

FTA

FEDERAL TRANSIT ADMINISTRATION

Omaha Metro Area Transit (Metro) DBE Program Compliance Review

FINAL REPORT

March 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 Omaha Metro Area Transit’s (Metro) 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 Metro. In addition, the following entities were interviewed as part of this review: Metro officials, Greater Omaha Economic Development Partnership, Midlands Latino Community Development Center, Metro Omaha Women’s Business Center, City of Omaha Public Works, City of Omaha Human Rights and Relations, Community Development Resources, Greater Omaha Chamber of Commerce REACH Program, Nebraska Business Development Center, Nebraska Small Business Administration, City of Lincoln Commission on Human Rights, South Omaha Business Association, Latino Contractors Group of Nebraska, North Omaha Contractors Alliance, Nebraska Hispanic Chamber of Commerce, AIM, Contractor Development Services, Perkins & Perkins Construction, Spencer Management, LLC, R.A.E Rebar Inc., Leuder Construction Co., Grunwald Mechanical Contractors and Engineers, BJ’s Mobile Wash and Exclusive Janitorial & Final Cleaning Services LLC (EJFCS). The three-day review included interviews, assessments of data collection systems, and review of program and contract documents.

Metro’s DBE Program includes the following positive program elements –

Positive Program Elements

- DBE monitoring checklist contains appropriate information
- Boilerplate language includes required contract clauses
- Metro has a thorough reconsideration process

The Program has the following administrative deficiencies –

Administrative Deficiencies

- Metro did not encourage prime contractors to use DBE financial institutions as required by 49 CFR Part 26.27.
- Metro did not notify the FTA Office of Civil Rights of vehicle purchases within 30 days of award, as required by 49 CFR Part 26.49.

The Program has the following substantive deficiencies –

Substantive Deficiencies

- Areas of Metro’s DBE program plan were not included, or required updating to comply with 49 CFR Part 26.21: DBELO responsibilities, process to review of annual affidavits for two (2) agencies on behalf of the NUCP, and calculation of race-neutral and race-conscious goals. (6.1 DBE Program Plan).
- Metro does not have adequate staff to administer the program in compliance with 49 CFR Part 26.25. The DBE program plan does not accurately reflect the roles and activities of the DBELO and other staff. The DBELO is not informed of or involved in key DBE matters such as reviewing procurement opportunities or preparing and submitting reports. The DBELO’s responsibilities are not included in her current job description (6.3 DBE Liaison Officer).

Substantive Deficiencies (continued)

- Metro has not determined if overconcentration of DBE firms exists, as required by 49 CFR Part 26.33 (6.6 Overconcentration).
- Metro has not conducted an evaluation of the need for a business development program, as required by Metro's DBE program plan (6.7 Business Development Programs).
- Metro did not include all procurement opportunities with FTA participation in the determination of the base figure, as required by 49 CFR Part 26.45, and failed to justify the relevance of using past DBE participation as an adjustment to its base figure (6.8 Determining/Meeting Goals: A. Calculation).
- During the FFY 2014-2016 DBE goal setting process, Metro did not conduct consultation with stakeholder groups, including a scheduled, direct, or interactive exchange with minority, women's and contractor groups as required by 49 CFR Part 26.45(g) (6.8 Determining/Meeting Goals: B. Public Participation).
- Metro has not fully implemented the race neutral measures listed in their DBE program plan, including its small business element, as required by 49 CFR Part 26.51(a-b) and 49 CFR Part 26.39 respectively (6.8 Determining/Meeting Goals: C. Race-Neutral DBE Participation).
- The FFY 2014-16 Goal Methodology does not explain the reasons for a wholly race-conscious goal and the DBE program plan does not provide a methodology for determining contract goals and adjusting use of contract goals as required by 49 CFR Part 26.51 (e)-(f). (6.8 Determining/Meeting Goals: D. Race-Conscious DBE Participation).
- Metro did not document the review of good faith efforts as part of the solicitation and award process, as required by Appendix A of 49 CFR Part 26 (V) (6.8 Determining/Meeting Goals: C. Good Faith Efforts).
- Metro did not receive good faith efforts documentation where a DBE was terminated for default and where a substitution for a DBE resource was warranted, as required by 49 CFR Part 26.53(g) (6.8 Determining/Meeting Goals: F. Protecting Against Termination for Convenience).
- Metro's submitted DBE Semi-Annual Uniform Reports indicate that a shortfall analysis was required in FY2014 but was not completed, as required by 49 CFR Part 26.47 (6.9 Shortfall Analysis and Corrective Action Plan).
- Metro does not have a process or procedure for reviewing the subcontracts to ensure that all the required DBE clauses are included and does not have policies for enforcement with prime contractors. Subcontracts did not include non-discrimination clauses as required by 49 CFR Part 26.13 (6.11 Required Contract Provisions and Enforcement: A. Contract Assurance).
- Metro does not have an ongoing prompt payment and return of retainage verification process, as required by 49 CFR Part 26.29 (6.11 Required Contract Provisions and Enforcement: B. Prompt Payment).
- Metro does not have a procedure in place to review subcontracts for the inclusion of legal remedies. Metro has not taken action where breaches of contract have occurred, as required by 49 CFR Part 26.37 (6.11 Required Contract Provisions and Enforcement: C. Legal Remedies).
- Metro's DBE program does not indicate that Metro is reviewing annual affidavits and does not include the appropriate procedure for this process, as required by 49 CFR Part 26.67-26.71 (6.12 Certification Standards).

Substantive Deficiencies (continued)

- Metro does not maintain a bidders list with subcontractor information, as required by 49 CFR Part 26.11 (c). The December 2014 Semi-Annual Uniform Report was submitted late and four (4) quarterly ARRA reports were not submitted. There are no procedures in place to ensure on-time report submission and accurate reporting, as required by 49 CFR Part 26.11. Metro did not monitor DBE participation performance of its prime contractors, including maintaining a running tally of payments made to DBEs during the contract's period of performance, and did not use enforcement measures, as required by 49 CFR Part 26.37 (6.14 Record Keeping and Enforcement).

Metro's DBE participation level has decreased over the past three (3) fiscal years: Metro's reported DBE participation data reflects 4.28% in FY 2012, 4.75% in FY 2013 and 0.71% in FY 2014. Metro inaccurately calculated its percent of DBE participation in the years FY2012-2015 so the actual level of participation could not be determined at the time of the site visit.

According to Metro's management, a number of factors contribute to its history of varied DBE participation, primarily the specific construction projects undertaken and lack of DBEs in other contracting areas. Notwithstanding, this report highlights 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 Metro. Information on Metro, the review team, and the dates of the review are presented below.

Grant Recipient:	Omaha Metro Area Transit (Metro)
City/State:	Omaha, NE
Grantee Number:	1839
Executive Official:	Curt Simon
On-site Liaison:	Edith Simpson, J.D.
Report Prepared By:	Calyptus Consulting Group, Inc.
Dates of On-site Visit:	September 15 – 17, 2015
Compliance Review Team Members:	George Harris Jameson Beekman Philippa Drew

2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights Compliance Reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

Metro is the recipient of one or more federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, Metro 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 Metro's DBE program and were the basis for this Compliance Review.

3. Purpose and Objectives

3.1 Purpose

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

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

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

4. Background Information

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

4.1 Introduction to Metro and Organizational Structure

The Transit Authority of the City of Omaha, DBA Metro, established in 1972, currently provides bus and paratransit services in the cities of Omaha, Bellevue, Ralston, Papillion and LaVista, Nebraska and Council Bluffs, Iowa. Funds from Omaha’s tax levy cannot be used to offset transit service operating expenses incurred outside of Omaha. Transit service outside of the Omaha city limits is provided by contractual agreement between Metro and the respective political jurisdictions and agencies, wherein they agree to reimburse Metro for all operating expenses not recovered through farebox receipts and federal and state subsidies. Metro does not have any subrecipients. The population of the metropolitan service area is approximately 477,000.

Metro operates 21 fixed routes, seven (7) express routes, and the Red Route from October to April. Metro’s fleet of revenue vehicles consists of 128 buses, 25 paratransit vans and four (4) cars. Metro’s administration and operations are located at 2222 Cuming Street in Omaha, Nebraska. Further, Metro utilizes four (4) transit centers: North Omaha Transit Center located on N. 30th Street, Westroads Transit Center located on N. 102nd Street, Benson Park Transit Center located on Military Avenue, and Metro Community College Transit Center located on Babe Gomez Avenue.

Metro was created as a governmental subdivision of the State of Nebraska, autonomous in nature. Metro has a five (5) member board appointed by the mayor and confirmed by Omaha’s City Council and the Douglas County Commissioners. Metro’s Executive Director reports to the Board. Metro’s main divisions fall under the Finance Director, Legal/Human Resources Director, and the Safety Director who oversees Operations, Maintenance, and Network Systems. Grants Administration reports to the Special Projects Manager who has direct access to the Executive Director. The Legal/Human Resources Director is the DBELO and also has responsibilities for HR, Legal, Equal Employment Opportunity (EEO), the Drug and Alcohol program, and insurance claims.

4.2 Budget and FTA-Assisted Projects

Metro’s budget comprises local, state, and federal funds, as well as revenue from fares and other sources. The FY2014 budget was as follows:

Funding Source	Funding Amount	
Federal – FTA (Non-ARRA)	Total:	\$10,516,199
	Planning:	\$1,071,602
	Capital:	\$9,392,207
	Operating:	\$52,390
State:		\$1,950,000
Local:		\$19,581,488
Total:		\$32,047,687

Metro has several FTA-assisted projects currently underway and planned for the future. The current projects include:

- State of Good Repair (SGR) Phase II - Refurbishing/remodeling bus storage area located at 2222 Cuming Street
- Replacement of an Underground Fuel Tank
- Bus Rapid Transit (BRT) and Urban Circulator Project - Planning and Preliminary Engineering and NEPA review for an eight (8) mile BRT line along Dodge Street Corridor
- Purchase of three (3) 2015 Ford paratransit leased vehicles for Bellevue, Papillion, and La Vista

Upcoming projects include:

- Farebox upgrade for integration with smart card and e-Payment technology
- BRT project – Construction of BRT stations, and purchase of BRT revenue vehicles
- Construction projects at Crossroad Transit Center, Downtown Transit Center, and Creighton Transit Center
- Construction and purchase of bus shelters
- Purchase of buses and paratransit vehicles

4.3 DBE Program

Metro's Legal/Human Resources Director is the DBELO and is responsible for developing, monitoring and enforcing the DBE program to ensure compliance with appropriate federal and state laws and regulations. The DBELO has direct access to the Executive Director. The DBELO is also responsible for HR, Legal, EEO, Drug and Alcohol Program and Insurance Claim activities at Metro. The DBELO has no dedicated staff to assist in managing the DBE program, although the Grants Administrator and Finance Director have shared responsibility for certain DBE activities as noted below.

The current Grant Administrator has a shared responsibility to ensure compliance with the DBE program. The Project Development Manager was previously the Grants Administrator and continues to provide some support for this role. The Grants Administrator develops information about potential opportunities based on grants and planned projects to inform the DBELO as she develops agency DBE goals. The Grants Administrator is responsible for major project procurement activities, and provides information to the DBELO to support contract goal setting. The Grants Administrator also collects payment information and develops the DBE Semi-Annual Uniform Reports. The Finance Director provides financial budget information to support goal development. The Special Counsel is listed in the DBE program, however, most legal advice is provided in-house by the DBELO.

The DBELO completes the following duties and responsibilities:

1. Reviews third party contracts and purchase requisitions for compliance with this program
2. Works with all departments to set overall annual goals
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner
4. Identifies contracts and procurements so that DBE goals are included in solicitations, and identifies ways to improve progress

5. Analyzes Metro's progress toward attainment of program goals and identifies ways to improve progress
6. Participates in pre-bid meetings
7. Advises the CEO/governing body on DBE matters and achievement
8. Provides DBEs with information and assistance in preparing bids
9. Acts as Metro's liaison to the Unified Certification Program in the State of Nebraska
10. Provides outreach to DBEs and community organizations to advise them of opportunities
11. Maintains an updated directory of certified DBEs
12. Applies legal and contract remedies available under Federal, state and local law
13. Publishes and documents the placement of legal notices in compliance with 49 CFR Part 26 publication requirements for overall goals

Metro's current DBE program plan was submitted to FTA on December 11, 2012. Concurrence was provided by FTA on December 17, 2012. Metro's DBE program indicates that they will meet the maximum feasible portion of its overall goal using race-neutral means; however, the last two (2) sets of submitted DBE goals have been race-conscious: 0.61% goal FFY 2011-2013, and 1.25% goal FFY 2014-2016, based on Metro's past practice and prior FTA approval of race-conscious goals. The FFY 2014-2016 goal was submitted on August 1, 2013 and was given concurrence by FTA on September 19, 2013. Metro's DBE Reports indicated that their goal was met in 2012 and 2013, but not in 2014 where participation was 0.71%. The focus of Metro's DBE participation has been on construction projects.

Areas that have been problematic for Metro in terms of implementing its program include a lack of resources to manage the program, the DBELO has not been fully utilized by the agency in the implementation of its program, and contractor payment data has not been collected and analyzed. The review team noted a number of positive program elements, including the DBE monitoring checklist for site visits, use of boilerplate language for FTA clauses within procurements, and a thorough reconsideration process.

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 Metro's 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 Metro 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) exist 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 Metro did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufactures (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include Metro seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- A non-discrimination and a prompt payment clause is 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 Metro 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 Metro of staff and other parties that would potentially be interviewed.

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

- Current DBE Program Plan.
- Fiscal years (FYs) 2010, FY 2011 - FY 2014, and the most recent goal methodology submission.
- ARRA reports for FY 2011.
- Current Memorandum of Understanding or similar documents indicating Metro's participation in the Unified Certification Program.
- Any additional certification criteria/guidelines used by Metro in determining DBE eligibility.
- Identification of firms, if any, that have worked on Metro's projects and have graduated from the DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified as a DBE.
- Information identifying FTA-funded contracts awarded during FY2011 to present by Metro and its subrecipients. 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.
- Good Faith Effort criteria established by Metro.
- Procedures for monitoring that work committed to DBEs is actually performed by those DBEs.
- Small Business element as implemented by Metro.
- FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the complete/executed contract between the agency and the transit vehicle manufacturer.
- FTA-assisted transit vehicle requests for proposals (RFPs) for the last five (5) years.
- List the names of all transit vehicle manufacturers that submitted bids for the RFPs.
- Shortfall analysis and corrective action plan for the last three (3) years.
- Names of interested parties (external organizations) with which Metro has interacted on DBE program issues.
- Any complaints received concerning Metro's DBE program over the past five (5) years.

- The DBELO's official position description.
- Other pertinent information determined by Metro staff to shed light on its DBE compliance efforts.

An opening conference was conducted at the beginning of the Compliance Review with FTA representatives, Metro staff and the review team. The following people attended the meeting:

- Curt Simon, Metro, Executive Director
- Edith Simpson, Metro, Legal/HR Director
- Jennifer Riess, FTA, Office of Civil Rights (by teleconference)
- Antoinette Davis, FTA, Office of Civil Rights (by teleconference)
- Brian Whitehead, FTA, Office of Civil Rights (by teleconference)
- Yolanda Mitchell, FTA, Office of Civil Rights (by teleconference)
- Janelle Hinton, FTA, Office of Civil Rights (by teleconference)
- Kevin Osborn, FTA, Regional Civil Rights Officer Region VII (by teleconference)
- George Harris, Calyptus Consulting Group, Team Lead, SME
- Jameson Beekman, Calyptus Consulting Group, Consultant
- Philippa Drew, Calyptus Consulting Group, Analyst

Following the opening conference, the review team examined the implementation of Metro's DBE Program Plan and other documents submitted by the DBE Liaison Officer. The team then conducted interviews and discussions with Metro regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from procurement, finance, legal/HR, and safety offices. A visit was made to the North Omaha Transit Center at 4308 North 30th Street, Omaha which had been recently renovated in a project involving DBE subcontractors. A sample of prime contracts and subcontracts was then selected and reviewed for their DBE elements. Additional interviews with prime contractors, subcontractors, and interested parties were also conducted.

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

- Curt Simon, Metro, Executive Director
- Edith Simpson, Metro, Legal/HR Director
- Britney Berry, FTA, Office of Civil Rights (by teleconference)
- Anita Heard, FTA, Office of Civil Rights (by teleconference)
- Yolanda Mitchell, FTA, Office of Civil Rights (by teleconference)
- Jennifer Riess, FTA, Office of Civil Rights (by teleconference)
- Janelle Hinton, FTA, Office of Civil Rights (by teleconference)
- Antoinette Davis, FTA, Office of Civil Rights (by teleconference)
- Kevin Osborn, FTA, Regional Civil Rights Officer Region VII (by teleconference)
- George Harris, Calyptus Consulting Group, Team Lead, SME
- Jameson Beekman, Calyptus Consulting Group, Consultant
- Philippa Drew, Calyptus Consulting Group, Analyst

Following the site visit, a draft report was compiled and transmitted to Metro for comments on January 14, 2016 and comments were received from Metro on January 22, 2016. A summary of comments can be found in Attachment 7.

5.3 Stakeholder Interviews

The review team interviewed the following fifteen (15) community representatives and stakeholder groups: Greater Omaha Economic Development Partnership, Midlands Latino Community Development Center, Metro Omaha Women's Business Center, City of Omaha Public Works, City of Omaha Human Rights and Relations, Community Development Resources, Greater Omaha Chamber of Commerce REACH Program, Nebraska Business Development Center, Nebraska Small Business Administration, City of Lincoln Commission on Human Rights, South Omaha Business Association, Latino Contractors Group of Nebraska, North Omaha Contractors Alliance, Nebraska Hispanic Chamber of Commerce, and AIM. One (1) interview was conducted with Contractor Development Services, which was contracted by Metro to support small businesses and DBEs and to provide access to procurement opportunities.

The review team also interviewed three (3) DBE contractors: Perkins & Perkins Construction, Spencer Management, LLC, and R.A.E. Rebar Inc. Two (2) non-DBE contractors were interviewed: Leuder Construction Co. (LCC) and Grunwald Mechanical Contractors and Engineers (GMCE). In addition, one (1) DBE and one (1) non-DBE contractor were interviewed relating to procurement complaints and protests: BJ's Mobile Wash (BJ's) and Exclusive Janitorial & Final Cleaning Services LLC (EJFCS).

Complaints and Protests

The interview with one DBE contractor indicated the termination process was not followed accurately. Other issues included failure to make timely payment of invoices, work outside of the contract, and a hostile work site.

In addition, interviews were undertaken with two (2) firms that had concerns relating to procurement procedures.

DBE Contractors

The interviews with DBE subcontractors included questions on the work performed, how the DBE was solicited for the work, if the DBE owned or leased equipment, on-site monitoring, subcontracted work, prompt payment, retainage, change orders, and experience on other FTA-assisted contracts.

All three (3) interviewed subcontractors had worked with the same prime contractor. One DBE subcontractor also worked on SGR-Phase I, with a different prime contractor. The key points of the interviews are summarized below:

How Contractors Solicited DBE Work

One (1) subcontractor had an existing relationship with the prime contractor and was notified by the prime contractor when an opportunity was identified. One (1) subcontractor was made aware of a project, and they reached out to prime contractors to express their interest.

Subcontracted work

One DBE firm subcontracted work. Neither of the other two (2) DBEs interviewed subcontracted work.

Equipment Leased or Lent to DBE Subcontractors

None of the DBE subcontractors reported leasing or borrowing equipment from prime contractors on Metro projects. The subcontractors owned or leased their own equipment.

On-Site Monitoring Activities

Two (2) subcontractors remembered DBE monitoring spot-checks completed on the construction site by Metro staff. The other DBE contractor did not recall Metro's monitoring activity, but indicated that they performed work on-site only 1-2 days per week.

Payment Terms and Prompt Payment

Two (2) subcontractors indicated that they were generally paid within the 30 days of the prime receiving payment from Metro. The other DBE contractor was not aware of a prompt payment clause in their contract with prime contractor.

Retainage

One (1) subcontractor indicated that they finished work on a project in April 2013, and did not get final payment of retainage until March 2014, when the project was complete.

Considering DBE Work for Change Orders

The original contract amounts for two (2) DBE subcontractors increased through change orders. The changes were documented in contract amendments.

Frequency with which DBE works on FTA-assisted contracts.

One (1) subcontractor reported working on Metro projects for the past five (5) years. None of the three (3) DBE subcontractors interviewed had worked on federally funded projects contracted by other agencies.

Non-DBE Contractors

The interviews with non-DBE contractors included questions on how contractors solicited DBE work, if contractors experienced performance issues with DBE subcontractors, if any subcontractor substitutions occurred, if the contractor leased or lent equipment to DBE subcontractors, on-site monitoring activities, payment terms and prompt payment, retainage, and considering DBE work for change orders.

One (1) prime contractor used DBE subcontractors on two (2) projects. Another prime contractor did not use a DBE subcontractor and was awarded a Boiler Addition contract in 2012 after Metro's review of good faith efforts. The key points of the interviews are summarized below:

How Contractors Solicited DBE Work

One (1) contractor indicated they had existing relationships with small and disadvantaged businesses. Another contractor stated that they send information out to known DBEs, requesting quotes from those that are interested in subcontracting. One (1) contractor interviewed also maintains databases of DBE subcontractors and reviews the Nebraska Department of Roads (NDOR) unified DBE directory to identify DBEs.

Performance Issues with DBE Subcontractors

One (1) contractor did not have any DBE subcontractors on the Boiler Addition project conducted for Metro. One (1) contractor described a performance issue with a DBE subcontractor on the NOTC contract, which led to the termination for default of the DBE.

Subcontractor Substitutions

One (1) prime contractor did not have any subcontractor substitutions on the project completed for Metro. Another contractor stated that they did not substitute a DBE with a non-DBE. Their DBE subcontractor on SGE-Phase II subcontracted part of their original scope to another when they realized that they were not qualified to deliver the work.

Equipment Leased or Lent to DBE Subcontractors

Neither of the two (2) prime contractors interviewed leased or lent equipment to DBE subcontractors.

On-Site Monitoring Activities

One (1) contractor did not have a DBE subcontractor on Metro's Boiler replacement project. The other contractor recalled Metro undertaking on-site monitoring spot checks of DBE participation during their construction contracts.

Payment Terms and Prompt Payment

One (1) contractor requested payroll information and invoices from subcontractors prior to billing Metro. They indicated that subcontractors are paid promptly after they receive payment from Metro, typically within 7 days.

Retainage

Both prime contractors reported that Metro withheld 10% retainage, in line with State of Nebraska regulations. One (1) contractor indicated that Metro reduced retainage to 5% as the construction projects progressed, and that they reduced their subcontractors' retainage in line with this process. This contractor held retainage from subcontractors until final payment from Metro at the end of the project.

Considering DBE Work for Change Orders

Both prime contractors explained that if a change order request included work performed by the DBEs they request a quote from the DBE, and include the additional value in a contract amendment with the subcontractor.

Major Issues and Concerns

None of the community representatives, stakeholder groups, or contractors reported any major issues and concerns regarding Metro's DBE program, other than the complaints and protests previously described.

Community Representatives and Stakeholder Groups

The interviews with community representatives and stakeholder groups included questions on the organization's familiarity with Metro's DBE program, level of participation during the development of Metro's DBE goal, communication with Metro regarding contracting opportunities, outreach efforts conducted by Metro, known concerns about Metro's DBE program, suggestions for improving Metro's DBE program, and whether the organization or its members have worked on FTA-assisted projects for Metro or have participated in providing input on Metro's DBE goals or improvements to Metro's DBE program.

Familiarity with Metro's DBE Program

Three (3) of the fifteen (15) external stakeholders interviewed were aware that Metro had a DBE program, but did not know any specific information about it. None of the other stakeholder organizations knew of Metro's DBE program.

Participation during the Development of Metro's DBE Goal

None of the external stakeholders interviewed were involved in the development of Metro's DBE goal or could recall being requested to participate or comment on the goal development.

Communication with Metro Regarding Contracting Opportunities

One (1) stakeholder indicated that they are sometimes contacted by Metro regarding contracting opportunities, but in most cases learn about the opportunities indirectly through the businesses they work with or by reviewing website postings. Several stakeholders expressed an interest in finding out about Metro's contracting opportunities to share with their members and networks.

Outreach Efforts Conducted by Metro

One (1) stakeholder explained that Metro had reached out to them in the past regarding business registrations. No other stakeholders indicated they had been contacted by Metro or were involved in outreach efforts.

Known Concerns about Metro's DBE Program

No external stakeholders reported any known concerns regarding Metro's DBE program.

Suggestions for Improving Metro's DBE Program

A number of external stakeholders indicated that Metro should talk to them about upcoming contracting opportunities so that they could share information with their members or contact lists, and assist Metro in accessing a wide range of businesses. One (1) external stakeholder runs workshops each year on how to do business in the federal market place and suggested Metro should participate. Another external stakeholder suggested that staff from Metro could attend a network meeting.

Work on FTA-Assisted Projects at Metro

One (1) external stakeholder stated that they are working with Metro on a project. No other interviewees indicated that they have worked on FTA-assisted projects at Metro.

Business Development Contract

An interview was conducted with one (1) organization which was contracted by Metro between June, 2012 to December, 2014 to support small businesses and DBEs to access Metro construction opportunities. They reported that during their contract they had supported nine (9) Metro projects in which they performed outreach to local DBE firms and matched them with prime contractors on Metro projects. Five (5) contractors that worked with them submitted seven (7) bids to Metro, leading to two (2) awards. They assisted one (1) firm with meeting its bonding requirements.

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 Metro'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, **deficiencies** were found with this requirement.

Metro provided a copy of its revised DBE program plan submitted to FTA on December 11, 2012. Concurrence was provided by FTA on December 17, 2012. The approved DBE program plan reflects the current organizational structure of the agency and names the current DBELO. The program plan has been uploaded onto FTA's Electronic Award Management System (EAMS). Metro's DBE policy statement is available on the agency website. The Metro website also contains the contact information for the current DBELO.

The review team noted that areas of Metro's DBE program plan were not included, or required updating to comply with 49 CFR Part 26.21. The required areas to be updated will be discussed throughout this report, but include: DBELO responsibilities, process to review of annual affidavits for two (2) agencies on behalf of the NUCP, and calculation of race-neutral and race-conscious goals.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, Metro must submit a plan to update the DBE program with the required changes. The plan must be submitted to the FTA's Office of Civil Rights.

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, **no deficiencies** were found with this requirement.

Metro's DBE policy statement was signed by the CEO on December 11, 2012. It is included in Metro's DBE program plan, lists the objectives of the DBE program, and includes responsibilities for implementation. The DBE program states that the policy is posted internally and disseminated to the business community through the solicitation process. The DBE policy was posted on staff notice boards in the Metro offices at 2222 Cuming Street in Omaha, Nebraska. The policy statement was evident in five (5) solicitation documents that included contract goals which were reviewed on site. The DBE policy is listed on the Metro website on the same web page as solicitations are posted. Metro has distributed a signed and dated DBE policy and has communicated the policy appropriately.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25)

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

Discussion

During this compliance review, **deficiencies** were found with this requirement.

Metro's DBE program plan describes the DBELO duties and responsibilities to implement the DBE program. Edith Simpson, Legal/Human Resources Director, is identified as the DBELO and the program plan includes her contact information. The DBE program plan states that the DBELO has direct, independent access to the Chief Executive Officer concerning DBE program matters. The organizational chart included in the DBE program plan indicates that the position reports to the Executive Director. As Legal/Human Resources Director, the DBELO meets frequently with the Executive Director, but they do not meet regularly on DBE matters. The DBELO and Executive Director do meet to discuss the DBE program when needed, in particular as new DBE goals are established.

The Legal/Human Resources Director has significant collateral duties, including responsibilities for HR, Legal, EEO, Drug and Alcohol program and insurance claims. There are no apparent conflicts of interest in performing her duties as DBELO and other responsibilities as none of these other duties require the DBELO to manage or keep FTA funded projects on schedule.

Metro's DBE program plan indicates that the DBELO has three (3) staff to assist in the administration of the program. In practice, the DBELO has no dedicated DBE staff, although an administrative assistant is available if needed. The DBELO has requested additional resources to manage the DBE and other compliance programs.

Metro's DBE program plan lists the DBELO responsibilities, but these are not included in the job description for the position of the Legal/Human Resources Director. The DBELO is not completing the responsibilities listed in the DBE program in the following areas:

- Gathers and reports statistical data and other information as required by DOT: In practice, the Grants Administrator collects DBE participation information, and develops and submits the Semi-Annual Uniform DBE Reports. The DBELO does not review the reports before submission to FTA.
- Analyzes Metro's progress towards attainment of program goals and identifies ways to improve progress: In practice, the Grants Administrator collects data on procurements and payments and manages the DBE reporting process. The DBELO is not aware of progress towards goals.
- Identifies contracts and procurements so that DBE goals are included and reviews third-party contracts and requisitions for compliance: In practice, the DBELO is only informed of upcoming construction projects by the Grants Administrator, rather than all types of procurement. Subcontracts are not reviewed for compliance.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner, provides outreach regarding opportunities and provides information and assistance to DBEs preparing bids: In practice, the Grant Administrator is responsible for publicizing procurement activity, but does not undertake targeted publicity.
- Plans and participates in DBE training seminars: In practice, Metro has not organized any training seminars. The DBELO participated in a National Transit Institute (NTI) DBE seminar in June, 2013.

Information relating to the DBE program is not always communicated to the DBELO. For example, the construction opportunities within grant NE-95-X001 were not included in 2014-16 goal calculations because the DBELO was not informed about the grant. Additionally, the DBELO usually reviews good faith efforts, but was not aware of the good faith efforts determination in a recent underground tank replacement project.

Metro does not have adequate staff to administer the program in compliance with 49 CFR Part 26.25 and must evaluate the level of effort required to satisfy the needs of the program. The DBE program plan does not accurately reflect the roles and activities of the DBELO and other staff. The DBELO is not informed of and is not involved in key DBE matters such as reviewing procurement opportunities or preparing and submitting FTA reports. The DBELO's responsibilities are not included in her current job description.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must implement a process to include the DBELO in evaluating DBE participation in all procurement activity. Metro must revise the DBELO job description to align with current DBELO responsibilities. Metro must develop a staffing plan to ensure all the requirements of the DBE program are adequately completed. The updated job description, staffing plan, and procurement process must be submitted to the FTA's Office of Civil Rights.

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 this requirement.

The DBE program plan states that Metro will investigate the full extent of services offered by DBE financial institutions, make reasonable efforts to use these institutions and encourage prime contractors to use these institutions. The program indicates that Metro will re-evaluate the availability of DBE financial institutions every eighteen (18) months.

Evidence of Metro's review of DBE financial institutions was provided on-site, occurring in June 2013 and January 2015. Activities included a review of the published Nebraska Department of Roads (NDOR) online directory to identify any and all financial institutions owned and controlled by socially and economically disadvantaged individuals.

None of the five (5) solicitation documents reviewed included a statement encouraging prime contractors to use DBE financial institutions, and interviewed prime contractors did not recall this being mentioned during the procurement process or included in contract documents.

Metro did not encourage prime contractors to use DBE financial institutions as required by 49 CFR Part 26.27.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must develop a process to include a statement encouraging firms to use DBE financial institutions in solicitation documents. A copy of the process and a solicitation document or template must be submitted to the FTA's Office of Civil Rights.

6.5 DBE Directory

Basic Requirement (49 CFR Part 26.31)

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

Discussion

During this compliance review, **no deficiencies** were found with this requirement.

Metro's DBE program indicates that the Nebraska Department of Roads (NDOR) is responsible for maintaining the unified DBE Directory. The listing of all Nebraska Unified Certification Program (NUCP) certified firms is available on the NDOR website. The directory includes for each firm, the name, address, phone number, and NAICS code for each type of work that the DBE firm is eligible. The program states that the DBE Directory must be revised at least annually. At the time of the review, the latest version available on the website was dated September 2015. A link to the DBE Directory is included on the Metro website and in the DBE program.

Metro makes the DBE directory available to interested parties and ensures the directory is updated annually.

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, **deficiencies** were found with this requirement.

Metro's DBE program plan indicates that overconcentration will be examined every three (3) years. There is, no evidence that an overconcentration analysis was completed either prior to or since December 2012. Metro does not have plans to complete this review. Metro does not have a process for completing the analysis on a three (3) year basis, as required by their DBE program plan.

Metro has not determined if overconcentration of DBE firms exists, as required by 49 CFR Part 26.33.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must conduct an overconcentration analysis and implement a plan for completing the required overconcentration analysis as indicated in its DBE program plan. The overconcentration analysis and plan must be submitted to the FTA's Office of Civil Rights.

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, **deficiencies** were found with this requirement.

Metro's DBE program indicates that Metro does not have an established business development /mentor-protégé program, but the need for such a program would be re-evaluated every 18 months. The need for a business development program has not been evaluated since the DBE program was adopted in December 2012.

Metro has not conducted an evaluation of the need for a business development program, as required by Metro's DBE program plan.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must develop a plan for completing the required evaluation of the need for a Business Development Program at least every 18 months. Metro must also conduct the evaluation. The evaluation and plan must be submitted to the FTA's Office of Civil Rights.

6.8 Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45)

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

Discussion

During this compliance review, **deficiencies** were found with this requirement

The DBE program plan outlines that Metro will meet the maximum feasible portion of its overall goal using race-neutral means, and provides the methodology for goal calculation in Attachment 4 of its program plan. The DBE program plan does not include the actual data and calculations used to determine the current DBE goals.

Metro had a 0.61% goal during FFY 2011-2013, and a 1.25% goal during FFY 2014-2016. Both the FFY 2011-2013 and 2014-2016 goals were projected to be met completely through race-conscious means. The DBELO indicated that the reason for using race-conscious goals was based on past practice and prior FTA approval of race-conscious goals. The FFY 2014-2016

goal was submitted on time on August 1, 2013 and was given concurrence on September 19, 2013.

Step 1: Determining the Base Figure

The FFY 2014-2016 goal methodology was reviewed for compliance with 49 CFR Part 26.45. The DBELO received information from the Grants Administrator and Finance Director to determine future contracting opportunities for the goal calculation. This included reviewing projects with funds carried over from prior years, and planned program projects for years 2014-2016. Metro calculated a total federal share of \$11,176,222 in contracting opportunities across 2014-16.

The list below indicates the grants with carryover funds FY 2013 to FY 2014 included in the FFY 2014-2016 goal calculation:

- NE-03-0041 – construction management, bus terminal construction and route signage
- NE-04-0044 – feasibility study for transit center, concrete work – bus bench/shelter, building site preparation, bicycle storage unit construction
- NE-04-0045 – maintenance shop equipment, administrative facility renovation
- NE-95-X001 – bus terminal renovation, facility security equipment
- NE-90-X096 – maintenance shop equipment, computer hardware, computer software, video surveillance upgrades, administrative support equipment, concrete work – bus shelters, temporary help services, waste collection services, pest control services, bus parts and new parts
- NE-57-X010 – ADP hardware and software

In addition, the following eligible program projects for 2014-2016 were included in the FY 2014-2016 goal calculation

- Maintenance shop equipment
- Computer hardware
- Computer software
- Video surveillance upgrades
- Administrative support equipment
- Concrete work – bus shelters
- Temporary help services
- Waste collection services
- Pest control services
- Bus parts & new parts

Although many major capital projects were considered, a review of financial expense detail from April 2013 indicated several FTA funded projects relevant to each FY that were not included in the goal calculation, with a projected total value of \$720,172 during 2015. These projects included:

- Insurance, \$124,438
- Cleaning contracts, \$362,218
- Motor oil, \$75,270
- Tires and tubes, \$114,787
- Service contract- maintenance, \$43,459

Metro identified 22 NAICS codes across the list of future contracting opportunities, including work that could be performed by both prime and subcontractors. Metro examined the NUCP Directory and their own vendor records to determine the availability of known, willing and able DBEs in the local and regional market area relating to each of these NAICS codes. Economic data from the U.S Census Bureau was examined to determine the total number of business firms in the Omaha Metropolitan Surrounding Area (MSA) local market for each NAICS classification. Metro indicated this market area was used because most eligible projects are completed by businesses in the local MSA. Metro did not substantiate why a larger geographic area was not used for construction and engineering projects. Metro calculated the number of DBEs as a percentage of contracting companies and weighted the calculation to reflect the contract dollars expected in each NAICS code. Step 1 identified a base rate goal of 2.2%.

Step 2: Adjusting the Base Figure

Metro determined that an adjustment to the base rate goal of 2.2% was required in order to account for the limited number of certified DBE firms in Nebraska that can perform the services that Metro requires. Metro determined that past race conscious DBE participation was 0% for FFY 2010, 0.3% for FFY 2011, and 1.08% for FFY 2012. The median number of 0.3% was averaged with the base number of 2.2% which calculated to 1.25%. Based on this analysis, an adjusted goal of 1.25% was determined for FFY 2014-16. This goal was concurred by FTA on September 19, 2013. Metro, failed to include in its step 2 adjustment any mention of whether past DBE participation would be similar to future DBE participation. A step 2 adjustment based on historic participation levels can only be accomplished if the historic contracting opportunities are substantially similar to future contracting opportunities. Metro did not include discussion of any disparity studies as none were conducted or were available for the geographic market area.

Metro did not include all procurement opportunities with FTA participation in the determination of the base figure, as required by 49 CFR Part 26.45, and failed to justify the relevance of using past DBE participation as an adjustment to its base figure.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must determine the procurement opportunities that were not included in the previous three-year goal calculation and the impact the inclusion of those opportunities would have on the goal. Metro must provide evidence of why historical DBE participation levels were relevant for adjustments to the base figure. The revised goal calculation must be submitted to the FTA's Office of Civil Rights.

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's, 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 this requirement.

Metro's DBE program plan and the Metro FFY 2014-16 Goal Methodology include a description of the public participation process during goal development. Both documents indicate that prior to establishing the goal, Metro consults with local community organizations, minority and women owned business and contractor groups to obtain information concerning: the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Metro's efforts to establish a level playing field.

The 2014-16 Goal Methodology named two (2) firms that were contacted by telephone to discuss the goal and local opportunities: the Nebraska Business Development Center and Nebraska Small Business Administration. No documentation of this outreach was provided by Metro and staff stated that consultation for the FFY 2014-16 goal was limited to discussions with the CDS, a contractor performing small business and DBE outreach.

None of the fifteen (15) community representatives and stakeholder groups interviewed by the review team, including the Nebraska Business Development Center and Nebraska Small Business Administration, could recall being asked to participate or comment on Metro's DBE goal.

The USDOT DBE Questions and Answers note that,

By definition, the process of consultation involves a scheduled face-to-face conference or meeting of some kind with individuals or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information or advice before a decision is made. Publication of the proposed goal to the general public is not synonymous with, or a substitute for, consultation with interested or affected groups.

Recipients should identify groups within their contracting market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process. Those groups should be contacted and invited to participate in a face-to-face exchange (which may occur at a public meeting) aimed at obtaining the kind of information set out in the regulation regarding establishing the overall DBE goal. Efforts should be made to engage in a dialogue with as many interested stakeholders as possible. An advisory committee may be one method of consultation (but not the exclusive method, since this could lead to a recipient talking only to the same people all the time). A description of the consultation process and its purpose should be provided to all invitees.

Metro published a notice of the proposed FFY 2014-2016 goals on the Omaha.com website, Metro website, and in the Omaha World Herald in June 2013. The notices stated that information pertaining to the goal and a description of how it was selected was available for inspection at the Omaha Metro Transit Offices for 30 days and written comments would be accepted for 45 days from the date of publication. No comments were received.

During the FFY 2014-2016 DBE goal setting process, Metro did not conduct consultation with stakeholder groups, including a scheduled, direct, or interactive exchange with minority, women's and contractor groups as required by 49 CFR Part 26.45(g).

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must develop a plan to involve local stakeholder groups, including as minority, women's and contractor groups, in the consultative process for its 2016 goal submission. The plan must be submitted to the FTA's Office of Civil Rights.

Advisory Comment: Please note that the triennial goal must be maintained on Metro's webpage for the entire triennial period.

C) Race-Neutral DBE Participation

Basic Requirement (49 CFR Part 26.51)

The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 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, **deficiencies** were found with this requirement.

Metro's DBE program plan states that the grantee will meet the maximum feasible portion of its overall goal using race-neutral means; however, both the FFY 2011-2013 and 2014-2016 goals are wholly race-conscious. Metro includes race-conscious contract goals on procurements that contain opportunities for DBE participation, principally in construction. No justifications were documented as to why race-conscious measures were pursued rather than race-neutral measures.

Metro's DBE program plan states that Metro "will utilize those efforts which may include, but are not limited to, those found in Section 26.51(b) of the DBE regulation". No other detail relating to race-neutral measures is provided.

Metro has implemented the following race-neutral activities indicated in 49 CFR Part 26.51(b):

- Arranging solicitations, bid presentations, specifications and delivery schedules to facilitate participation: Specifications and the procurement process are reviewed by either the DBELO or Grants Administrator to ensure barriers to access are removed.
- Ensuring distribution of the DBE directory: A link to the DBE directory is provided in all solicitation contracts that contain contract goals and on Metro's 'Contracting and Bidding Opportunities' webpage along with information about the DBE program.

The following race-neutral means indicated in 49 CFR Part 26.51(b) have not been fully implemented by Metro:

- Carrying out information and communications programs on contracting procedures and contract opportunities: Between June 2012 and December 2014 Metro employed third-party contractor CDS to support small business and DBE access to Metro procurement opportunities, in particular construction opportunities. CDS documented the outreach to prime contractors, local DBE and small business firms to encourage involvement of local DBEs and small businesses in specific contract opportunities. Proactive communication to DBEs and small businesses has been limited since the end of this contract.
- Providing assistance in overcoming limitations, such as by providing bonding or financing; providing technical assistance and other services: CDS provided support to small business and DBEs, including providing bonding services. No technical assistance has been provided since the end of this contract in December 2014.
- Implementing a supporting services program to develop and improve business capability, encourage use of emerging technology and support long-term development of DBEs and small businesses: Metro has not directly provided assistance or training to DBEs or small businesses. The interviews conducted with local stakeholders indicated that Metro is not engaged in local business development activities, such as those provided by Greater Omaha Chamber of Commerce REACH Program, Nebraska Business Development Center and the Nebraska Small Business Administration.
- Establish a program to assist new start-up firms, especially in fields where DBE participation has been historically low: Metro has not established such a program, or partnered with any local agencies working to support new businesses.

Small business program

Metro's DBE program plan lists specific elements to achieve the objectives of the small business participation program as required by 49 CFR Part 26.39. One (1) element has been implemented:

- Require bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation: In the five (5) construction procurements reviewed that included contract goals, Metro required prime contractors to submit the Subcontractor/Supplier Quotation List Form (Attachment 1) as a way of encouraging bidders to seek DBE and small business participation.

The following elements of the small business program have not been fully implemented:

- Removal of unnecessary and unjustified bundling of contract requirements: Metro staff review upcoming projects and solicitation documents for unbundling opportunities, although no examples of subsequent changes were provided. The DBELO is not always involved in this review.

- For contracts that do not have DBE goals, require the prime contractor to provide subcontracting opportunities rather than perform work with its personnel: No evidence of this approach was provided.
- Increase awareness of transportation related work opportunities in DOT-assisted projects: Metro advertises contracting opportunities on their website. Between June 2012 and December 2014 Metro employed third-party contractor CDS to support small business and DBE access to Metro procurement opportunities, in particular construction opportunities. No ongoing effort has been implemented.
- Provide services for technical assistance: CDS matched Metro opportunities to a pool of small and DBE firms, and provided bonding and technical support to assist these firms to bid on projects. During interviews, CDS reported that they had supported nine (9) Metro projects. Five (5) contractors that worked with CDS submitted seven (7) bids to Metro, leading to two (2) awards. CDS provided bonding support to one (1) company. No technical assistance has been provided since the end of the CDS contract in December 2014.
- Identification of DBE/MBE firms in the local market area: Interviews with fifteen (15) external stakeholders and community groups indicated that Metro does not engage with local stakeholders who might have access to small businesses. No local bidders list has been developed for this purpose.

The USDOT DBE Questions and Answers note that,

Recipients know their own markets and the types of contracts most likely to be let. In determining the level of participation to be achieved through race-neutral means, the recipient should use its experience concerning the availability of DBEs in particular types of contracts in their market.

Here are some examples of questions recipients could ask in making this analysis:

- *What is the participation of DBEs in the recipient's contracts that do not have contract goals?*
- *There may be information about state, local, or private contracting in analogous areas where contract goals are not used (e.g., in situations where a prior state/local affirmative action program was ended). What is the extent of participation of minority and women's businesses in programs without goals?*
- *What is the extent of race neutral efforts that the recipient will have in place for the next fiscal year?*
- *Are there firm, written, detailed commitments in place from contractors to take concrete steps sufficient to generate a certain amount of DBE participation through race-neutral means?*
- *To what extent have DBE primes participated in the recipient's programs in the past?*
- *To what extent has the recipient oversubscribed its DBE goals in the past?*

Where there is not systematic data in existence, recipients could conduct quick, informal surveys and use the results as part of the basis for their projections.

Recipients should closely monitor DBE participation relative to their projections to determine whether mid-course corrections are needed.

Metro has not fully implemented the race neutral measures listed in their DBE program plan, including its small business element, as required by 49 CFR Part 26.51(a-b) and 49 CFR Part 26.39 respectively.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must provide a detailed plan of how race neutral measures, including its small business element, will be fully implemented. The plan must be submitted to the FTA's Office of Civil Rights.

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, **deficiencies** were found with this requirement.

While Metro's DBE program plan states that the grantee will meet the maximum feasible portion of its overall goal using race-neutral means, Metro's FFY 2014-2016 DBE goal methodology states that the 1.25% goal will be met through wholly race-conscious means. The DBELO indicated that the reason for using race-conscious goals in the most recent submission was based on past practice and prior FTA approval of race-conscious goals. No rationale is provided within the DBE Goal Methodology submission.

The Metro DBE program plan indicates that contract goals are used to meet any portion of the overall goal Metro does not project being able to meet using race-neutral means and will only be established where there are subcontracting possibilities. Metro currently only sets contract goals for construction projects.

The program plan does not provide a detailed methodology for determining contract goals. Once the cost estimate for the project is finalized, the DBELO and Grants Administrator examine the items of work. For items that can be subcontracted, the NAICS codes are identified and the number of available DBE contractors is determined by searching the Nebraska DBE Unified Certification Program (NUCP) DBE Directory. The DBE work dollar amount is calculated for each work item and totaled. The percentage of DBE work is determined by dividing the total DBE work dollar by the estimated total cost of the project. Interviews with staff indicated that the DBELO does not review all contracting opportunities; the initial assessment of whether a procurement should have a contract goal is made by the Grants Administrator.

The review team reviewed the following five (5) construction contracts that included DBE contract goals in the solicitation document. For three (3) projects the prime contractors committed goal was less than the goal in the solicitation, and were awarded after review of good faith efforts. In the NOTC project prime contractor LCC achieved more DBE participation than

the solicitation goal, but less than their commitment of 20.82% included in the contract. SGR-Phase II is ongoing and the final DBE participation is not known.

Contract	Prime Contractor	Prime Contract Execution Date	DBE Goal in Solicitation Document	DBE Commitment by Prime Contractor	DBE Participation Achieved (Determined by Metro)
SGR – Phase I	The Weitz Company LLC (TWC)	5/6/2011	5%	1.03%	1.65%
Parking Lot Lighting	Thompson Electric	4/12/2012	3%	0%	0%
Boiler Addition	Grunwald Mechanical Contracts & Engineers (GMCE)	9/22/2012	2%	0%	0%
North Omaha Transit Center Renovation (NOTC)	Leuder Construction Co. (LCC)	10/18/2012	3%	20.82%	5.75%
SGR- Phase II	Leuder Construction Co. (LCC)	7/11/2013	3%	6.08%	Project is ongoing

Metro’s Semi-Annual DBE Reports indicate that its contract goal of 1.25% was not met in FY 2014. Metro does not assign goals to all contracts, only to some construction projects where a review of NAICS codes and the NUCP directory determines DBE participation is likely. It does not appear that Metro is overusing contract goals.

The FFY 2014-16 Goal Methodology does not explain the reasons for a wholly race-conscious goal and the DBE program plan does not provide a methodology for determining contract goals and adjusting use of contract goals as outlined in 49 CFR Part 26.51 (e)–(f).

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must revise the DBE program plan to reflect the rationale for use of a wholly race-conscious goal and a methodology for determining contract goals. The revised program must be submitted to the FTA’s Office of Civil Rights.

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 DBE 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 this requirement.

Good Faith Efforts

Metro's DBE program plan indicates that good faith efforts of bidders who have not met contract DBE goals will be reviewed as a matter of responsiveness. Bidders must complete a DBE Participation Form and DBE Confirmation Form (see Attachments 2 and 3). If a contractor cannot meet a contract goal they must complete the Documentation of Good Faith Effort Form (Attachment 4). In addition, bidders must submit the Subcontractor/Supplier Quotations List showing the identity of firms that provided quotes (Attachment 1). Use of these forms was verified on-site.

Four (4) construction projects that included a review of good faith efforts were reviewed on site: Parking Lot Lighting (2012), Boiler Addition (2012), SGR-Phase I (2011) and SGR-Phase II (2013). The procurement files for the Parking Lot Lighting, SGR Phase I and II projects did not include a summary of the good faith efforts reviews. The Boiler Addition project included a summary memo of the good faith efforts review, but this did not detail the reasons each contractor was unable to meet the 2% contract goal. The documentation of good faith efforts provided by contractors did not always include information on specific reasons DBE participation was not obtained. Contractors did not fully complete DBE forms as required in solicitations but the accompanying bids were not rejected. The files did not document that the capabilities of other bidders to meet the contract goal had been reviewed, as required in Appendix A of 49 CFR Part 26 (V).

The USDOT DBE Questions and Answers note that,

A bidder/offeree is deemed to have made a good faith effort to meet a contract goal if it: (1) documents that it has obtained enough DBE participation to meet the goal; or (2) documents that it made adequate good faith efforts to meet the goal even though it did not succeed in obtaining enough DBE participation to meet the goal. 49 CFR 26.53(a). Recipients have an obligation to make sure all information is complete and accurate (e.g., all needed DBE certifications have been timely completed) and adequately

documents the bidder/offeror's good faith efforts before committing itself to the performance of the contract by the bidder/offeror. 49 CFR Part 26.53(c).

Administrative Reconsideration

The DBE program plan indicates that a bidder/offeror can request administrative reconsideration within three (3) days of being informed that it is not responsive due to lack of good faith efforts documentation. The Executive Director will appoint a reconsideration official that was not involved in the good faith efforts determination. The bidder has the opportunity to provide written support within five (5) business days of the request. Metro sends a written decision on reconsideration within three (3) business days.

Both the SGR Phase I project and the SGR-Phase II projects required administrative reconsideration. The process in the DBE program plan was followed in both cases, including providing opportunity for contractors to submit clarifying information, reconsideration hearings and documented findings in Metro's written response. The Grant Administrator was the administrative reconsideration official, and had not been involved in the good faith efforts review which was completed by the DBELO. Reconsideration hearings provided opportunities for contractors to provide additional and clarifying information relating to participation efforts. The reconsideration process for both SGR Phase I and II projects determined that the prime contractors had demonstrated that reasonable steps had been taken to achieve the project DBE goal. In both cases the reconsideration process identified that missing information in the solicitation document may have contributed to the contractors not providing full disclosure of the good faith efforts within their solicitation responses. For both SGR Phase I and Phase II construction projects, the prime contractors that requested reconsideration were awarded contracts.

Metro did not document the review of good faith efforts as part of the solicitation and award process, as required by Appendix A of 49 CFR Part 26 (V).

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must implement a procedure for fully documenting good faith efforts as part of the responsiveness check after bids and proposals are received. The implemented procedure must be submitted to the FTA's Office of Civil Rights.

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, **deficiencies** were found with this requirement

Metro's DBE program requires that prime contractors do not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Metro's prior written consent. Metro will review the situation to determine if there is "good cause" for termination, or if the prime contractor is terminating for convenience. The program lists examples of where there may be "good cause" and prior written consent will be given. Before sending a request to Metro the prime contractor must give notice in writing to the DBE of its intent, and the DBE must have five (5) days to respond to Metro with any objections. Where there is "good cause" Metro will require the prime contractor to make good faith efforts to replace a DBE that is terminated with another certified DBE to the extent needed to meet the contract goal.

A review of five (5) FTA-funded prime construction contracts that included DBE goals indicated that the required termination for convenience and termination for default clauses were included. Five (5) subcontracts were also reviewed and included termination clauses. The contract files indicated that none of the five (5) DBE subcontractors used on these projects were terminated for convenience.

The review team investigated the termination of DBE subcontractor Perkins & Perkins on the NOTC project in October 2013. Interviews with Metro, prime and subcontractors, and detailed file review including 24-hour notice/deficiency reports during August-September 2013, performance notices and reports by Metro staff, showed that the DBE was terminated for non-performance, not convenience. Metro's process for terminating a DBE was followed, including notice, period for objections, request to terminate and Metro's response on October 22, 2013 which included evidence to determine that there was "good cause" for termination. Metro requested that the prime contractor show good faith efforts to find a substitute DBE but this information was not provided.

Metro did not receive good faith efforts documentation where a DBE was terminated for default and where a substitution for a DBE resource was warranted, as required by 49 CFR Part 26.53(g).

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must implement a procedure to obtain good faith efforts documentation in all cases where a DBE is terminated. The implemented procedure must be submitted to the FTA's Office of Civil Rights.

G) Counting DBE Participation

Basic Requirement (49 CFR Part 26.55)

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

Discussion

During this compliance review, **no deficiencies** were found with this requirement.

Metro's DBE program plan states that Metro will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

Five (5) solicitation documents containing DBE goals were reviewed. For each solicitation, Metro required bidders to submit a DBE Confirmation Form (Attachment 3), which lists the name and address of the DBE subcontractor, a description of the work to be performed and the dollar value. This form is signed by both the prime contractor and the DBE subcontractor. This information, when compared to the project scope, enabled Metro to determine that only work performed by the DBE is counted towards DBE goals and that the DBE is performing a commercially useful function.

Metro counts DBE participation based on submitted information from prime contractors at the end of the project and compares this to the value agreed in the contract and any change orders, and whether the DBE has completed a commercially useful function. Metro has developed an on-site monitoring form (Attachment 5) which has been used on the NOTC and SGR Phase II construction projects to verify the items of work completed by DBEs are consistent with commitments made in subcontract documents.

Metro counts the value of work actually performed by DBEs when assessing bidders' submission responses and actual DBE participation.

H) Quotas

Basic Requirements (49 CFR Part 26.43)

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

Discussion

During this compliance review, **no deficiencies** were found with this requirement.

Metro's DBE program indicates Metro does not use set-asides or quotas in administering the DBE program. The review team did not note any evidence that Metro had used quotas or set-asides during the review of procurement documentation. No evidence of overconcentration was found.

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, **deficiencies** were found with this requirement.

Metro's DBE program states that if Metro's DBE Reports indicate DBE awards and commitments are less than the goal at the end of a fiscal year, a shortfall analysis and milestone corrective action plan will be completed.

Metro had a 0.61% goal during FFY 2011-2013, and a 1.25% goal during FFY 2014-2016. The DBE Semi-Annual Uniform Reports submitted by Metro indicate that the annual percentage awarded to DBEs was 4.28% in FFY 2012, 4.75% in FFY 2013 and 0.71% in FFY 2014. The reported data indicated that a shortfall analysis was required in 2014 where the value of awards to DBEs was lower than Metro's goal.

Metro's submitted DBE Semi-Annual Uniform Reports indicate that a shortfall analysis was required in FY2014 but was not completed, as required by 49 CFR Part 26.47.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must submit any required shortfall analysis once the information in the Semi-Annual Uniform Reports is revised. The shortfall analysis must be submitted to the FTA's Office of Civil Rights.

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, **deficiencies** were found with this requirement.

Metro's DBE program states that Metro will require each TVM to certify that it has complied with the regulations as a condition of being authorized to bid on FTA-assisted vehicle procurements. Alternatively Metro may, with FTA approval, establish project-specific goals for DBE participation in the procurement of vehicles. In fiscal year 2016 Metro has budgeted approximately \$5,000,000 of federal funds for replacement of aging rolling stock.

The following piggyback vehicle procurements were reviewed on-site. TVM documentation was noted in the procurement files for all vehicle purchases reviewed.

Year of purchase	Grant	Vendor Name/ Manufacturer	Amount

Year of purchase	Grant	Vendor Name/ Manufacturer	Amount
2010	NE-04-0043	El Dorado National–Kansas	\$300,245
2011	NE-90-X092	Telin Transportation Group	\$185,131
2012	NE-04-0043	North Central Bus Sales	\$135,277
2012	NE-04-0043	Mobility Motoring/ El Dorado National	\$580.175
2013	NE-90-X096 and NE-95-X001	New Flyer of America, Inc.	\$3,103,858
2013	NE-90-X096 and NE-04-0043	Masters Transportation/ Supreme Corporation/Startrans Bus*	\$48,107
2013	NE-90-X009 and NE-34-0001	New Flyer of America, Inc.	\$3,880,533
2015	NE-16-X102	Masters Transportation/ Supreme Corporation/Startrans Bus*	\$149,889

* Documentation was reviewed indicating FTA approval of the DBE goal methodology submitted by Supreme Corporation/Startrans Bus covering the time of the original solicitation.

Metro finalized purchase orders for three (3) small transit vehicles during June 2015, but did not notify the FTA Office of Civil Rights of these vehicle purchases within 30 days of award, as required by 49 CFR Part 26.49.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must develop a procedure for ensuring FTA's Office of Civil Rights is informed of all vehicle purchases made after November 13, 2014 and submit a report identifying all vehicle purchases since that date.

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 this requirement.

Metro's DBE program states that a contract assurance clause must be placed in every DOT-assisted prime contract and subcontract. The review team examined eight (8) prime contracts and five (5) DBE subcontracts for compliance with contract assurance. A non-discrimination clause was included in the boiler plate language of all prime contracts, and was also evident in three (3) subcontracts through incorporation. The two (2) subcontracts between prime contractor TWC and its DBE subcontractors Navarro Enterprise Construction and R.A.E Rebar did not include a non-discrimination clause.

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

Project (Ref #)	Prime Contractor	DBE Goal in Solicitation Document?	Solicitation No.	DBE Subcontracts
SGR-Phase I	The Weitz Company LLC (TWC)	Yes	14-10	Navarro Enterprise Construction Inc., R.A.E Rebar Inc.
Parking Lot Lighting	Thompson Electric	Yes	09-12	None
Boiler Addition	Grunwald Mechanical Contracts & Engineers (GMCE)	Yes	18-12	None
North Omaha Transit Center Renovation (NOTC)	Leuder Construction Co. (LCC)	Yes	15-11	R.A.E Rebar Inc. Perkins & Perkins Construction
SGR-Phase II	Leuder Construction Co. (LCC)	Yes	18-11	Spencer Management LLC
Farebox Upgrade	SPX Genfare (GFI)	No	16-12	None
Diesel Tank Replacement - design services	Reinhardt & Associates	No	11-14	None
BRT and Urban Circulator Design	HDR Engineering	No	14-14	None

Metro does not have a process or procedure for reviewing the subcontracts to ensure that all the required DBE clauses are included and does not have policies for enforcement with prime contractors. Subcontracts did not include non-discrimination clauses as required by 49 CFR Part 26.13.

Corrective Actions and Schedules:

Within 60 days of the issuance of the final report, Metro must develop a procedure for reviewing DBE subcontracts to ensure all DBE provisions are included in subcontracts by prime contractors. The procedure must be submitted to the FTA's Office of Civil Rights.

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 subcontractor's work is satisfactorily completed.

Discussion

During this compliance review, **deficiencies** were found with this requirement.

Prompt Payment

Metro's DBE program states that a prompt payment clause will be included in each DOT-assisted prime contract. Metro has a 30 day prompt payment clause and indicates the clause applies to both DBE and non-DBE subcontracts.

The prime contracts of five (5) projects with DBE contract goals, and three (3) projects without DBE contract goals, were reviewed. Prompt payment clauses were included in all prime contracts.

Five (5) DBE subcontracts were reviewed. The prompt payment clauses differed only slightly between the different subcontracts as indicated in the table below:

Prime	Subcontractors	Project	Prompt Payment	Return of Retainage
The Weitz Company LCC	Navarro Enterprise Construction and R.A.E Rebar, Inc.	SGR Phase I	Payment to the subcontractor within 30 days following the contractors receipt and approval of the subcontractor's invoice.	Final payment would be made within 30 days following final completion and acceptance of the Subcontractor's work

Prime	Subcontractors	Project	Prompt Payment	Return of Retainage
Leuder Construction Co.	Perkins & Perkins Construction, and R.A.E Rebar, Inc.	North Omaha Transit Center Renovation (NOTC),	Monthly progress payments could occur 30 days from the Contractors date of invoice to the to the Owner, provided the Owner had paid the Contractor for the work	The final payment would occur within ten days after receiving final payment for the project
Leuder Construction Co.	Spencer Management LLC	SGR Phase II,	Monthly progress payments could occur 30 days from the Contractors date of invoice to the to the Owner, provided the Owner had paid the Contractor for the work	The final payment would occur within ten days after receiving final payment for the project

Metro received one (1) complaint from Perkins & Perkins on September 20, 2013 relating to prompt payment by the prime contractor on the NOTC project. Metro responded on September 24, 2013 indicating that upon research into the issue raised, prime contractor LCC paid within the 30 days required within the prime contract.

Metro's DBE program plan suggests that Metro will perform interim audits of contract payments to DBEs. Metro has not completed interim audits and does not have a formal process to ensure prime contractors are complying with prompt payment requirements. Metro requests information from prime contractors and DBE subcontractors on project completion through Final DBE Reports (see Attachment 6). The dates of payment to subcontractors are not routinely submitted during the period of the contract. Metro provided the dates of Metro payments to prime contractors and the date that subcontractors were paid for the SGR- I, SGR- II and NOTC projects. Across these projects, 2 out of 29 payments were made to subcontractors more than 30 days after the date the prime was paid by Metro.

Metro does not have a formal process for ensuring that prime contractors are complying with prompt payment requirements.

Return of Retainage

All of Metro's prime contracts stated that retainage should be returned to each subcontractor within 30 days after the subcontractors work is satisfactorily completed.

Five (5) DBE subcontractor contracts were reviewed. Not all the subcontracts contained the required provisions for retainage as indicated in the table above: The payment clauses in the TWC subcontracts reflect the provisions in the prime contract with Metro. The three (3) DBE

subcontracts prime contractor LCC developed for the SGR II and NOTC projects included a return of retainage clause stating ‘*Contractor shall make final payment to the Subcontractor within ten (10) days after receiving final payment for the Project, provided the terms of this Subcontract have been fully carried out*’. Interviews with LCC and their subcontractors confirmed that LCC retains final retainage payment until final payment from Metro. R.A.E Rebar indicated that they finished work in April 2013, and did not get the final retainage payment until March 2014. Spencer Management reported that their work had been complete for approximately 3-4 months and they were waiting for the final 5% retainage which is being held until the end of the project. This does not comply with the retainage provisions within Metro’s prime contract with LCC, or with DBE regulations 49 CFR Part 26.29.

The USDOT DBE Questions and Answers note that,

Recipient’s DBE programs must include contractual provisions that unambiguously require contractors to make retainage payments to their subcontractors as soon as the subcontractor’s work has been satisfactorily completed. This is a race-neutral feature that applies to all subcontractors, not just DBEs.

Metro does not have an ongoing prompt payment and return of retainage verification process, as required by 49 CFR Part 26.29.

Corrective Actions and Schedules:

Within 60 days of the issuance of the final report, Metro must develop a procedure for monitoring prime contractor compliance with all payment terms including retainage. Metro must implement a prompt payment verification procedure. The procedures must be submitted to the FTA’s Office of Civil Rights.

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, **deficiencies** were found with this requirement.

All the eight (8) prime contracts reviewed included termination and breach and dispute resolution clauses as part of the Federal Clauses boilerplate section. For contracts that included DBE goals, the DBE section of the solicitation document listed the Investigative Powers and Administrative Procedures for Enforcement relating to DBE non-compliance. This clause allows Metro to impose one or more of the following penalties:

1. Termination of the contract
2. The DBE firm may be decertified and/or suspended from participation in Metros and/or the Nebraska Department of Road’s DBE Program(s)

3. The prime contractor may not be able to count the work performed towards his project DBE goal, and if possible to do so, may need to subcontract other work on the project to DBE subcontractors to achieve the goal
4. The contract items involved may be considered for a monetary reduction equal to the amount of work not done by the DBE subcontractor
5. The prime contractor may be suspended and/or debarred
6. If at any time during the life of the contract, it is determined that the contractor is out of compliance with these provisions, Metro may withhold payment of progress payments
7. If at the completion of the project, the contractor is determined to be out of compliance. Metro may sustain damages, the exact extent of which would be difficult or impossible to ascertain and, therefore, in order to liquidate such damages, the monetary difference between the amount stated by the contractor and the amount actually paid to the DBEs will be deducted from the contractor's payment as liquidated damages. These damages would be in addition to any liquidated damages assessed in accordance with this solicitation document
8. Referral to the Attorney General for possible prosecution for fraud
9. Other action as appropriate, within Metro's discretion.

All the five (5) subcontracts included a termination clause. The two (2) subcontracts developed by prime contractor TWC included dispute and resolution requirements. The three (3) subcontracts developed by prime contractor LCC did not specify dispute and resolution procedures, but incorporated the prime contract clauses by reference. Metro does not have a procedure in place for determine whether subcontracts contain the required contract language.

The review team found three (3) instances where Metro has not notified prime contractors of non-compliance or used breach of contract remedies:

- After LCC terminated a DBE subcontractor for non-performance on the NOTC project, they performed the remaining work themselves rather than subcontracting with another DBE. No formal good faith effort documentation was provided to Metro, even when requested in a letter dated October 22, 2013.
- The subcontracts developed by LCC state that the prime will hold final retainage until Metro releases the retainage to the prime at the end of the contract. This is not in compliance with Metro's contract terms.
- Prime contractors TWC and LCC made one payment each to DBE subcontractors more than 30 days after the date they were paid by Metro. This is not in compliance with the prompt payment clause within the prime contract.

Metro does not have a procedure in place to review subcontracts for the inclusion of legal remedies. Metro has not taken action where breaches of contract have occurred, as required by 49 CFR Part 26.37.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must implement a process to monitor prime contractor DBE performance and establish a program to take action when performance does not meet the contract terms. The program must be submitted to the FTA's Office of Civil Rights.

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, **deficiencies** were found with this requirement.

Metro's DBE program indicates that Metro is a member of a Unified Certification Program (UCP) that is administered by the Nebraska Unified Certification Program (NUCP). The UCP agreement, developed in 2008, is signed by Omaha Metro Area Transit, but is not dated. The agreement indicates that the Nebraska Department of Roads (NDOR) will maintain the up to date DBE directory on its website and applications for certification will be sent to NDOR, or to the appropriate NUCP Subcommittee. Metro Area Transit, as a member of the Transit Subcommittee, is empowered to complete application reviews for firms that are primarily transit concessionaires, vendors or providers.

The Metro DBELO currently reviews annual affidavits for two (2) DBEs to confirm their ongoing eligibility for participating in the NUCP DBE program. This practice has been in place since before the last DBE program submission, and began because the two (2) companies found it cumbersome to go through the State. Metro uses the current NUCP DBE Annual Update Packet and follows the UCP agreement and process.

Metro's DBE program does not indicate that Metro is reviewing annual affidavits and does not include the appropriate procedure for this process, as required by 49 CFR Part 26.67- 26.71.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must develop an internal process for review of DBE Annual Updates. The process must be submitted to the FTA's Office of Civil Rights.

6.13 Certification Procedures

A) Onsite 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, **no deficiencies** were found with this requirement.

Metro's DBE program states they rely on the NUCP to administer the certification process for DBEs. Metro has not participated in certifying new DBEs

B) Annual Affidavit

Basic Requirement (49 CFR Part 83)

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

Discussion

During this compliance review, **no deficiencies** were found with this requirement.

Metro's DBE program states they rely on the NUCP to administer the certification process for DBEs.

In practice, Metro reviews the annual affidavit submissions from two (2) DBE firms. Metro reviews the completed NUCP DBE Annual Update Packet provided by the companies. The packet requests information that indicates that the firm continues to meet the Small Business Administration business size criteria and overall gross receipts cap outlined in 49 CFR Part 26. The packet requests the following information:

- Signed copy of U.S. Individual Income Tax Return
- Signed copy of U.S. Federal Corporate Income Tax Return
- DBE Annual Update Information sheet, to ensure firm contact information is up to date
- Personal Net Worth Statement
- No Change Affidavit.

The annual affidavit review undertaken by Metro of two (2) DBEs follows the NUCP process.

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, **no deficiencies** were found with this requirement.

Metro's DBE program states they rely on the NUCP to administer the certification process for DBEs. Metro has not participated in certifying new DBEs.

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 this requirement.

Metro's DBE program states they rely on the NUCP to administer the certification process for DBEs. Metro has not participated in certifying new DBEs.

6.14 Record Keeping and Enforcements

Basic Requirement (49 CFR Part 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. 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 closeout reviews for contracts.

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

Discussion

During this compliance review, **deficiencies** were found with this requirement.

Bidders list

Metro's DBE program states that Metro will create a bidders list consisting of the information about all the DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list should include the name, address DBE or non-DBE status, age and annual gross receipt of firms.

A bidders list has not been developed by Metro. Staff provided contact lists for recent construction procurements, including NOTC, Boiler Addition, SGR I and II projects. These lists comprised of those companies that the solicitation had been sent to, rather than a list of those firms that bid on the contracts and the list did not indicate information such as the age of the firm and annual gross receipts.

Metro does not maintain a bidders list with subcontractor information, as required by 49 CFR Part 26.11 (c).

Semi-Annual Reporting

Metro's DBE program indicates that Metro will submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually, due June 1 and December 1.

The Grant Administrator is responsible for developing the Semi-Annual Uniform Reports. Data relating to contract awards is obtained from the grant/procurement files and payment information is downloaded from Metro's finance system, but payments made are reconciled between the completed prime contracts and subcontractors and financial records after the contract is completed. Information is gathered from grant procurement records, and through manual requests for information from prime contractors on payments to subcontractors. Metro does not have a process to monitor ongoing prime contracts and subcontractors.

A review of the backup documentation for Metro's DBE Reports indicated that the total value of contract awards had been miscalculated by including indirect payments and labor costs for the period. Submitted reports overstated the total value of contract awards, and there was some duplication of awards and payments information. An accurate level of DBE goal achievement has not been reported to FTA.

The December 2014 Semi-Annual Uniform Report was submitted late and four (4) quarterly ARRA reports were not submitted. There are no procedures in place to ensure on-time report submission and accurate reporting, as required by 49 CFR Part 26.11.

Monitoring DBE Participation

The Compliance and Enforcement section of Metro's DBE program plan includes the provision that Metro will perform interim audits of contract payments to DBEs to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. The program plan indicates that Metro will maintain a running tally of payments to DBEs and verify the achievement of the DBE commitments on each project through Final DBE Reports filled out by the prime contractor and subcontractors at project completion (Attachment 6).

Metro has not outsourced any monitoring activities. The DBELO recently introduced a comprehensive on-site monitoring form (Attachment 5) which has been used for the NOTC and SGR Phase II construction projects. Interviews with prime contractors and subcontractors also indicated that Metro undertook on-site monitoring for construction projects.

Metro maintains records of the invoices or payment applications submitted, including the breakdown of subcontractor work. The Grants Administrator requests information from the prime and subcontractors at the end of the project to identify the amount paid to DBEs. No evidence was provided of the interim audits or running tally of actual payments to DBE firms described in Metro's program plan. Prime contractors are not required to submit DBE participation reports regularly during the contract. Metro does not track ongoing payments, prompt payment timeframes or the release of retention. For example, the subcontractor R.A.E Rebar completed work on the NOTC project in April 2012 and did not receive release of retention until March 2013. Metro was not aware of this contractual violation. The review team noted two instances where payments from prime contractors to subcontractors were made outside of the 30 day prompt payment timeframe. Metro did not monitor prompt payment and return of retainage for subcontractors and does not use contract enforcement mechanisms as required.

In 2013 a DBE subcontractor, Perkins & Perkins was terminated due to non-performance from the NOTC project. Although Metro requested documentation of good faith efforts regarding the substitution in October 2013, the prime contractor LCC did not provide a documented response. No enforcement activity occurred.

Metro did not monitor DBE participation performance of its prime contractors, including maintaining a running tally of payments made to DBEs during the contract's period of performance, and did not use enforcement measures, as required by 49 CFR Part 26.37.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Metro must implement a process to create and update a bidders list and include the description of the process in its DBE program plan. The process must be submitted to the FTA's Office of Civil Rights.

Within 60 days of the issuance of the final report, Metro must evaluate the extent of changes needed to contract award values and revise and resubmit Semi-Annual Uniform Reports. Metro must also develop a procedure for ensuring accurate reporting in the future. The procedure must be submitted to the FTA's Office of Civil Rights.

Within 60 days of the issuance of the final report, Metro must develop a procedure to ensure all Semi-Annual Uniform Reports are reviewed by the DBELO and submitted on time. Metro must develop and submit missing quarterly ARRA reports. The procedures must be submitted to the FTA's Office of Civil Rights.

Within 60 days of the issuance of the final report, Metro must implement a process for monitoring prime contractor compliance with all contract terms, using enforcement measures, and documenting monitoring activities. Metro must develop a process and procedure for tracking participation and actual payments to DBEs during a project, and comparing this to the work committed to them at the time of the contract award. The procedures must be submitted to the FTA's Office of Civil Rights.

7. Summary of Findings

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	D	Areas of Metro’s DBE program plan were not included, or required updating: DBELO responsibilities, process to review of annual affidavits for two (2) agencies on behalf of the NUCP, and calculation of race-neutral and race-conscious goals	60 days
2.	Policy Statement	26.23	ND		
3.	DBE Liaison Officer	26.25	D	Metro does not have adequate staff to administer the program. The DBE program plan does not accurately reflect the roles and activities of the DBELO and other staff. The DBELO is not informed of or involved in key DBE matters such as reviewing procurement opportunities or preparing and submitting reports. The DBELO’s responsibilities are not included in her current job description	60 days
4.	Financial Institutions	26.27	D	Metro did not encourage prime contractors to use DBE financial institutions	60 days
5.	DBE Directory	26.31	ND		
6.	Overconcentration	26.33	D	Metro has not determined if overconcentration of DBE firms exists	60 days
7.	Business Development Programs	26.35	D	Metro has not conducted an evaluation of the need for a business development program	60 days
8. Determining / Meeting Goals					
8.a	Calculation	26.45	D	Metro did not include all procurement opportunities with FTA participation in the determination of the base figure and failed to justify the relevance of using past DBE participation as an adjustment to its base figure	60 days

8.b	Public Participation	26.45	D	During the FFY 2014-2016 DBE goal setting process, Metro did not conduct consultation with stakeholder groups, including a scheduled, direct, or interactive exchange with minority, women's and contractor groups	60 days
			A	The triennial goal must be maintained on Metro's webpage for the entire triennial period.	
8.c	Race-Neutral	26.51	D	Metro has not fully implemented the race neutral measures listed in their DBE program plan, including its small business element	60 days
8.d	Race-Conscious	26.51	D	The FFY 2014-16 Goal Methodology does not explain the reasons for a wholly race-conscious goal and the DBE program plan does not provide a methodology for determining contract goals and adjusting use of contract goals	60 days
8.e	Good Faith Efforts	26.53	D	Metro did not document the review of good faith efforts as part of the solicitation and award process	60 days
8.f	Counting DBE Participation	26.55	ND		
8.g	Protecting Against Termination for Convenience	26.53	D	Metro did not receive good faith efforts documentation where a DBE was terminated for default and where a substitution for a DBE resource was warranted	60 days
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	D	Metro's submitted DBE Semi-Annual Uniform Reports indicate that a shortfall analysis was required in FY2014 but was not completed	60 days
10.	TVM	26.49	D	Metro did not notify FTA Office of Civil rights of vehicle purchases within 30 days of award	60 days
11.Required Contract Provisions and Enforcement					
11.a	Contract Assurance	26.13	D	Metro does not have a process or procedure for reviewing the subcontracts to ensure that all the required DBE clauses are included and does not have policies for enforcement with prime contractors. Subcontracts did not include non-	60 days

				discrimination clauses	
11.b	Prompt Payment	26.29	D	Metro does not have an ongoing prompt payment and return of retainage verification process	60 days
11.c	Legal Remedies	26.37	D	Metro does not have a procedure in place to review subcontracts for the inclusion of legal remedies. Metro has not taken action where breaches of contract have occurred	60 days
12. Certification Standards		26.67-26.71	D	Metro's DBE program does not indicate that Metro is reviewing annual affidavits and does not include the appropriate procedure for this process	60 days
13. Certification Procedures					
13.a	Onsite Visit	26.83	ND		
13.b	Annual Affidavit	26.83	ND		
13.c	Interstate Certification	26.85	ND		
13.d	Certification Appeals	26.86	ND		
14. Record Keeping and Enforcements					
14.a	Bidders List and Reporting DBE Participation	26.11	D	Metro does not maintain a bidders list with subcontractor information. The December 2014 Semi-Annual Uniform Report was submitted late and four (4) quarterly ARRA reports were not submitted. There are no procedures in place to ensure on-time report submission and accurate reporting	60 days
14.b	Monitoring	26.37	D	Metro did not monitor DBE participation performance of its prime contractors, including maintaining a running tally of payments made to DBEs during the contract's period of performance, and did not use enforcement measures	60 days

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

8. Attachments

Attachment I: Required Sub-Contractor / Supplier Quote List

REQUIRED SUB-CONTRACTOR / SUPPLIER QUOTE LIST

All bidders/offerors are required to complete and **submit this form with their bid.**

All bidders are required to submit this form with their bid showing the identify of DBEs and non-DBEs from whom quotes were requested in response to this RFCP. If no quotes were received, the bidder must indicate this in the space provided.

Name of Letting Agency: Metro		Name of Project: NOTC Upgrades		
METRO Project #: NE-04-0045		METRO Specification #:15-11		
	Name of Firm from whom a quote was requested	Description of Work or Line Item Number	Quote Received	
			Yes	No
1				
2				
3				
4				
5				
6				
7				

Print Name of Firm

Print Name of Authorized Representative

Print Email Address

Print Title of Authorized Representative

Print Street Address/Mailing Address (including City, State & Zip)

Area Code & Telephone Number

Area Code & Fax Number

Signature of Authorized Representative

(NOTE: Copy as need execute first signature page only.)

Attachment 2: DBE Participation Form

REQUIRED DBE PARTICIPATION FORM

All bidders/offerors are required to complete and **submit this form with their bid.**

The DBE goal for this project is 3% of bidder's total bid.

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder / offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of 3%) is committed to a minimum of _____ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of Letting Agency: Metro		Name of Project: North Omaha Transit Center Renovation		
METRO Project #: NE 04-0045		METRO Specification #: 15-11		
	Name of Certified DBE	Description of Work or Line Item Number	\$ Amount to be Paid DBE	Amount to be Credited Toward Goal
1				
2				
3				
4				
5				

NOTE: Overhead costs are not eligible for DBE credit. Show only the amount that will actually be paid to the DBE. Only 60% of the amount paid to a DBE supplier, for materials, may be credited toward the goal.

Print Name of Firm

Print Name of Authorized Representative

Print Email Address

Print Title of Authorized Representative

Print Street Address/Mailing Address (including City, State & Zip)

 Area Code & Telephone Number

 Area Code & Fax Number

Signature of Authorized Representative

(NOTE: If additional sheets are needed, attach to this sheet. However, show the contract total on this sheet.)

Attachment 3: DBE Confirmation Form

REQUIRED DBE CONFIRMATION FORM

All bidders/offerors are required to have DBEs complete this form and **submit it with their bid.**

Name of Letting Agency: Metro	Name of Project: NOTC Upgrades
METRO Project #: NE 04-0045	METRO Specification #: 15-11
Item Number or Description of Work to be Completed by This DBE:	
Dollar Amount of Work to be Completed by This DBE:	

Print Name of Firm

Print Name of Authorized Representative Print Email Address

Print Title of Authorized Representative

Print Street Address/Mailing Address (including City, State & Zip)

Area Code & Telephone Number Area Code & Fax Number

Signature of Authorized Representative

Attachment 4: Documentation of Good Faith Effort

DOCUMENTATION OF GOOD FAITH EFFORT

The bidder/offeror (if unable to meet the DBE goal of 3%) is committed to a minimum of _____ % DBE utilization on this contract and hereby submits the following *minimum* documentation to demonstrate its good faith efforts.

Name of Letting Agency: Metro		Name of Project: North Omaha Transit Center Renovation	
METRO Project #: NE 04-0045		METRO Specification #: 15-11	
Did Prime-Contractor examine the Nebraska Unified Certification Program DBE Directory?	Yes	No	
Did Prime-Contractor attend the Pre-Bid Conference?	Yes	No	
DBE Firm Considered			
Name of DBE Firm			
Area Code & Telephone Number			
DBE Firm Contact Person			
Date Contacted			
Describe the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached for this DBE firm to perform the work.			
DBE Firm Considered			
Name of DBE Firm			
Area Code & Telephone Number			
DBE Firm Contact Person			
Date Contacted			
Describe the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached for this DBE firm to perform the work.			

DBE Firm Considered	
Name of DBE Firm	Area Code & Telephone Number
DBE Firm Contact Person	Date Contacted
Describe the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached for this DBE firm to perform the work.	

Print Name of Firm

Print Name of Authorized Representative

Print Email Address

Print Title of Authorized Representative

Print Street Address/Mailing Address (including City, State & Zip)

Area Code & Telephone Number

Area Code & Fax Number

Signature of Authorized Representative

(NOTE: Copy as need execute first signature page only.)

Attachment 5: DBE Monitoring Report

DBE MONITORING REPORT 49 CFR 26.37



b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

COMPANY NAME:	PHONE NUMBER:
COMPANY ADDRESS:	CITY, STATE, ZIP:
Type of work performed:	METRO Project:
DATE OBSERVED:	

Type of Work: <input type="checkbox"/> Foreman ON SITE <input type="checkbox"/> Machinery Operated <input type="checkbox"/> Tools Used <input type="checkbox"/> Intern		Number of Employees Supervised:

DESCRIPTION OF OBSERVATION

OBSERVER:	DATE:
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Attachment 6: DBE Final Report

Return To: _____

Date: _____

DBE WORK PERFORMED DBE FINAL REPORT

DBE Subcontractor:	Prime Contractor:
MAT Project #:	MAT Specification #:
Description of Work Subcontracted or Services Provided:	\$ Amount of Subcontract:
\$ Amount Received	
Date Received	
Payment #1	
Payment #2	
Payment #3	
Payment #4	
Payment #5	
Payment #6	
Payment #7	
Payment #8	
Payment #9	
Payment #10	

Note: Attach additional sheets as needed to document all payments received.

Signature _____

Title _____

Attachment 7: Summary of Grantee Comments to the Draft Report

Omaha Metro Area Transit (Metro) submitted the following comments to the draft report on January 22, 2016:

1. Requested that the name “Metro College Transit Center” be changed to “Metro Community College Transit Center” on p. 15 of the report.
2. Requested that the reference to “General Counsel” be changed to “Special Counsel” on p. 16 of the report.
3. Clarified that the DBELO participated in a National Transit Institute (NTI) DBE seminar in June, 2013 on p. 28 of the report.
4. Identified a typo on p. 49 of the report in which “LCC” was incorrectly labeled “LLC”.