Terry Garcia Crews, FTA Region III Administrator
Dr. Stacie Parkins, FTA Region III Civil Rights Officer

Metropolitan Washington Airports Authority
Disadvantaged Business Enterprise Program Compliance Review

Enclosure 1

You must submit the following information to Milligan within 21 calendar days from the date of this letter.

1. Current DBE Program Plan (which should include a clear and legible copy of the Airports Authority's organization chart and policy statement).
2. Fiscal years (FYs) 2011 - FY 2013 goal methodology submission and the FTA's approval letter for current FYs 2014 – FY2016 goal methodology submission.
3. Project goal methodology—separate and distinct from the triennial goal—that was established for any phase of Dulles Corridor Metrorail project.
4. DBE Uniform Reports for all fiscal years that contain funds used during the Dulles Corridor Metrorail project (i.e., Phases 1 and 2)
5. List of DBEs used during the Dulles Corridor Metrorail project (Phases 1 and 2), the type of work each DBE performed, and the payment each DBE received.
6. The number and names of DBE firms whose contracts have been terminated during the Dulles Corridor Metrorail project (Phases 1 and 2) and the reasons for their termination.
7. Prompt Payment verification process.
8. Current Memorandum of Understanding or similar documents for the Airports Authority's participation in the Unified Certification Program.
9. Any additional certification criteria/guidelines used by the Airports Authority in determining DBE eligibility, if applicable.
10. The identification of firms, if any, that have worked on the Airport Authority's projects and have graduated from the Airports Authority's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified as a DBE.
11. Information identifying FTA-funded contracts awarded during FY2013 to present by the Airports Authority and its subrecipients. The federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
12. Good Faith Effort criteria established by the Airports Authority.
13. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
14. Small Business element as implemented by the Airports Authority.
15. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This

Metropolitan Washington Airports Authority
Disadvantaged Business Enterprise Program Compliance Review

information should include the complete/executed contract between your agency and the transit vehicle manufacturer.

16. FTA-assisted transit vehicle requests for proposals (RFPs) for the last five (5) years.
17. List the names of all transit vehicle manufacturers that submitted bids for the RFPs provided in response to Item 14.
18. Shortfall analysis and corrective action plan for the last three (3) years.
19. Names of an interested party (external organizations) with which the Airports Authority has interacted on the DBE program issues.
20. Any complaints received concerning the Airports Authority's DBE program over the past five (5) years.
21. The DBELO official position description.
22. Other pertinent information determined by the Airports Authority's staff to shed light on its DBE compliance efforts.

March 4, 2016

Ms. Anita Heard
Internal EEO Program Coordinator
Federal Transit Administration
Office of Civil Rights, TCR
1200 New Jersey Avenue, E54-420 East Building
Washington, DC 20590

Dear Ms. Heard:

We are in receipt of the Draft Report of the Metropolitan Washington Airports Authority (Airports Authority) DBE Program Compliance Review that took place during the week of October 20-22, 2015. Your e-mail of February 26, 2016, asked that we review the Report for any factual errors and provide any comments to you (in a separate document). Our preliminary review of the draft finds that Section 4.2 Budget and FTA-Assisted Projects (pages 7-8) should be revised to reflect the current funding sources and budget for Phase 2 of the Dulles Corridor Metrorail Project (see enclosure).

Within 60 days of receipt of the final Report, we will respond with our specific corrective actions for each of the deficiencies noted in the Report. If you have any questions, I can be reached at 703-417-8616 or e-mail at robin.wade@mwaa.com.

Sincerely,



Robin L. Wade
Acting Deputy Vice President of Supplier Diversity

RLW:pc

Enclosure

cc: Mr. John E. Potter
Mr. Jerome L. Davis
Mr. Richard Gordon
Ms. Julia Hodge

