

COMPLIANCE REVIEW FINAL REPORT
OF THE
Port Authority of Allegheny County (PAAC)
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

January 2013

Prepared for the
Federal Transit Administration
Office of Civil Rights

by

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SECTION 1 - GENERAL INFORMATION

Grant Recipient: Port Authority of Allegheny County
Heinz 57 Center
345 Sixth Avenue Floor 3
Pittsburgh, PA 15222-2527

City/State: Pittsburgh, PA

Grantee Number: 1441

Executive Official: Stephen Bland
Chief Executive Officer

On Site Liaison: Edward J. Greene
DBE Contract Compliance Coordinator
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SECTION 2 - JURISDICTION AND AUTHORITIES

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A., (14), October 1, 2007 and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

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

SECTION 3 – PURPOSE AND OBJECTIVES

PURPOSE

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the Port Authority of Allegheny County's (PAAC) "Disadvantaged Business Program Plan" is necessary.

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

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

OBJECTIVES

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

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

SECTION 4 – BACKGROUND INFORMATION

This section reflects the state of the agency, the Port Authority of Allegheny County (PAAC) at the time of the Compliance Review.

PAAC was established in 1964 under the Second Class County Port Authority Act of 1956 to provide transit service in Allegheny County. Currently, Port Authority also provides services to adjacent portions of Beaver, Butler, Washington, Westmoreland, and Armstrong counties. Port Authority serves a population of approximately 1.4 million people.

Port Authority operations include fixed-route bus, light rail, paratransit, and incline plane service. Fixed-route bus service is operated on 214 routes. In addition, Port Authority operates more than 18.4 miles of dedicated busways with 23 stations on the Martin Luther King, Jr. East Busway, the South Busway, and the West Busway. Light rail is operated on more than 25 miles of track with 26 stations. Paratransit service is operated under contract with ACCESS Transportation Systems. ACCESS coordinates all paratransit service on behalf of the Port Authority through multiple contracts with local service providers. Port Authority directly operates the Monongahela Incline and contracts the operation of the Duquesne Heights Incline to the Society for the Preservation of the Duquesne Heights Incline.

The basic adult fare for bus and light rail service is \$1.25 within the downtown zone and \$.50 per zone, up to a maximum of \$2.75 for a three-zone ride. A reduced fare of \$.60 plus \$.25 per zone is offered to persons with disabilities and Medicare cardholders during off-peak hours. Senior citizens ride free of charge during off-peak hours. Fares on the incline are \$1.75 for adults, \$.85 for persons with disabilities and Medicare cardholders, and free for senior citizens. The fare for ADA paratransit service is no more than twice the fixed-route fare for comparable trips.

Port Authority operates a fleet of 970 buses for fixed-route services. Its bus fleet consists of standard transit coaches and leased minibuses. The current peak requirement is for 869 vehicles. Port Authority operates 83 vehicles in its light rail service and four vehicles in the incline plane services. All vehicles used in Port Authority ADA paratransit services are owned by the ACCESS subcontractors.

Port Authority's administrative offices are located in the Heinz 57 Building at 345 Sixth Avenue in downtown Pittsburgh. The Port Authority's operations facilities include five bus garages, one heavy maintenance facility, one rail maintenance facility, one facilities maintenance center and one transportation center. The five bus garages are Ross Garage, Collier Garage, West Mifflin Garage, East Liberty Garage and Harmar Garage. Manchester Bus Maintenance Facility is the heavy maintenance facility.

Port Authority operates rail service from its heavy maintenance rail yard at the South Hills Village Rail Center on Village Drive in Upper Saint Clair. There is one transportation center in McKeesport known as the McKeesport Transportation Center.

Over the past three years, Port Authority completed the following projects:

- **East Busway Extension:** In June 2003, the 2.3-mile extension of the Martin Luther King, Jr. East Busway was opened. This project extended the busway from its previous terminus in Wilkinsburg through the boroughs of Edgewood and Swissvale. This project added three new stations and three park-and-ride lots with over 1,000 spaces.
- **Stage II Light Rail Transit Project:** In June 2004, Port Authority opened the Stage II Light Rail Transit Priority Project to revenue service. This included reconstruction of the 5.5 mile Overbrook Line, purchase of 28 new light rail vehicles, expansion and modernization of the rail operations center, upgrade of the rail power, communications and signalization systems, and construction of 2,200 additional parking spaces through construction of two new park-and-ride lots and the construction of a multi-level parking garage at South Hills Village Station.
- **Wabash HOV Ramp:** The Airport Busway portion of the Airport Busway/Wabash HOV was opened in September 2000, and construction of the Wabash HOV ramp from the Wabash Tunnel to Carson Street was completed in December 2004.
- **Regional Strategic Transit Visioning Study:** In partnership with the Southwestern Pennsylvania Commission and several project sponsors, Port Authority concluded a transit visioning study. The study took a broad look at the ten-county region to identify and prioritize future public transportation needs and investments.
- **Airport Multimodal Corridor Study:** Port Authority partnered with the Southwestern Pennsylvania Commission, PennDOT, the City of Pittsburgh, and the Allegheny County Airport Authority to identify highway and transit alternatives that would reduce congestion and provide travel choices in the Parkway West corridor between Pittsburgh International Airport and downtown Pittsburgh.
- **Eastern Corridor Transit Study:** Port Authority partnered with Southwestern Pennsylvania Commission and Westmoreland County Transit Authority to evaluate a range of public transportation alternatives to improve mobility in eastern Allegheny County and western Westmoreland County.

The following noteworthy projects are on-going:

- **LRV Remanufacture:** Fifty-five light rail vehicles, which are over fifteen years of age are currently being remanufactured as part of the mid-life overhaul project. All vehicles are expected to be completed by December 2008.
- **Edgewood Train Station:** As part of the Martin Luther King, Jr. East Busway Extension project, the Authority committed to renovate the Edgewood Train Station.
- **North Shore Connector:** The North Shore Connector project is a 1.2 mile extension of Port Authority's existing 25-mile light rail transit system. The project will extend the light rail transit system from the area of the existing Gateway Station to the vicinity of the West End Bridge via two bored tunnels below the Allegheny River, continuing along the North Shore as a mix of below grade and elevated alignments. Three stations will be constructed as part of the project: a new Gateway Station will be constructed adjacent to the current Gateway Station and two new stations will be constructed on the North Shore. The North Shore Connector has a projected revenue operation date of June 2011.

Over the next three to five years, Port Authority has planned for the following noteworthy

projects:

- **Environmental Impact Statements:** One or more environmental impact statements for projects resulting from the Airport Multimodal Study, the Eastern Corridor Transit Study, and the Strategic Regional Strategic Transit Visioning Study. These studies were conducted over the past several years and are briefly described above.
- **Maglev:** Port Authority prepared a Draft Environmental Impact Statement for the Pennsylvania High-Speed Maglev Project, a 54-mile Maglev system in the region linking the Pittsburgh International Airport to downtown Pittsburgh and the eastern suburbs. Port Authority is now prepared to advance the environmental process and complete a Final Environmental Impact Statement (FEIS).

SECTION 5 – SCOPE AND METHODOLOGY

Scope

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

1. A signed policy statement expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible must be signed, dated and distributed [49 CFR 26.23].
2. Designation of a liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25].
3. Efforts made to use DBE financial institutions, by the recipient as well as prime contractors, if such institutions exist [49 CFR 26.27].
4. A DBE directory including addresses, phone numbers and types of work performed, must be made available to the public and updated at least annually [49 CFR 26.31].
5. The recipient must determine if overconcentration exists and address this problem if necessary [49 CFR 26.33].
6. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
7. An overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a recipient's DOT-assisted contracts [49 CFR 26.43 – 26.53].
8. All contracts must include a non-discrimination clause, a prompt payment clause and must implement appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
9. A certification process must be intact to determine if a potential DBE is legitimately socially and economically disadvantaged. The potential DBE must submit an application, a personal net worth statement and a statement of disadvantage, along with the proper supporting documentation [49 CFR 26.67].
10. The certification procedure must include document review and an on-site visit and determine eligibility consistent with Subpart D of the regulations [49 CFR 26.83].
11. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

12. In establishing an overall goal, the recipient must provide for public participation and then provide information on this goal to the public through published notices [49 CFR 26.45]

Methodology

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

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

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

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

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

This is the Final Report associated with the Compliance Review held in 2008. It should be noted that this report reflects PAAC's agency information related services and PAAC personnel at the time of the Compliance Review, which may have since changed. This Final Report takes into consideration PAAC's most recent DBE Program submitted to the FTA on November 20, 2012 and the DBE corrective action submitted on September 11, 2012 in response to PAAC's 2012 Triennial Review. Any findings identified during the Compliance Review, but have been sufficiently addressed in PAAC's recently submitted DBE Program or their responses to the Triennial Review have been closed as part of this review. Any remaining findings are detailed herein and PAAC is responsible for addressing them within the defined time lines.

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

Michael Riess
FTA Office of Civil Rights, Region III
1760 Market St., Suite 500
(215) 656-7255, Michael.Riess@dot.gov

Please also copy Margaret Griffin at Margaret.Griffin@dot.gov when emailing materials.

SECTION 6 – ISSUES AND RECOMMENDATIONS

1. **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 review, **deficiencies** were found with requirements for a policy statement. PAAC included a revised November 1999 unsigned policy statement in their 1999 DBE Program Plan from then Chair of the Board, Neal H. Holmes. PAAC inserted an August 2005-revised signed policy statement from John A. Brooks, current Chairman of the Board. The policy references 49 CFR Part 23 and 26 and incorporates objectives formerly under part 23 of the regulations, i.e. "that DBEs have maximum opportunity".

The DBE Contract Compliance Coordinator from the Office of Equal Opportunity is the designated administrator for the program. The DBE Program Plan and the Coordinator stated during the review that PAAC disseminates the policy internally and externally. The policy statement is also posted on PAAC's website; however, it is worded differently than the signed statement and uses the correct language found in Part 26.

Corrective Action and Schedule: The Compliance Review found PAAC needed to revise its policy statement to reference the objectives of 49 CFR Part 26 and remove any references or language of Part 23. PAAC has addressed this corrective action in its revised November 2012 policy statement that removes any references to Part 23. As a result, this item can be closed. However PAAC is to provide, no later than 60 days from issuance of this report, evidence that the most recent policy statement was distributed to all PAAC office coordinators for posting and was disseminated to various community and civic organizations.

2. **DBE Liaison Officer**

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

Discussion: During this DBE Compliance Review, a **deficiency** was found with the requirement for the DBE Liaison Officer. The PAAC DBE Program Plan of 1999 designated Mr. Edward J. Greene, the DBE Contract Compliance Coordinator, as the DBE Liaison Officer. Mr. Greene reports directly to Mr. Eric Wells, Director of Employee Relations/Office of Equal Opportunity. Mr. Wells reports to the Assistant General Manager of Human Resources who reports directly to the CEO.

The job description for the DBE Contract Compliance Coordinator was included in the DBE Program Plan. Some of the listed duties include developing and implementing the DBE program; monitoring DBE utilization; developing DBE contract opportunities; serving as liaison between FTA and PAAC; and administering the DBE certification process. Mr. Greene stated during the review that his other specific DBE responsibilities include drafting the Authority's overall goal methodology, completing the semi-annual reports, and attending pre-bid meetings.

A 2006 Triennial Review rendered a finding of the liaison officer not having direct and independent access to the CEO regarding DBE matters. Mr. Wells' predecessor and Mr. Greene indicated they did not have direct and independent access during the 2006 review. Mr. Greene and Mr. Wells were asked during the current review if Mr. Greene has direct and independent access to the CEO regarding DBE matters. Mr. Wells indicated during the review that Mr. Greene does have direct and independent access to the CEO and provided an organizational chart. The chart showed a dotted line from the DBE Contract Compliance Officer to the Chief Executive Officer. During the review, evidence of the DBE Liaison Officer using direct and independent access was requested. Mr. Greene mentioned there has been no need to contact the CEO regarding any DBE issues since the 2006 Triennial Review finding.

The PAAC DBE Program Plan of 1999 indicated that the Office of Equal Opportunity will hire a DBE Assistant. Staff members from the Procurement and Engineering and Construction Divisions are also to assist the Office of Equal Opportunity according to the Program Plan. During the review, Mr. Wells indicated that Mr. Greene is the only DBE staff member and there are no future plans to hire additional DBE staff. Other departments currently provide information to assist Mr. Greene with setting goals, reporting and monitoring some projects. PAAC was able to show some coordination between departments; however, the DBE Assistant was to provide direct support to the DBE Contract Compliance Coordinator. Due to the significant increase in size, complexity, and number of federally funded contracts over the last few years, it is not evident that the DBE Liaison Officer has sufficient resources to properly administer an effective DBE Program for PAAC.

Corrective Action and Schedule: The Compliance Review found that PAAC DBE Liaison Officer did not have direct and independent access to the CEO regarding DBE issues. PAAC's revised November 2012 DBE Program now includes both a statement and an organizational chart that show that the DBE Liaison Officer has direct and independent access to the CEO. However, there is no specific evidence that the DBE Liaison Officer actually has direct and independent access to the CEO regarding DBE issues. As a result, this Corrective Action remains open. To close this deficiency, PAAC must submit to FTA, no later than 60 days from issuance of this report, evidence that the DBE Liaison Officer does in fact have direct and independent access to the CEO.

Additionally, the review identified that PAAC lacked adequate resources to implement their DBE Program. PAAC's revised November 2012 DBE Program does include a plan to provide adequate resources to implement the DBE program for PAAC. In the plan, PAAC states that each division will assign a staff member to assist the DBELO with monitoring contracts for DBE involvement. Additionally, the staff member is responsible

for making progress reports both to their respective Assistant General Manager and the DBELO. As a result, this specific Corrective Action can now be closed.

3. Financial Institutions

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

Discussion: During this DBE Compliance Review, an **advisory comment** was made regarding the requirements for financial institutions. PAAC's DBE Program Plan states that financial institutions owned and controlled by DBEs will be utilized to the maximum extent possible in the implementation of this program. It also mentions that the PAAC shall encourage contractors to use the services of bank owned and controlled by DBEs within the local community. During the review, Mr. Greene indicated that PAAC researched one financial institution but was unable to provide any additional information on their process.

Advisory Comment: It is recommended that periodic reviews of financial institutions are conducted and documented as stated in their DBE Program Plan.

4. 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 DBE Compliance Review, **no deficiencies** were found with the requirement for a DBE directory. PAAC currently utilizes Pennsylvania Unified Certification Program directory as its DBE directory. A link to this directory is included on PAAC's website and is also referenced in their solicitation documents. The review team viewed the web-based directory during the site visit. The directory includes the information required by the regulations. It lists the firm's name, mailing address, telephone number, and the type of work the firm has been certified to perform as a DBE. In addition to the web-based electronic version, the DBE Liaison Officer makes the directory available in hard copy format upon request.

5. Overconcentration

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

Discussion: During this DBE Compliance Review, an **advisory comment** was made with the requirement for overconcentration. PAAC's 1999 DBE Program Plan states that the DBE Liaison Officer will monitor DBE participation to review possible instances of

overconcentration of DBEs in Port Authority contracting. During the review, the DBE Liaison Officer indicated that there was no indication that overconcentration existed in their DBE program. However, there was no evidence that a review was conducted examining overconcentration in the program.

Advisory Comment: PAAC is advised to document periodic reviews of overconcentration and for the Liaison Officer to recommend appropriate actions to address issues of overconcentration as stated in their Program Plan.

6. Business Development Programs

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found in the area of Business Development Programs (BDP). PAAC does not have a formal Business Development Program; however, they are active in the business community through participation in several events and conduct several workshops each year. Mr. Greene shows his support of business development by coordinating functions and also attended a business awards luncheon during the review period.

7. Determining/ Meeting Goals

A) Calculation

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

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirements for calculation of goal. PAAC provided Fiscal Years 2006, 2007, and 2008 goal submissions to their Region III Civil Right Officer. The overall goals were 18, 18, and 19 percent respectively. The methodology used by PAAC was outlined to determine the availability of ready, willing and able Disadvantaged Business Enterprises. Mr. Wells submitted FY2008 and his predecessor submitted FY2007 and FY2006. Mr. Greene prepared the goals for all three fiscal years examined by the review team. PAAC analyzed information from the U.S. Census Bureau Patterns (CBP) for the region, along with certified firms from the Pennsylvania Unified Certification Program (PA UCP). The contracting activity amount projected in the goal submission for FY2006 was \$280 million; the projected amount was \$460 million for FY2007, and for FY2008, the projected amount was \$305 million.

Step 1: Determining the Base Figure

PAAC's goal submissions for FY2006, FY2007, and FY2008 indicated that information from the U.S. Census Bureau Patterns (CBP) for their region was analyzed along with

certified firms from the Pennsylvania Unified Certification Program (PA UCP) to achieve base step one figures. The method employed by the PAAC for the past three fiscal years goals is found in provision 26.45 (c)(1): *“Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau’s County Business Pattern data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes”*.

During the onsite review, PAAC’s method of capturing all contracting opportunities was discussed. The DBE Liaison Officer obtains contract information from various departments, including Engineering and Procurement. Using the most refined data for goal setting was discussed with the DBE Liaison Officer. The DBE Liaison Officer was not sure about any contract opportunities in preventative maintenance grants nor had this been considered in determining opportunities in goal setting. The review team highlighted that FTA’s Transportation Electronic Awards and Management (TEAM) system indicated some contracting opportunities that did not appear to be accounted for in PAAC’s goal methodology. Onsite interviews with representatives from the Office of Equal Opportunity and Procurement Department revealed that they were unfamiliar with FTA’s TEAM system.

During the onsite review, it appeared that the numbers utilized in the numerator for the step one were inflated. The numerator and denominator from PAAC’s goal methodology are derived from three-digit NAICS codes using the CBP and PA UCP databases. For the NAICS codes, the data becomes more refined as the numbers expand to the full six-digit code. According to their past three goal submissions, the PA UCP directory averaged approximately 2,600 firms. The numbers used in the numerator for the past three goal submissions exceeded the average number of firms in the PA UCP directory. The DBE Liaison described during the onsite interview that both the CBP and PA UCP databases are used for the numerator and denominator. Using the CBP for the numerator is inconsistent with the method described in 26.45 (c)(1) of the regulation. The step one base figures for PAAC’s fiscal years 2006, 2007 and 2008 submissions were 13, 18 and 20 percent respectively.

Step 2: Adjusting the Base Figure

The regulation indicates that once the step one figure is calculated, all of the evidence available in the jurisdiction must be examined to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. PAAC elected to adjust their step one base figures based on past participation of DBEs on their DOT-assisted contracts. They used the median past participation method from their previous fiscal years, averaged with the step one base figure to arrive at the overall goal. The language in PAAC’s goal submission for FY2008 indicated that “to support an increase in the base figure, fiscal years 2003, 2004, 2005 and 2006 were used to assist Port Authority with establishing a fair and reasonable DBE goal for fiscal year 2008”. This language was also used in all three goal submissions reviewed by the review team. The review team noted that the purpose of a step two process is not to support an increase, but to adjust the base figure based on relevant and reliable factors.

The median past participation figures used in the FY2008 goal submission yielded 24.4

percent. When adding the median participation of 24.4 percent to the current step one base figure of 20 percent divided by 2, the end result amounts to 22.2 percent. PAAC thought a 19 percent goal was more achievable for fiscal year 2008. No justification of this third adjustment was provided in the goal submission. The DBE Liaison Officer explained during the onsite review that 19 percent seemed to be more achievable than the 22 percent yielded by the step two adjustment. Adjusting the step two number a third time is not a recommended process in Part 26.45 of the regulation. The 22 percent appeared to be achievable based on their past participation number of 26.2 percent for 2006, 28.4 percent for 2005, 21.2 percent for 2004 and 22.6 for 2003.

Corrective Action and Schedule: The Compliance Review found PAAC needed to address its process for calculating its DBE goal methodology specifically the following:

- FTA funded contracting opportunities from Transportation Electronic and Awards Management (TEAM) system including their dollar value and scope of work
- FTA funded contracting activity from preventative maintenance grants
- Refined numerical and denominator data in step one process
- Fully detailed rationale adjustments in step two to base figure

PAAC since the Compliance Review, has submitted to FTA a DBE Goal Methodology for FY 2012-2014; this was approved by FTA on June 1, 2012. In the calculation of its goal, PAAC used all the FTA funded contract opportunities and included the dollar value and the scope of the work. PAAC's DBE goal for FY 2012-2014 included FTA funded contracting activity from preventative maintenance grants; properly used the DBEs available for the corresponding NAICS code as its numerator and used the CBP's for the corresponding NAICS codes for its denominator; and correctly used its median past participation to adjust its base figure. As a result, the above corrective actions can now be closed.

B) Transit Vehicle Manufacturer (TVM)

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

Discussion: During this DBE Compliance review, a **deficiency** was found with the requirement for transit vehicle manufacturers. The 1999 DBE Program Plan of PAAC requires each transit vehicle manufacturer to certify that it has complied with the requirements of 49 CFR Section 26.49. The review team examined the documentation for the latest federally funded vehicle procurement. The 2001 Request for Proposal included DBE certification language and a TVM certification affidavit referencing 49 CFR Part 23. During the onsite visit, interviews with the DBE Liaison Officer and two Procurement personnel revealed they were unfamiliar with the term Transit Vehicle Manufacturer and the requirements concerning TVM certification. The Procurement personnel were new to the department, but were able to determine the vehicles were procured in 2002 from Gillig Corporation, which is on the list of FTA's approved TVMs eligible to bid on federally funded transit agency contracts in Federal Fiscal Year 2008. No copy of the certification affidavit from Gillig Corporation was produced during the

review.

Corrective Action and Schedule: The Compliance Review found that PAAC needed to update its DBE certification language and TVM certification affidavit for transit vehicle procurements.

PAAC's revised November 2012 DBE Program includes the requisite DBE certification language. PAAC states that it included a TVM DBE Compliance form in Exhibit XII of its DBE program, but it was not presented in its submission. As a result, this Corrective Action remains open. To close this deficiency, PAAC must submit to FTA, no later than 60 days from the issuance of this report, the TVM certification affidavit for transit vehicle procurements PAAC has awarded over the past 2 years (if none, provide a copy for the last transit vehicle procurement).

C) Race Neutral DBE Participation

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

Discussion: During this DBE Compliance Review, a deficiency was found in the area of race neutral participation. The 1999 DBE Program Plan explains PAAC will use the following race-neutral means to increase DBE participation;

- Workshops conducted on topics of interest to small businesses
- Liaison Officer will examine feasibility of breaking contracts in smaller elements
- Work with SBA to attract additional businesses.

The race conscious and race neutral projections for the past three fiscal years were examined. The following is a breakdown of the goal projections per year:

Fiscal Year	Overall Goal	Race Conscious Projection	Race Neutral Projection
2006	18%	14%	4%
2007	*20%	14%	4%
2008	19%	15%	4%

The * above for FY2007 goal submission indicates an overall goal of 20%; however, the goal was explained as 18% with a 14% race conscious and 4% race neutral in another section of their submission. The DBE Program Plan indicated that race neutral projections were based on past reports submitted to FTA on the dollar amount spent directly with DBEs. There was no narrative or calculation provided in the three goal submissions nor was there an explanation provided during the review as to how the race conscious/neutral portion is determined in their goal setting methodology.

Corrective Action and Schedule: PAAC's DBE goal submission for FY 2012-2014 adequately justified its race neutral/race conscious projections by submitting an analysis of its past race-neutral attainment. Therefore, PAAC has presented supporting evidence and a strong justification for its race-neutral/race-conscious breakdown. However, TCR

has not received any documentation on the procedures for determining race-neutral and race-conscious projections. As a result, this Corrective Action remains open. To close this deficiency, PAAC must submit to FTA, no later than 60 days from issuance of this report, documentation supporting the procedures outlined in their 2012-2014 submission.

D) Race Conscious DBE Participation

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirements for race conscious participation. The 1999 DBE Program Plan indicates that the DBE Liaison Officer is responsible for setting contract goals. The DBE Liaison Officer explained during the review that the Procurement Department sends him a draft of the scope of services or work for upcoming procurements and contracts. A copy of a correspondence was provided during the review. It requested that the DBE Liaison Officer identify 1) if there would be a specified DBE subcontract participation goal and the appropriate percentage, 2) potential areas of subcontracting, 3) PAUCP certified DBE firms that would be interested in proposing, and 4) the DBE representative that is recommended to participate on the Evaluation Committee. The DBE Liaison Officer provided an email response to Procurement's request for information on the procurement reviewed.

E) Good Faith Efforts

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirements for good faith efforts. PAAC's DBE Program Plan was examined for procedures of good faith efforts. A detailed list of procedures that a contractor must document prior to award of a contract with a DBE utilization goal is included in their DBE Program Plan. A waiver committee reviews good faith efforts before a waiver of the DBE goal is granted. The waiver committee consists of the Director of Office of Equal Opportunity, and Assistant General Managers of Corporate Services, Engineering and Construction, Finance, and Human Resources.

The review team examined good faith effort language in several contracts awarded by PAAC with DBE utilization goals. The contract language was as follows, "to use good faith efforts to achieve the specific measurable Disadvantaged Business Enterprise goal for the Contract for DBE utilization with the provision that the Bidder may file the required supportive documentation to justify a request for a waiver in accordance with this article 3". The next section indicates, "failure of the Bidder to carry out the above requirements shall cause the Bidder to be non-responsive and ineligible for award. Following the award of the contract, if the contractor fails to carry out the above requirements, the contractor shall be in breach of the contract which may result in

termination of the contract by Authority or such other remedy as Authority deems appropriate.”

Good faith effort waiver reviews are coordinated by the Procurement Department. There were no waiver committee meeting minutes available to examine during the onsite review. The DBE Liaison Officer indicated that the contractor usually meets the established contract goal and the last waiver committee meeting was several years ago.

F) Counting DBE Participation

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirements for counting DBE participation. The 1999 DBE Program Plan explains the criteria needed to count DBE participation on contracts. This procedure was also verified in proposals and contracts examined by the review team. PAAC requires the contractor to submit a DBE Utilization Report on a monthly basis, which identifies DBE subcontractors and DBE vendors with appropriate 60% credit for suppliers. Commercially useful functions language is also included in their program plan and in contracts issued by PAAC.

G) Quotas

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirement for quotas. No evidence of the use of quotas or set-aside contracts by PAAC was found during the site visit.

8. Required Contract Provisions

A) Contract Assurance

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

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirements for Contract Assurances. The PAAC DBE Program Plan stated that each contract they sign with a contractor and each subcontract the prime contractor signs with a subcontractor would include the contract assurance language of 26.13. The review team examined several contracts let by PAAC over the past few years. The North Shore Connector contract and South Hills Junction Improvements contract were also reviewed along with a DBE subcontract from each project for compliance with this requirement. Each of the prime contracts included Article 3 DBE Utilization Requirements, which outlines all the requirements of PAAC’s DBE program. This article included the necessary contract assurance language of part 26.13. The prime’s subcontract agreements with Zavala, Inc. and Alvarez, Inc. on the North Shore and South Hills

projects respectively were reviewed for the same compliance requirements. The contract assurance provisions were not included in the two subcontract agreements examined during the review. However, reference was made to Article 3 DBE Utilization Requirements in the list of applicable contract clauses to adhere to, such as Buy America, Lobbying, etc.

The review team also advised PAAC to update the Article 3 DBE Utilization Requirements inserted in their contracts to the current 49 CFR Part 26 language concerning the objective of leveling the playing field for DBEs and not maximizing their opportunities. It was also noted that this update should be extended to the Procurement Department updating their boilerplate language in their procurements and their Request For Proposals. The 2006 procurement for Transformer Bus Duct Replacement referenced DBE 49 CFR Part 23 and also included maximizing opportunities for DBEs as an objective.

Corrective Action and Schedule: The Compliance Review found that PAAC needed to implement procedures to ensure that the clause addressing contract assurance is included in its contracts with its prime contractors and in subcontracts on FTA-assisted projects. This will also include documentation referencing the applicable language and regulation of 49 CFR Part 26.

The November 2012 Program submission does not provide the necessary documentation to determine if this action has been corrected. As a result, PAAC must provide documentation that it has implemented procedures to ensure that the clause addressing contract assurance is included in the contracts with its prime contractors and in subcontracts on FTA assisted projects. As a result, this Corrective Action remains open. To close this deficiency, PAAC must submit to FTA, no later than 60 days from issuance of this report, their procedures and supporting documentation.

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 a specific number of 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 a specific number of days after the subcontractors' work is satisfactorily completed.

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirements for Prompt Payment and Return of Retainage.

Prompt Payment

In PAAC's 1999 DBE Program Plan, PAAC requires prime contractors to make prompt payment to all of their subcontractors, both DBE and non-DBE, within 5 working days from receipt of PAAC payment. In Article 3 of the DBE Utilization Requirements in the contract documents reviewed, prompt payment is explained as within 14 days of payment from PAAC. The DBE Liaison Officer explained during the review that the prompt payment guidelines were "a little aggressive", therefore, it was increased to 14 days. The subcontracts were examined during the review for prompt payment language. The DBE

subcontract agreement between the prime contractor, Mosites Construction Company, and DBE, Alvarez, Inc., on the South Hills project has a seven-day prompt payment clause. The DBE subcontract agreement between the prime contractor, North Shore Constructors, and DBE, Zavala, Inc., on the North Shore Connector project has the same fourteen-day prompt payment clause found in Article 3 of the contract.

PAAC should revise their DBE Program Plan to ensure that contracts and subcontracts do not exceed the set amount in their DBE Program Plan. If Article 3 indicates that prompt payment is within fourteen days rather than five days, then this should be reflected in the DBE Program Plan.

Return of Retainage

PAAC's DBE Program Plan indicates that subcontractors shall receive, upon successful completion of their work, any retention payments held by the prime, regardless of the fact that the prime did or did not receive its retention. No specified number of days was mentioned in the Program Plan, however. Article 3.11(A) DBE Utilization Requirements found in the contract provisions states, "The contractor shall also pay each subcontractor and supplier all retainage, if retainage has been withheld from the subcontractor or supplier by the contractor, within twenty days after the subcontractor's or supplier's work is satisfactorily completed in its entirety, regardless of whether retainage is still being held by PAAC from the Contractor.

The DBE Liaison Officer and Project Manager confirmed during the review that retainage is withheld from the prime contractor on their projects. In June 2003, USDOT issued a Final Rule on DBE that contained new requirements for prompt return of retainage (26.29). According to the Final Rule, if an agency chooses to hold retainage from a prime contractor, they must have prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

It did not appear that PAAC was correctly implementing option (b)(3) of withholding retainage from the prime of 49 CFR Part 26.29. The PAAC staff and the contracts reviewed verified that retainage is withheld from the primes and the primes are withholding retainage from the subcontractors. Several of the contracts reviewed had PAAC withholding 5% retainage and reducing it to 2% after 50% completion of the contract. The prime contractor withheld the same retainage from the subcontractors according to the contracts reviewed and contractors interviewed. The subcontracts reviewed did not have PAAC's Article (3) DBE Utilization Requirements concerning releasing retainage to subcontractors, but rather had a clause that final payment would be released upon final payment from the owner (PAAC).

For information on monitoring of subcontractor payments, see discussion in *Item 11, Record Keeping and Enforcements* of this section.

Corrective Action and Schedule: The Review concluded that PAAC needed to demonstrate it has implemented procedures to ensure that the clauses addressing prompt

payment and prompt return of retainage are included in the contracts with its prime contractors and that they are passed through to the subcontractors participating on FTA-assisted projects.

PAAC's November 2012 DBE program includes the Prompt Payment requirements listed under 26.29, as noted in the June 2003 Final Rule. PAAC has also provided a sample bid specification that includes the relevant language. As a result, this specific finding can now be closed. While PAAC has sent TCR a sample bid document that includes the necessary prompt payment and retainage clauses, PAAC has not submitted procedures to ensure that the clauses addressing prompt payment and prompt return of retainage are included in the contracts with its prime contractors and that they are passed through to the subcontractors participating on FTA-assisted projects. As a result, this specific Corrective Action remains open. To close this deficiency, PAAC must submit a copy of the procedures to FTA no later than 60 days from issuance of this report.

C) Legal Remedies

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

Discussion: During this DBE Compliance Review, an **advisory comment** was made with the requirement for legal remedies. The Legal and Contract Remedies section of PAAC's DBE Program Plan states, "this section requires Port Authority to implement appropriate mechanisms to ensure compliance by all program participants with the requirements (e.g. applying legal and contract remedies available under Federal, State and local laws)." The plan continues, "Port Authority shall research what mechanisms are available during September and together with the users and the compliance office will decide what, if any, penalties would apply to our contract documents." PAAC notes in Article (3), DBE Utilization, requirements of their contracts, that penalties for non compliance with 49 CFR Part 26 and of Article 3 shall constitute a breach of contract and may result in termination of the Contract by Authority or such remedy as Authority deems appropriate. Some of the penalties that PAAC includes in Article 3 of the contracts are: withhold further payments, ordered to stop work without Authority being responsible for any resulting damages, costs or delays, contract may be terminated, suspension or debarment proceeding, or relevant performance bonds may be enforced.

Advisory Comment: PAAC is advised to update their DBE Program Plan to include the legal remedies mentioned in Article 3 of their contracts.

9. Certification Standards

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the

requirement for certification standards. PAAC has procedures in place to utilize 49 CFR Part 26 Subpart D in determining whether to certify a firm as eligible to participate as a DBE. PAAC requires each owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth (PNW) with appropriate supporting documentation. A Statement of Social and Economic Disadvantage is also required as part of the application process. The certification files reviewed during the site visit showed that all appropriate documentation was routinely collected.

Several certification files were examined during the DBE review to gauge proper size, ownership, control and social and disadvantaged determinations. The files reviewed are summarized below:

Company	Site Visit Conducted	Small Business	Own & Control	Soc. & Econ. Disadvantaged	PNW	Supporting Documents	Processed < 90 Days	Cert./ Denial Date	Cert. Status
Zavala, Inc.	Y	Y	Y	Y	Y	Y	Y	Mar-05	Certified
VAL III, Inc.	Y	Y	N	Y	Y	Y	Y	Oct-07	*Denied
Comm Steel, Inc.	Y	N	Y	Y	Y	Y	Y	Dec-00	**Removal

*Burden of proof for ownership .

**Exceeded USDOT business size standards.

10. Certification Procedures

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirement for certification procedures. PAAC is one of five certifying agencies that grant certification under the Pennsylvania Unified Certification Program (PAUCP). A copy of the Cooperative memorandum agreement to establish the PAUCP was provided during the review period. The agreement was entered into with PAAC and the other UCP members on January 10, 2003. PAAC uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. The procedures require the performance of an on-site visit to offices of the applicant firm along with securing proper documents prior to certification approval.

The review team interviewed Mr. Edward Greene, PAAC's DBE Liaison Officer. As the certifying official, Mr. Greene is responsible for DBE certifications for PAAC in the PAUCP. Mr. Greene demonstrated knowledge of the certification elements of the DBE Regulation during this interview. He also demonstrated that PAAC keeps abreast of changes in the regulation that may affect certification standards. Several files completed

by the staff were reviewed for evidence of an on-site visit and supporting documentation review. The files reviewed by the team included the proper documents and on-site interviews with principal officers of the applicant firms.

The DBE final rule states that a DBE shall remain certified for a period of at least three years. Every year on the anniversary of the date of certification, an affidavit of no change affecting eligibility is required. According to PAAC's Certification Procedures, DBE firms are certified for a period of three years after which the firm is required to reapply for certification as a condition of continuing to participate in the DBE program. During the three year term, PAAC requires firms to submit an annual affidavit. A recipient is required to make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under 49 CFR Part 26. Of the files reviewed, all initial decisions regarding certification were made within 90 calendar days of receipt of a completed package.

11. Record Keeping and Enforcements

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

Discussion: During this DBE Compliance Review, **deficiencies** were found with the FTA requirement for Record Keeping and Enforcements.

Bidders List

The Port Authority of Allegheny County revised their bidders list paper application to an electronic *ebusiness* online bidders list registration in March 2008. The Procurement Department is responsible for collecting the bidder's information. They recently sent out letters to all firms on their list requesting that they register their businesses on the new *ebusiness* system. They received less than a 10% response and are currently working to increase registration in the system. The bidders list registration includes all the requirements of 26.11 of the regulations. The regulations give examples of different data collection approaches and PAAC is reviewing their options of collecting data from their universe of DBE and non-DBE contractors and subcontractors.

Monitoring

The PAAC DBE Program Plan indicated that the following records are part of their monitoring process; 1) awards to DBEs, 2) confirmation notices issued to DBE firms to confirm payment have been made, 3) records maintained on dollars spent with DBEs for each monthly period, and 4) report of DBE awards and commitments are submitted quarterly. The plan also requires contractors to submit a DBE Form B with each invoice requesting payment. The form is furnished to the DBE Liaison Officer and the DBE subcontractor payment receipts are confirmed with the DBE by written correspondence to confirm the DBE firm has received payments.

PAAC indicated in their response letter to the review team that the DBE Contract Compliance Coordinator attends weekly progress meetings of those projects that are actively in progress. Site visits are conducted periodically to monitor DBE personnel and reflected within the progress meeting minutes. The review team verified this process during the review. Interviews with the Project Management Department verified that DBE/EEO Issues was an agenda item at the North Shore Connector progress meetings and a copy of this particular section in the minutes were provided. Mr. Greene, the DBE Contract Compliance Coordinator, verified during the review that he accompanies the project management team on periodic jobsite visits.

The review team examined PAAC's current monitoring process on two contracts during the review period. The South Hills Junction Improvements (Phase II) and The North Shore Connector-North Side Tunnels and Station Shell contracts were examined for the supporting documents described in PAAC's DBE Program Plan. For both contracts, PAAC required the prime contractors to collect letters of intent (Form GII) from each DBE proposed on the contract. The letters of intent identified the DBE's contact information, scope of work, dollar amount, certification expiration and authorized signature. The DBE Contract Compliance Coordinator then reviews the letters of intent for accuracy and current certification status for DBEs. The prime contractors submitted a DBE Utilization Report for each invoice submitted for payment by PAAC. The report outlined all the DBE subcontractors on the project, original contract value, dollar paid toward goal for the reporting period, dollars invoiced, total dollars paid to date, and projected final DBE dollars towards the goal. The report also shows the percentages for each category in relation to the contract goal. The prime contractors also submitted the cancelled checks paid to the DBE subcontractors for the reporting period.

Reviewing DBE subcontract agreements is not a routine part of PAAC monitoring process. The DBE Liaison Officer indicated that he could request the DBE subcontracts should the need arise. In reviewing the subcontract agreement between Zavala, Inc. and North Shore Constructors (NSC), the terms and conditions indicate that NSC intends to execute joint check agreements with the subcontractor's (Zavala, Inc.) material suppliers. The DBE cancelled checks submitted by NSC revealed Zavala, Inc. and Codale Electric Supply, Inc. were joint payees on check number 1000 in the amount of \$1,075.78. When joint checks are involved with payment to DBEs, additional scrutiny should be applied to monitoring payments. Section 26.55 of the regulation states that DBEs must perform a commercially useful function. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. There appeared to be no procedures in place to address the issue of joint checks as it relates to DBEs performing a commercially useful function.

DBE subcontractors are requested by PAAC to complete a monthly report (Form E-2) verifying receipt of payment from the prime contractor and past due invoices. A copy of Form E-2 was provided to the review team. Mr. Greene also provided a copy of a closeout letter he routinely sends DBEs to verify receipt of all payments related to their contract. Although these appear to be effective tools in monitoring DBE payments, no documentation was provided that evidences how the information gathered is used to

verify compliance with the prompt payment and return of retainage requirements.

The review team examined the payment history of the prime and DBEs on the South Hills Junction Improvement (Phase II) Project to determine how prompt payment requirements delineated in the agreement were adhered to and monitored by PAAC. The review team first examined contract, subcontract, and payment information for Mosites Construction Company, the prime on the project and the DBE subcontractor, Alvarez, Inc. According to the contract language, the prime contractor shall pay subcontractors or suppliers by no later than fourteen (14) days from receipt of each payment from PAAC. The DBE's subcontract agreement states that they would receive progress payments and final payment within seven (7) days from the prime's receipt of payment from PAAC. The review team examined all the payments Mosites made to the DBE firm, Alvarez, Inc. The average payment to the DBE was six (6) days from receipt of the prime's payments from PAAC.

Although the review team did not find instances of non-compliance by the prime contractors with the prompt payment policy, the review team noted areas for improvement in PAAC's monitoring efforts. During the review, PAAC demonstrated how the information it collects in its various monthly reports is used to determine whether DBEs are paid for work completed. However, the reviewers were unable to ascertain how PAAC utilizes this information to ensure compliance with the DBE prompt payment requirements. In addition, it does not appear that PAAC has developed and implemented a process whereby the DBE Liaison Officer or his designee reviews the contract files of the DBE subcontractors performing work on federally assisted projects to ensure that the DBE requirements are included.

Reporting

Copies of PAAC's semi-annual reports for fiscal years 2005, 2006, and 2007 were provided during the review. All of the reports were submitted on the appropriate form, Uniform Report of DBE Awards or Commitments and Payments. All the semi-annual reports were timely submitted either by the June 1st or December 1st deadlines.

The review team requested supporting documentation used for completing the semi-annual reports. Mr. Greene provided spreadsheets to support the information gathered in the two FY2005 Uniform Reports. PAAC awarded seventy-one (71) prime contracts for the reporting period April 1, 2005 – September 30, 2005 in the amount of \$23,806,134. Of the seventy-one contracts awarded during the period, thirty-two were awarded to DBEs in the amount of \$1,077,021. The reporting period for October 1, 2005 – March 31, 2005 indicated that PAAC awarded thirty-eight (38) contracts totaling \$51,449,714. Twenty-four (24) of the contracts were awarded to DBEs in the amount of \$715,548.

The spreadsheets did not however provide the federal share of the prime contracts awarded. Mr. Greene indicated that he had not reported only the federal share in the semi-annual Uniform Reports, but realized he was reporting the contract amounts incorrectly as a result of taking a telephone course offered by the National Transit Institute. He indicated that he would report the federal share only for the FY2008 semi-annual reports.

Corrective Action and Schedule: The Compliance Review found that corrective actions were needed related to the following:

- Procedures to monitor prompt payments return of retainage to subcontractors within the specified number of days in the contract agreement.

A finding in the same area was found during FTA's 2012 Triennial Review. PAAC has since submitted a corrective action that provides a procedure for monitoring prompt payments. PAAC's corrective action states that "the DBE Contract Compliance Officer monitors and ensures prompt payment requirements are adhered to and verifies actual payments to DBE's via reviewing cancelled checks. DBE monthly utilization forms are required with each project invoice submitted by prime and subcontractors. The DBE Contract Compliance Officer verifies that each project is on target to meet its DBE goals by tracking the actual dollars spent." As a result, this specific finding can now be closed.

- Procedures to review commercially useful functions when joint checks are involved as a form of payment to DBEs.

PAAC has implemented procedures to review commercially useful functions when joint checks are involved as a form of payment to DBEs. However, documentation has not been submitted to verify its implementation. As a result, this Corrective Action remains open. To close this deficiency, PAAC must submit a copy of the procedures and documentation to FTA no later than 60 days from the issuance of this report.

- Procedures as to how the federal share will be determined for the contracts reported on the future semi-annual reports.

PAAC has implemented procedures regarding how the federal share will be determined for the contracts reported on future semi-annual reports. However, documentation has not been submitted to verify its implementation. As a result, this Corrective Action remains open. To close this deficiency, PAAC must submit a copy of the procedures and documentation to FTA no later than 60 days from issuance of this report.

12. Public Participation and Outreach

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the FTA requirement for Public Participation and Outreach. The 1999 DBE Program Plan addresses publishing their goal for public comment. The Plan also indicates that

following the publication date, a 45-day comment period would begin. The goal for fiscal year 2008 was publicly advertised in the local community newspaper according to their DBE goal submission to the Federal Transit Administration.

PAAC included three organizations in response to the review team's request for a list of external organizations with which PAAC has interacted on the DBE program issues, such as annual overall goal setting. These organizations include Minority Business Opportunity Committee (MBOC), Pittsburgh Regional Minority Purchasing Council, and the African American Chamber of Commerce.

The Pittsburgh Regional Minority Purchasing Council and African American Chamber of Commerce were interviewed during the review. Both interested parties were familiar with PAAC's DBE program and Mr. Edward Greene. The parties interviewed indicated that they are involved in the agency's goal consultation process and consider themselves an essential part of their goal setting process.

SECTION 7 – SUMMARY OF FINDINGS

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Response Days/Date
1. Policy Statement	26.23	D	References to 49 CFR Part 23	<ul style="list-style-type: none"> • Submit a revised policy statement referencing the objectives of 49 CFR Part 26 and remove any references or language of Part 23. • Provide evidence that the most recent statement was distributed to all PAAC office coordinators for posting and was mailed to various community and civic organizations. 	<p>CLOSED</p> <p>March 1, 2013</p>
2. DBE Liaison Officer	26.25	D	Direct and Independent Access	<p>Submit the following:</p> <ul style="list-style-type: none"> • Evidence that the DBE Liaison Officer actually has direct and independent access to the CEO regarding DBE issues. • An action plan to address the lack of adequate staff to implement the DBE Program for PAAC should also be included. 	<p>March 1, 2013</p> <p>CLOSED</p>
3. Financial Institutions	26.27	AC		It was advised that a periodic review of financial institutions is conducted and documented as stated in PAAC's DBE Program Plan.	
4. DBE Directory	26.31	ND			
5. Overconcentration	26.33	AC		It was advised to document periodic reviews of overconcentration and for the Liaison Officer to recommend appropriate actions to address issues of overconcentration as stated in their Program Plan.	
6. Business Development Programs	26.35	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Response Days/Date
7. Determining / Meeting Goals A) Calculation	26.45	D	Goal calculation	Provide FTA with a DBE goal methodology for FY 2009 that incorporates the following: <ul style="list-style-type: none"> • FTA funded contracting opportunities from TEAM with dollar value and scope of work • FTA funded contracting activity from preventative maintenance grants • Refined numerator and denominator data in step one process • Rationale for Step 2 adjustments 	CLOSED CLOSED CLOSED CLOSED
B) TVM	26.49	D	TVM Certification	<ul style="list-style-type: none"> • Submit copy of TVM certification affidavit for transit vehicle purchases PAAC has awarded over the last two years. 	March 1, 2013
C) Race Neutral	26.51	D	Race neutral projection	<ul style="list-style-type: none"> • Submit procedures on how future race-neutral and race-conscious projections will be determined and how these procedures were used for the FY2012-2014 goal submission. 	March 1, 2013
D) Race Conscious	26.51	ND			
E) Good Faith Efforts	26.53	ND			
F) Counting DBE Participation	26.55	ND			
G) Quotas	26.43	ND			

8. Required Contract Provisions A) Contract Assurance	26.13	D	Contract assurance clause not included in agreement Reference Part 23	<ul style="list-style-type: none"> Submit documentation that PAAC has implemented procedures to ensure that the contract assurance clause found in 49 CFT Part 26, which addresses nondiscrimination, is included in the contracts with its contractors and their DBE subcontractors. 	March 1, 2013
B) Prompt Payment	26.29	D	Prompt Payment/Return of Retainage Clause	<ul style="list-style-type: none"> Submit documentation that PAAC has implemented the requirements of Part 26.29 as noted in the June 2003 Final Rule. Additionally, PAAC should provide documentation that it has implemented procedures to ensure that the clauses addressing prompt payment and prompt return of retainage are included in the contracts with its prime contractors and that they are passed through to the subcontractors participating on FTA-assisted projects. 	CLOSED March 1, 2013
C) Legal Remedies	26.37	AC		It was advised to update the DBE Program Plan to include the legal remedies mentioned in Article 3 of the contracts.	
9. Certification Standards	26.67	ND			
10. Certification Procedures	26.83	ND			

11. Record Keeping and Enforcements A) Bidders List	26.11	ND			
B) Monitoring	26.37, 26.55	D	Monitoring prompt payment and return of retainage	<ul style="list-style-type: none"> • Procedures to monitor promptness of payments to subcontractors within the specified number of days in the contract agreement. • Procedures to review commercially useful functions when joint checks are involved as a form of payment to DBEs. 	CLOSED March 1, 2013
C) Reporting to DOT	26.11	D	Accurate reporting to FTA	Provide FTA with procedures for accurate assessment of federal share reporting of data for semi-annual reports that address the issues noted above.	March 1, 2013
12. Public Participation and Outreach	26.45	ND			

Findings at the time of the site visit: ND = No deficiencies found; D = Deficiency; NA = Not Applicable; NR = Not Reviewed

SECTION 8 - LIST OF ATTENDEES

Name	Organization	Title	Phone	Email
PAAC:				
Eric L. Wells	PAAC	Director of Employee Relations/ OEO	412.566-5262	ewells@PortAuthority.org
Edward J. Greene	PAAC	DBE Contract Compliance Coord.	412.566.5434	egreene@portauthority.org
Michael G. Whitico	PAAC	Director of Grants	412-566-5190	mwhitico@portauthority.org
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