

FTA

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

Central Oklahoma Transportation & Parking Authority (COTPA) Disadvantaged Business Enterprise Program Compliance Review FINAL Report

January 2013

Federal Transit Administration

PREPARED BY

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U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Agency:	Central Oklahoma Transportation & Parking Authority
Date:	Feb. 15 to 17, 2012
Reviewer:	Jack Faucett Associates and Ken Weeden & Associates

Objective and Methodology - This report details the findings of a Compliance Review of the Disadvantaged Business Enterprise (DBE) program operated by the Central Oklahoma Transportation & Parking Authority (COTPA). The Compliance Review was based on an examination of COTPA’s procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and COTPA. Interviews were held with officials from COTPA, local chambers of commerce, and COTPA contractors. This included the Greater Oklahoma City Hispanic Chamber of Commerce. The 3-day review included interviews, review of data collection systems, and analysis of contract documents.

COTPA’s DBE Program has Many Effective Elements – COTPA has demonstrated a dedication to administering an effective DBE program. ES-1 documents some of the positive program elements observed by the JFA Team.

ES-1: Positive Program Elements
<ul style="list-style-type: none"> ➤ Strong program leadership ➤ Direct DBELO access to executive leadership ➤ Recently completed Program Plan

The Program has Administrative Deficiencies that are Easily Correctable - Several administrative corrections remain to be addressed. ES-2 lists administrative deficiencies COTPA can quickly address to bring their program into increased compliance with 49 CFR Part 26.

ES-2: Administrative Deficiencies
<ul style="list-style-type: none"> ➤ Elaborate on how overconcentration might be assessed and addressed in the program plan ➤ Perform regular scans for local minority financial institutions and encourage their use ➤ Include DBE contract clauses in actual contracts and not by reference ➤ Alter contract language to ensure flow down of DBE contract clauses to sub-recipients ➤ Obtain actual copy of TVM certificate ➤ Expand language on methods for counting DBE participation in Program Plan ➤ Add fields for firm age and annual revenues to bidders list ➤ Improve accuracy of forms submitted to FTA

COTPA Should Work to Foster a DBE-Friendly Culture – COTPA has not awarded contract dollars to DBE prime or subcontractors within the recent past despite the presence of qualified minority or women-owned firms. Part of the problem is low awareness of the DBE program within the contracting community. COTPA should attempt to interface with local chambers of commerce and publicize the DBE program. COTPA should also remove barriers for DBEs to submit proposals. For example, COTPA should publicize the availability of requests for proposals (RFPs) at planholder’s rooms, especially if COTPA is charging a fee for that RFP. COTPA staff is receptive to this plan and has expressed a willingness to develop and improve

their DBE program moving forward. This commitment needs to translate to actual inclusion and award of contract dollars to DBEs.

COTPA's goal setting methodology will need to be strengthened in future submissions to further encourage DBE participation in COTPA contracting.

1. General Information

This chapter provides basic information concerning this compliance review of COTPA. Information on COTPA, the JFA/KWA review team, and the dates of the review is presented below.

Grant Recipient:	Central Oklahoma Transportation & Parking Authority
City/State:	Oklahoma City, Oklahoma
Grantee Number:	1525
Executive Official:	Rick Cain, Administrator, COTPA, Director, METRO Transit
On-site Liaison:	Diponker Mukherjee, DBELO and Planner II, COTPA Jim Meeks, Purchasing Manager and Former DBELO, COTPA
Report Prepared By:	Jack Faucett Associates (JFA) 4550 Montgomery Ave. Suite 300N Bethesda, Maryland 20814 <i>And</i> Ken Weeden & Associates (KWA) 3955 Market St. Suite A Wilmington, North Carolina 28403
Dates of On-site Visit:	February 15 th – February 17 th , 2012
Review Team Members:	Aida Douglas, Acting RCRO for Region VI Rami Chami, Lead Reviewer, JFA Mike Brooks, Reviewer, JFA Kenneth Weeden, Reviewer, KWA

2. Jurisdiction and Authorities

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

COTPA is a recipient of FTA funding assistance, including funding from the American Recovery and Reinvestment Act of 2009 (ARRA), and is therefore subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in COTPA's DBE program and were the basis for the selection of compliance elements that were reviewed.

3. Purpose and Objectives

This chapter discusses the purposes and objectives of the DBE program and the compliance review process.

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub-recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. The FTA decided to conduct one such review of COTPA.

The primary purpose of the compliance review is to determine the extent to which COTPA has implemented 49 CFR Part 26, as represented to FTA in its DBE Program Plan. This compliance review is intended to be a fact-finding process to: (1) examine COTPA's Disadvantaged Business Enterprise Program Plan and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance. This compliance review is not intended to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its sub-recipients, or to adjudicate these issues in 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 the administration of DOT-assisted contracts in the Department's financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE program is narrowly tailored in accordance with applicable laws.
- Ensure that only firms that fully meet 49 CFR Part 26's eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- Determine whether COTPA 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 COTPA’s DBE Program Plan against the compliance standards set forth in the regulations and to document the compliance status of each component.
- Gather information and data regarding the operation of COTPA’s Disadvantaged Business Enterprise Program Plan from a variety of sources, including DBE program managers, other COTPA management personnel, DBEs, and prime contractors.

4. Introduction to COTPA

This chapter provides an introduction to COTPA and highlights its services, budget, and DBE program. The purpose of this section is to provide readers with an understanding of COTPA's operations and scale.

4.1 Introduction to Transit Services and Organizational Structure

The Central Oklahoma Transportation & Parking Authority (COTPA) provides transportation and parking services for the greater Oklahoma City area. COTPA was established in 1966 and began service with 18 buses. Ridership increased throughout much of the 1970s and service expanded to additional transit options, such as carpool matching and paratransit. In 1989, COTPA acquired Union Station, which houses administrative offices. COTPA's transit component was relabeled as METRO Transit in 1992. COTPA relocated its operations and maintenance facilities to the South May facility in 1996. COTPA extended operating hours and bus route frequencies in 2003. The Downtown Transit Center, a hub for bus services, opened in 2004.

Today, METRO Transit operates 22 standard fixed bus routes within the Oklahoma City metropolitan area. In addition, METRO operates a downtown trolley service and an express bus to Norman, Oklahoma. METRO also provides paratransit and other options for the elderly and/or disabled. METRO provides trips for approximately three million riders annually.¹



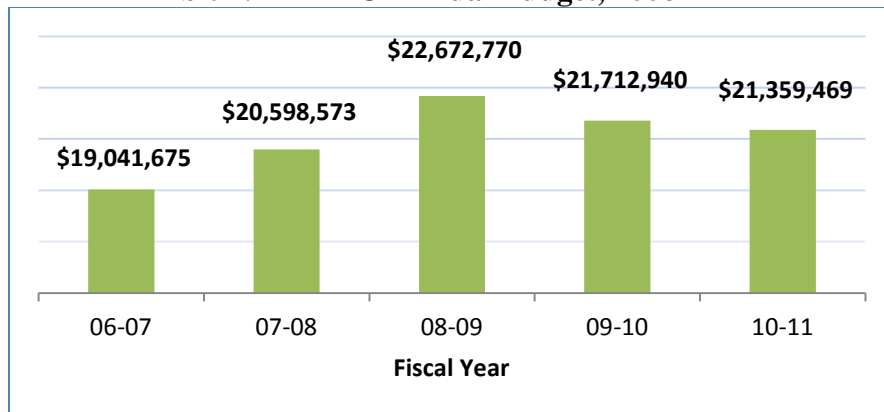
Daily operations are managed by the executive leadership, which consists of the Director and other officials such as the Assistant Director and Legal Counsel. METRO is delineated into divisions that conduct planning, operations, administrative support, and facility and fleet management. The DBELO has direct and independent access to the Director of METRO.

¹ "METRO Transit: About Us." <http://gometro.publishpath.com/about-us>

4.2 Budget

METRO’s budget is comprised of state and federal funds, as well as revenue from fares and other sources. Exhibit 1 displays a time series of COTPA’s annual budget for the last five federal fiscal years. The METRO budget reached a peak during fiscal year 2008-9, when it nearly reached \$22.7 million. The annual budget has a maximum observed fluctuation of approximately \$3.5 million during this period.

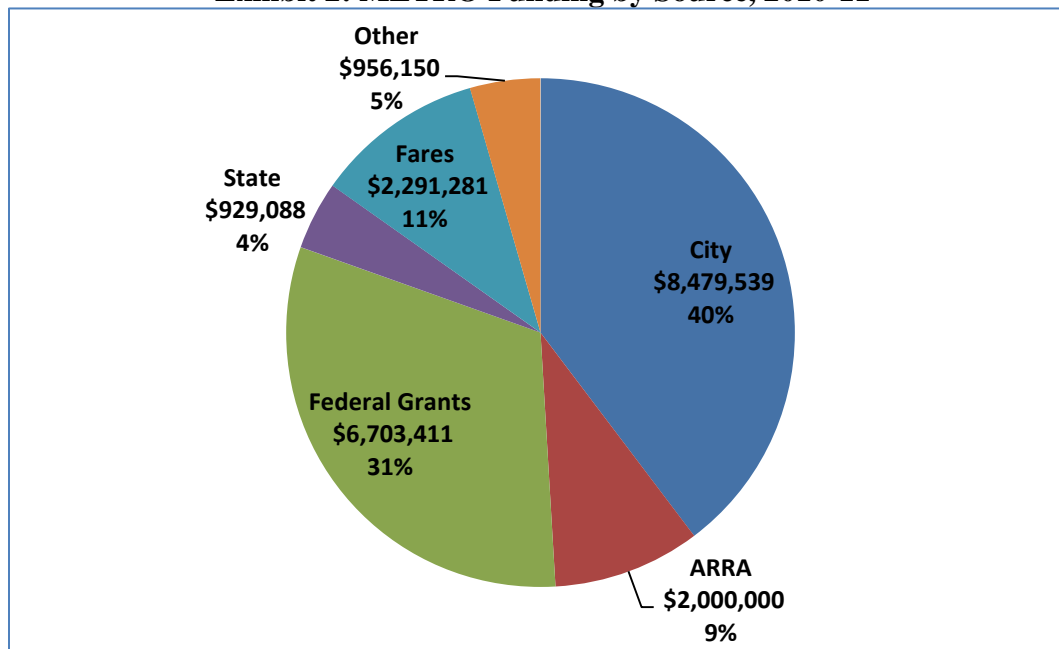
Exhibit 1: METRO Annual Budget, 2006-11



Source: “METRO Transit: Transit Funding.” <http://gometro.publishpath.com/transit-funding>

Exhibit 2 provides an examination of the fiscal year 2010-11 METRO budget by source. City funds make up 40 percent of the transit budget. Federal grants constitute nearly a third of the budget, not including a \$2 million ARRA grant.

Exhibit 2: METRO Funding by Source, 2010-11



Source: City of Oklahoma City Public Parking and Transportation 2010-2011 Budget

4.3 DBE Program

The COTPA DBE liaison officer (DBELO) is responsible for monitoring and enforcing COTPA's internal and external DBE programs to ensure compliance with appropriate federal and state laws and regulations. The DBELO has direct access to the COTPA Administrator and other members of the executive leadership. The newly designated COTPA DBELO also serves as a transportation planner. The previous designated DBELO serves as the purchasing manager.

COTPA has not awarded contracts to DBEs in the recent past. COTPA's record of Uniform Reports and interviews with COTPA staff indicate that COTPA had race conscious and race neutral goals of zero percent for a number of years. There is no record of DBE contracting attainment.

5. Scope and Methodology

This chapter describes the scope of the FTA regulations that the review team considered during its compliance review as well as the methodology employed for the compliance review.

5.1 Scope

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

1. A DBE program plan signed by a concerned operating administration (OA) [49 CFR 26.21].
2. A signed policy statement that expresses a commitment to the agency's DBE program, states its objectives, and outlines responsibilities for its implementation [49 CFR 26.23].
3. Designation of a liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25].
4. Efforts made to use DBE financial institutions, by the recipient as well as prime contractors, if such institutions exist [49 CFR 26.27].
5. A DBE directory including addresses, phone numbers and types of work performed made available to the public and updated at least annually [49 CFR 26.31].
6. Determination if overconcentration exists and address this problem if necessary [49 CFR 26.33].
7. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
8. An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a recipient's DOT-assisted contracts [49 CFR 26.43 – 26.53]. Additionally, in establishing an overall goal, the recipient must provide for public participation and then provide information on this goal to the public through published notices [49 CFR 26.45].
9. Inclusion of a contract non-discrimination clause, a prompt payment clause and implementation of appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
10. A certification process to determine if a potential DBE is legitimately socially and economically disadvantaged. The potential DBE must submit an application, a personal net worth statement and a statement of disadvantage, along with the proper supporting documentation [49 CFR 26.67].

11. A certification procedure to include document review and an on-site visit and determination of eligibility consistent with Subpart D of the regulations [49 CFR 26.83].
12. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

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

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

Subsequent to the opening conference, a review was conducted of COTPA's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer or equivalent. The review team then conducted interviews with COTPA officials regarding DBE program administration, project procurement, grant administration record keeping, monitoring, and legal remedies. The review team also selected a sample of FTA funded contracts, which were then reviewed for their DBE elements. The review team interviewed personnel from COTPA, local chambers of commerce, and recent COTPA contractors. This included an interview with staff from the Greater Oklahoma City Hispanic Chamber of Commerce.

At the end of the review, an exit conference was held with FTA representatives, COTPA staff and the review team. At the exit conference, initial findings and corrective actions were discussed with COTPA.

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

This document constitutes the final report.

6. Issues and Recommendations

This chapter details the review team's findings for each of the areas pertinent to the 49 CFR Section 26 regulations outlined in the Scope and Methodology section above. The review team has provided an overview of the relevant regulations, a discussion of the regulations as they apply to COTPA's DBE program, and a suggested corrective action and timetable for each of the requirements and sub-requirements where necessary.

6.1 DBE Program Plan

Basic Requirement: (49 CFR 26.21) Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval. In recent years because of changes in DBE program rules, an updated DBE Program Plan, while not required, is strongly recommended.

Discussion: During this DBE Compliance Review deficiencies were found with the Program Plan requirements. COTPA completed a Revised DBE Program Plan on February 9, 2012 and submitted it to the review team. The DBE Program Plan in general is a well-organized and insightful document. It has some deficiencies in its constituent subsections, including procedures for identifying financial institutions, evaluating overconcentration, ensuring flow-down of contract clauses in subcontract agreements, and amplifying detail in the bidders list.

Corrective Action Schedule: Advisory Comment: Within 60 days of the issuance of the final report, COTPA must revise their DBE Program Plan addressing the issues identified in this compliance review report.

COTPA Response: The Program Plan has been updated and attached into TEAM.

FTA Response: COTPA's updated DBE Program Plan and their responses to FTA's initial comments address most of the comments and concerns raised by FTA. FTA's responses in the subsequent sections of this report highlight where FTA agrees with corrective actions already taken by COTPA and where COTPA needs to take further actions to address outstanding issues. These findings will remain open until these issues are resolved.

6.2 DBE Policy Statement

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

Discussion: The review team found no deficiencies with COTPA's Policy Statement. COTPA has included a Policy Statement signed by the Administrator in its latest DBE Program Plan. The DBE Program Plan identifies Diponker Mukherjee as the DBE Liaison Office (DBELO). COTPA distributes the Policy Statement to the COTPA Board of Trustees and throughout the

COTPA organization. COTPA will distribute this statement to DBE and non-DBE business communities that perform work on DOT-assisted contracts. The Policy Statement states that “COTPA includes this statement in all bid and proposal documents and distributes copies to the bidders and proposers at all pre-bid/pre-proposal meetings for DOT-assisted contracts. COTPA also posts this statement on bulletin boards at its various facilities and on its website.”²

6.3 DBE Liaison Officer

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

Discussion: The review team found no deficiencies with the DBE Liaison Officer requirement. Diponker Mukherjee is officially designated as the COTPA DBELO in the DBE Program Plan and Policy Statement. The review team confirmed Mr. Mukherjee has direct access to COTPA Administrator and METRO Director Rick Cain. Mr. Mukherjee became the DBELO in January 2012.

6.4 Minority and Women Owned Financial Institutions

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

Discussion: During this DBE Compliance Review, deficiencies were found within the Financial Institutions section of the DBE Program Plan. COTPA has not searched for local minority or women owned financial institutions. Such institutions do exist in the Oklahoma City area and can be located through resources such as the Federal Reserve Bank’s Minority-Owned Financial Institutions list and the Minority Bank Deposit Program for Financial Institutions list. A review of these lists by the review team during the site visit found two relevant institutions: Bank2 and International Bank of Commerce. COTPA should describe in its DBE Program Plan how it will identify minority and women owned financial institutions. The DBE Program Plan should also describe how often this search will be performed. COTPA should also formulate a plan to encourage use of these institutions. This could involve including information about local minority and women owned financial institutions in solicitation documents.

Corrective Action and Schedule: Within 60 days of the issuance of the final DBE Compliance Review Report, COTPA must expand the Financial Institutions section of their DBE Program Plan to include information how and how often COTPA will identify relevant financial institutions and how they will promote their use.

² COTPA website, “Business Center,” <http://www.gometro.org/business-center>

COTPA Response: The list of available minority owned financial institutions is added to the DBE Program Plan. The Program Plan is also updated with the information on how and how often COTPA will update the list and provide it to bidders.

FTA Response: FTA agrees with COTPA's response. COTPA's DBE Program Plan dated July 26, 2012 provides sufficient information about local minority and women-owned financial institutions. This deficiency is now closed.

6.5 DBE Directory

Basic Requirement: (49 CFR 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: The relevant DBE directory is maintained by the Oklahoma Department of Transportation (ODOT) UCP. A web link to this directory is provided in Attachment 3 of the DBE Program Plan. While the DBE directory itself is not deficient, this link does not function correctly and the correct link should be inserted into Attachment 3. COTPA is not a certifying member of the state UCP. However, their DBE Program Plan includes useful information about DBE certification criteria and how to learn more about the process on page 28, "Attachment 14."

Advisory Comment: COTPA should include a functioning link to the OUCP in its DBE Program Plan and verify that the correct web address is being used if referenced elsewhere in their published documents or online.

COTPA Response: The OUCP link is corrected in the Program Plan.

6.6 Overconcentration

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

Discussion: COTPA states on page 4 of the Program Plan that, "COTPA has not recognized any specific area of over concentration." COTPA has not used DBE participation goals for contracts in the past, so they do not have overconcentration. Nevertheless, COTPA should elaborate in this section on the procedure they would undertake if such an overconcentration is identified and how frequently COTPA will investigate whether overconcentration exists.

Corrective Action and Schedule: Within 60 days of the issuance of the final DBE Compliance Review Report, COTPA must enhance the Overconcentration section of the DBE Program Plan and include discussion of overconcentration identification procedure, how frequently COTPA will investigate this issue, and what actions they would take if an overconcentration was identified.

COTPA Response: The Overconcentration section in the Program Plan is updated with the language related to identification procedures and actions that COTPA would take if an overconcentration was identified.

FTA Response: FTA agrees with COTPA's response. COTPA's updated DBE Program Plan dated July 26, 2012 addresses the above; this deficiency is closed.

6.7 Business Development Programs

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

Discussion: The current Program Plan contains no mention of DBE business development programs. However, COTPA recently reviewed their business development efforts to comply with the FTA Small Business Utilization element. This program could be incorporated into the DBE Program Plan. COTPA is also encouraged to contact local business development programs, such as the University of Central Oklahoma Small Business Development Center and local chambers of commerce, with the aim of fostering a cooperative business development program or, at least, identifying and promoting business development programs offered by other organizations.

Advisory Comment: COTPA should describe DBE business development efforts they provide or recommend in their Program Plan. COTPA may incorporate their recently completed Small Business Utilization plan into the Program Plan to expedite this process.

COTPA Response: This section is included in the Program Plan with reference to the Small Business Participation Plan to improve DBE participation.

6.8 Determining/Meeting Goals

This requirement includes seven sub-requirements related to determining and meeting goals.

A. Calculation

Basic Requirement: (49 CFR 26.45) In 2010, 49 CFR Part 26 was amended concerning the old requirement for an annual overall DBE goal, which had in previous years coincided with the annual federal fiscal year and typical grant year. Instead, beginning with FY 2011, based on a schedule determined by the FTA, overall goal documents are now required on a triennial basis.

Discussion: COTPA's goal methodology should strengthen prior to the next goal submission. Several areas have been identified for improvement. For example, several steps in the calculation require further explanation or adjustment. Regarding available DBEs, COTPA did not explicitly define the geographic area used in their calculation. The description of the methodology indicates a statewide scope, yet the small number of DBEs included could indicate a confinement

to the Oklahoma City metropolitan area. The goal methodology also states that COTPA used Census and UCP data to identify the total number of available firms. They do not provide any additional details regarding the source of the information, such as date accessed, a specific referenced chart or table, or other information. The geographic area is again undefined. COTPA also used the un-weighted 1.03 percent goal as the race conscious element of the overall goal. This step does not follow accepted goal setting practice and was not explained adequately in the methodology. During the step two adjustment, COTPA stated that their adjustment included an assumption that 25 contractors would register as DBEs in the near future, that four other minority or women owned contractors have been identified for particular jobs and would be encouraged to register as DBEs, and that more than 29 new DBEs would be registered by FY 2014. COTPA then used an estimate of 42.5 DBEs (the existing 13 plus an additional 29.5) as the adjusted numerator. The rationale behind this process was not fully articulated. Also in step two, the previously referenced 1.03 percent race conscious goal was used as an input for the final averaged goal calculation.

Advisory Comment: COTPA should strengthen and better explain their goal setting process by their next goal methodology submission to FTA.

COTPA Response: The goals and its explanation are now approved by Region VI and it is added to the Program Plan.

B. Public Participation and Outreach

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

Discussion: COTPA describes its public participation methodology for their goal setting process beginning on page 17 of their DBE Program Plan. Their presented plan complies with 49 CFR 26.45. COTPA publicized notice of their DBE participation goals in local newspapers such as the Oklahoman, a daily newspaper; The Journal Record, a daily business and legal newspaper; The Black Chronicle, a weekly minority newspaper; and El Nacional Spanish Newspaper, a weekly minority newspaper. COTPA also held a public meeting on July 26, 2011 and September 30, 2011 at their offices to discuss the goal. However, COTPA did not consult with local chambers of commerce and contractor associations during the goal development process.

Advisory Comment: For COTPA's next DBE Goal Methodology submission COTPA must adhere to the public participation requirements to publicize their DBE goal methodology in the newspaper during the goal setting process.

FTA advises COTPA that it should conduct its' consultation process with chambers and minority business prior to the goal being published.

COTPA Response: COTPA offered two public hearings and published the goals during the last goal setting process. However, in [the] future it will also consult with local chambers and minority businesses prior to the goals being published.

C. Transit Vehicle Manufacturers (TVM)

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

Discussion: COTPA acquired six Gillig Corporation buses in 2008 through a “piggyback” arrangement with Akron METRO. Akron METRO provided COTPA with a written assurance from Gillig that their TVM certificate was in order. Following the review team’s site visit, Jim Meeks, COTPA’s procurement manager could not produce a copy of the TVM certificate with Akron METRO or FTA headquarters. FTA agreed to accept the letter of assurance regarding the TVM certificate, but COTPA is encouraged to obtain up-to-date TVM certificates for future transit vehicle purchases.

Advisory Comment: For future transit vehicle purchases, COTPA is encouraged to obtain up-to-date TVM certificates, and not rely on an assurance letter regarding TVM certificates.

COTPA Response: COTPA will acquire an up-to-date TVM certificate for any future transit vehicle purchases.

D. Race Neutral

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

Discussion: COTPA’s methodology in deriving their race neutral goal is not adequately explained in the Program Plan. COTPA used the un-weighted 1.03 percent DBE business availability percentage as the race conscious element of the overall goal and set the race neutral goal as the remainder. COTPA did not explain why they follow this methodology. During the step-two adjustment, COTPA made a number of assumptions. These assumptions include: (1) 25 contractors would register as DBEs in the near future, (2) four other minority or women owned contractors have been identified for particular jobs and would be encouraged to register as DBEs, and (3) more than 29 new DBEs would be registered by FY 2014. COTPA then used an estimate of 42.5 DBEs (the existing 13 plus an additional 29.5) as the adjusted numerator. The rationale behind this process was not fully articulated. Also in step two, the previously referenced 1.03 percentage was used as an input for the final averaged goal calculation. This decision was also not adequately explained or justified.

Advisory Comment: COTPA needs to have a stronger and better documented process for articulating their race neutral and race conscious goals.

COTPA Response: The goals and its explanation are approved by Region VI and it is added to the Program Plan.

E. Race Conscious

Basic Requirement: (49 CFR 26.51). The recipient must establish contract goals to meet any portion of its overall goals it does not project to be met using race neutral means. The recipient must also project a percentage of its overall goal that will be met through race conscious means, as part of the goal methodology. Race conscious goals may only be established on contracts with subcontracting opportunities and are not required to be set on each individual contract.

Discussion: COTPA's methodology in deriving their race conscious goal is not adequately explained in the Program Plan. COTPA used the un-weighted 1.03 percent goal as the race conscious element of the overall goal. This step does not follow accepted goal setting practice and was not explained adequately in the methodology. During the step two adjustment, COTPA stated that their adjustment included an assumption that 25 contractors would register as DBEs in the near future, that four other minority or women owned contractors have been identified for particular jobs and would be encouraged to register as DBEs, and that more than 29 new DBEs would be registered by FY 2014. COTPA then used an estimate of 42.5 DBEs (the existing 13 plus an additional 29.5) as the adjusted numerator. The rationale behind this process was not fully articulated. Also in step two, the previously referenced 1.03 percentage was used as an input for the final averaged goal calculation. This decision was also not adequately explained or justified.

Advisory Comment: COTPA needs to have a stronger and better documented process for articulating their race neutral and race conscious goals. FTA recommends that COTPA participate in FTA goal setting training.

COTPA Response: The goals and its explanation are approved by Region VI and it is added to the Program Plan.

F. Good Faith Efforts

Basic Requirement: (49 CFR 26.53) The recipient may only award contracts which contain DBE contract goals to bidders who either meet the stated goals or document sufficient good faith efforts (GFE) to meet the goals. The bidders must provide documentation of these efforts to the recipient. The recipient should have a written Good Faith Efforts procedure, including an administrative reconsideration process for cases where apparent successful bidder does not meet requirement.

Discussion: During this DBE Compliance Review, a deficiency was found with the requirements for good faith efforts. The DBE Program Plan does not include detailed guidance on how contractors can demonstrate a good faith effort. This deficiency likely occurred because good faith effort procedures only apply to contract bid opportunities with established DBE participation goals, and COTPA has not historically used DBE participation goals on contract opportunities.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, COTPA must provide instructions in both the Program Plan and in bid solicitation documents that outline the steps prime contractors can take to perform and document good faith efforts. It should be noted that good faith effort procedures only apply to projects with DBE participation goals.

COTPA Response: The Good Faith Efforts guidance is updated and necessary forms that have to be filled out by the contractors are included in the Program Plan.

FTA Response: FTA partially agrees with COTPA's response; however the revised DBE Program Plan section on 49 CFR 26.53 still lacks sufficient detailed guidance on how contractors can demonstrate a good faith effort. To close this deficiency, COTPA must submit an updated copy of their DBE Program Plan that includes detailed guidance on how contractors can demonstrate a good faith effort, documentation of its implementation, within 60 days of issuance of the DBE Program Compliance Review Final Report.

G. Protecting Against Termination for Convenience

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

Discussion: During this compliance review, there were no deficiencies found in the area of protecting against termination for convenience. The 2012 COTPA Program Plan provides guidance for modifying or terminating subcontractor roles on contracts (p. 9 and Attachment 10). The guidance also identifies legal remedies available to prime contractors and subcontractors if a dispute occurs between them with relation to subcontractor modification or replacement.

H. Counting DBE Participation

Basic Requirement: (49 CFR 26.55) The recipient must count only the value of work actually performed by a DBE with its own forces or a DBE sub, toward actual DBE goals. The DBE must be certified at the time of award and work can be counted only if the DBE is performing a commercially useful function, as described in 26.55 c 1-5.

Discussion: During this DBE Compliance Review, while no deficiencies were found with the requirements for counting DBE participation. COTPA states at the bottom of page 7 of the Program Plan states that it will track DBE participation as required by 49 CFR 26.55

Advisory Comment: It is recommended that the program plan include basic, but expanded language on counting DBE participation, extracted from parts of the rule, in 26.55.

COTPA Response: The Program Plan is updated with the language from 49 CFR 26.55.

I. Quotas

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

Discussion: During this DBE Compliance Review, no deficiency was found with the requirement for quotas. The COTPA Program Plan explicitly states on page 5 that the agency does not use quotas or set-asides.

6.9 Required Contract Provisions

This requirement includes four sub-requirements related to the inclusion of contract provisions.

A. Contract Assurance

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

Discussion: The nondiscrimination clause is not included in the actual contract document, which is typically one page long. Instead, a variation of this assurance (not verbatim from 49 CFR 26.13) is included in the standard COTPA solicitation template. The purchasing manager explained that by entering into a contract with COTPA, the vendor agrees to any requirements or provisions presented in other documents, including the solicitation. As with other contract clauses, there appears to be insufficient provisions to guarantee flow-down of contract provisions to subcontractors.

Corrective Action and Schedule: Within 30 days of the issuance of the final DBE Compliance Review Report, COTPA must include the following statement in all its solicitation and contract documents:

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

Additionally, COTPA must include language in their Program Plan that assures that this and other contract provisions flow down to contract sub-recipients.

COTPA Response: The Program Plan as well as the contract documents between COTPA and the prime contractor and in all subcontracts are updated with the non-discrimination clause from 49 CFR 26.13.

FTA Response: FTA partially agrees with COTPA’s response that they will ensure flow down of the required contract clauses, however, to close this deficiency, COTPA must submit an

updated DBE Program Plan within 60 days of receipt of the DBE Program Compliance Review Final Report including the referenced assurance and documented implementation that their new contract template includes language about this requirement.

B. Prompt Payment and Return of Retainage

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

Discussion: As with other contract elements, the prompt payment clause required under 49 CFR 26.29 is included in the standard COTPA RFP template, but not in the actual contract document. The purchasing manager has stated that by signing the contract the parties assent to language in all other documents, including the RFP. Nevertheless, 49 CFR 26 contract regulations should be incorporated directly into all solicitations and contracts. COTPA presents a prompt payment clause on page 4 of its Program Plan.

Corrective Action and Schedule: Within 30 days of the issuance of the final DBE Compliance Review Report, COTPA must begin to include a prompt payment and return of retainage clause within their contract documents. Additionally, COTPA must document in their Program Plan how they ensure flow-down of required clauses in subcontract agreements.

COTPA Response: The Program Plan as well as the contract documents between COTPA and the prime contractor and in all subcontracts are updated with the prompt payment and return of retainage clause from 49 CFR 26.29.

FTA Response: FTA partially agrees with COTPA's response. COTPA must ensure flow down of the required contract clauses. COTPA's DBE Program Plan and prime contracts must provide a timeframe for when prime contractors must submit subcontract agreements to COTPA. The Program Plan dated July 26, 2012 does not include a timeframe of when prime contractors must submit executed subcontractor agreements to COTPA. To close this deficiency, COTPA must within 60 days of receipt of the DBE Program Compliance Review Final Report, submit an update DBE Program Plan including language that specifies a timeframe prime contractors have after prime contract award to submit copies of all subcontract agreements to COTPA, and documented implementation that the new contract template includes language about this requirement.

C. Legal Remedies

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

Discussion: During this compliance review, a deficiency was found with regard to legal remedies. Several potential legal remedies are listed on page 5 of the Program Plan. However, these DBE specific remedies are not included in the RFP template or in the examined contracts.

Corrective Action and Schedule: Within 30 days of the issuance of the final DBE Compliance Review Report, COTPA should begin including a legal remedies clause based on the actions listed on page 5 of the Program Plan in all its solicitations and contracts. COTPA should also develop procedures that ensure that these clauses are also included in subcontractor agreements.

COTPA Response: The contract documents between COTPA and the prime contractor and in all subcontracts are updated with the legal remedies mentioned in the Program Plan.

FTA Response: FTA partially agrees with COPTA's response. To close this deficiency, COTPA must update their DBE Program Plan within 60 days of issuance of the DBE Program Compliance Review Final Report with procedures to ensure clauses are included in the prime contracts and subcontract agreements to COTPA, include a timeframe of when prime contractors must submit executed subcontract agreements to COTPA, and documented implementation of this requirement (i.e., boiler plate language). .

6.10 Certification Standards

Basic Requirement: (49 CFR 26.67) All grantees are required to be part of a statewide Unified Certification Program (UCP). The recipient, if a certifying member of the UCP, must have a certification process intact to determine if a potential DBE firm is legitimately socially and economically disadvantaged according to the regulations. The DBE applicant must submit the required application and a signed and notarized statement of personal net worth with appropriate supporting documentation as part of this process.

Discussion: This regulation is not relevant to this review because COTPA is not a certifying agency; the Oklahoma Department of Transportation (ODOT) certifies DBEs through the Oklahoma Unified Certification Program (OUCP). A brief description of the OUCP is provided on page 8 of the Program Plan. Additionally, one of the DBE-eligible COTPA contractors interviewed for this review indicated that she had applied to become a DBE but that, for unknown reasons, the process stalled within the OUCP. This is not an issue that COTPA is responsible for investigating. However, this could signal an underlying problem within the OUCP.

Advisory Comment: COTPA could include additional background information on the OUCP, such as a description of DBE qualifications, and a web link to the OUCP website in its Program Plan. COTPA is also encouraged to remain in contact with FTA and the OUCP so they remain aware of any issues with the OUCP.

COTPA Response: The link to OUCP as well as the contact information was corrected in the Program Plan. COTPA also contacted ODOT to verify whether or not the application process of one DBE "stalled within the OUCP". OUCP could not identify the applicant so it was not possible what actually happened to that application. If it was denied, there could be

the reason that the proper documents were not submitted with the application. However, OUCP is very much willing to investigate the issue if more information is available.

6.11 Certification Procedures

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

Discussion: As noted in Section 10, above, this regulation is not relevant to this review because COTPA is not a certifying agency; the Oklahoma Department of Transportation (ODOT) certifies DBEs through the Oklahoma Unified Certification Program (OUCP). A brief description of the OUCP is provided on page 8 of the Program Plan. Additionally, one of the DBE-eligible COTPA contractors interviewed for this review indicated that she had applied to become a DBE but that, for unknown reasons, the process stalled within the OUCP. This is not an issue that COTPA is responsible for investigating. However, this observation is worth mention as it could signal an underlying problem within the OUCP.

Advisory Comment: COTPA could include additional background information on the basic OUCP certification process and a web link to the OUCP in its Program Plan. COTPA is also encouraged to remain in contact with FTA and the OUCP so they remain aware of any issues with the OUCP.

COTPA Response: The link to OUCP as well as the contact information is corrected in the Program Plan. COTPA also contacted ODOT to verify whether or not the application process of one DBE "stalled within the OUCP". OUCP could not identify the applicant so it was not possible what actually happened to that application. If it was denied, there could be the reason that the proper documents were not submitted with the application. However, OUCP is very much willing to investigate the issue if more information is available.

6.12 Record Keeping and Enforcements

The requirement includes three sub-requirements related to recordkeeping and enforcement.

A. Bidders List

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

Discussion: During this compliance review, a deficiency found with regard to the bidders list requirement. COTPA provided the review team with a copy of its bidders list, which goes back to 2009. This bidders list contains many, but not all of the data elements as outlined in 49 CFR 26.11. The bidders list is missing data entry points for firm age and gross annual receipts.

Corrective Action and Schedule: Within 30 days of the issuance of the final report, COTPA must add fields for firm age and gross annual receipts. This information should be gathered moving forward and is not retroactive.

COTPA Response: The bidders list has been updated to include the age of the vendor and their gross annual receipts.

FTA Response: FTA agrees with COTPA's response. However, to fully close this deficiency please submit to FTA a copy of their new bidders list that includes the age of the vendor and their gross annual receipts within 60 days of receipt of the DBE Program Compliance Review Final Report.

B. Monitoring

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

Discussion: The review team found no deficiencies regarding COTPA's monitoring system. COTPA lists several monitoring and enforcement mechanisms on pages 4 and 5 and in Attachment 4 of its Program Plan. An on-site visit form designed to ensure that DBEs are actually performing the contracted work is displayed in Attachment 5 of the COTPA Program Plan. COTPA should ensure that accurate running attainments are reported in their Uniform Reports submitted to FTA.

C. Reporting to DOT

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

Discussion: During this DBE Compliance Review, deficiencies were found within the Uniform Report of DBE Awards/Commitments and Payments. It is unclear if these reports have been submitted correctly. The status of the FY 2011 report submitted for June 1, 2011 is incorrect/incomplete. It is not clear if COTPA has completed the report or made the appropriate corrections. In addition, the report shows that there were 39 prime contracts awarded for \$7,964,377 with no subcontracts or DBE participation. Although this may be correct, COTPA may consider reviewing their contracts to ensure that there is no missing data. Finally, the report shows that there were 9 race conscious contracts completed with a value of \$1,659,715. However, the report lists zero dollars as the DBE participation needed to achieve the goal. Race conscious contracts would likely include non-zero DBE contract goals and therefore the amount of DBE participation would likely be above zero dollars. It is likely that these contracts were race neutral rather than race conscious.

Corrective Action and Schedule: COTPA must verify that the status of their FY 2011 report submitted for June 1 is complete. Also, COTPA should participate in FTA facilitated training sessions on DBE reporting.

COTPA Response: The FY 2011 report submitted for June 2011 has been corrected and sent for Regional review.

FTA Response: FTA agrees with COTPA's response. This finding is now closed. COTPA is advised to continue participating in FTA facilitated training sessions on DBE reporting.

Exhibit 6: Summary Table of Compliance Review Findings

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
1	DBE Program Plan	26.21	Deficiency	COTPA's Program Plan and their responses to FTA's initial comments address many, but not all, of the comments and concerns raised by FTA. FTA's responses in the subsequent sections of this report highlight where FTA agrees with corrective actions already taken by COTPA and where COTPA needs to take further actions to address outstanding issues. These findings will remain open until these issues are resolved.	COTPA must update the DBE Program Plan to comply with the requirements of 49 CFR Part 26.	March 25, 2013
2	Policy Statement	26.23	No Deficiency	COTPA has a Policy Statement signed by its Administrator in its latest DBE Program Plan. COTPA posts this statement on its website and on bulletin boards in several of its facilities. COTPA plans to disseminate it to local business organizations and to include it in future procurement and solicitation documents.	Not Applicable	Not Applicable
3	DBE Liaison Officer	26.25	No Deficiency	Diponker Mukherjee is officially designated as the COTPA DBELO in the Program Plan and elsewhere. Mr. Mukherjee has direct access to the COTPA Administrator and METRO Director, Rick Cain.	Not Applicable	Not Applicable
4	Financial Institutions	26.27	Deficiency	COTPA must expand the Financial Institutions section of their DBE Program Plan to include information how and how often COTPA will identify relevant financial institutions and how they will promote their use.	COTPA must expand the Financial Institutions section of their DBE Program Plan.	Deficiency is now closed.
5	DBE Directory	26.31	Advisory Comment	The relevant DBE directory is maintained by the Oklahoma Department of Transportation (ODOT) UCP. A web link to this directory is provided in Attachment 3 of the Program Plan. While the DBE directory itself is not deficient, this link does not function correctly and the correct link should be inserted into Attachment 3.	COTPA should include a functioning link to the OUCP in its Program Plan and verify that the correct web address is being used if referenced elsewhere.	Not Applicable

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
6	Overconcentration	26.33	Deficiency	COTPA states on page 4 of the Program Plan that, "COTPA has not recognized any specific area of over concentration." COTPA should elaborate in this section on the procedure they would undertake if such an overconcentration is identified and how frequently COTPA will investigate whether overconcentration exists.	COTPA must develop the Overconcentration section of the Program Plan and include discussion of overconcentration identification procedure, how frequently COTPA will investigate this issue, and what actions they would take if an overconcentration was identified.	Deficiency is now closed.
7	Business Development Programs	26.35	Advisory Comment	The current Program Plan contains no mention of DBE business development programs. However, COTPA recently reviewed their business development efforts to comply with the FTA Small Business Utilization requirement. This program could be incorporated into the DBE Program Plan. COTPA is also encouraged to contact local business development programs, such as the University of Central Oklahoma Small Business Development Center and local chambers of commerce, with the aim of fostering a cooperative business development program or, at least, identifying and promoting business development programs offered by other organizations.	COTPA should describe DBE business development efforts they provide or recommend in their Program Plan. COTPA may incorporate their recently completed Small Business Utilization plan into the Program Plan to expedite this process.	Not Applicable
8	Determining and Meeting Goals					
	A) Calculation	26.45	Advisory Comment	Several steps in the calculation require further explanation or adjustment. Regarding available DBEs, COTPA did not explicitly define the geographic area used in their calculation. The description of the methodology indicates a statewide scope, yet the small number of DBEs could indicate a confinement to the Oklahoma City metropolitan area. The goal methodology also states that COTPA used Census and UCP data to identify the total number of available firms. They do not provide any additional details regarding the source of the information, such as date accessed, a specific referenced chart or table, or other information. The geographic area is again undefined.	COTPA should strengthen and better explain their goal setting process by their next goal methodology submission to FTA.	Not Applicable

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
	B) Public Participation and Outreach	26.45	Advisory Comment	COTPA describes its public participation methodology for their goal setting process beginning on page 17 of their Program Plan. Their presented plan complies with 49 CFR 26.45. However, COTPA did not consult with local chambers of commerce or contractor associations during their most recent DBE participation goal setting process.	<p>For COTPA’s next DBE Goal Methodology submission COTPA must adhere to the public participation requirements to publicize their DBE goal methodology in the newspaper during the goal setting process.</p> <p>FTA advises COTPA that it should conduct its’ consultation process with chambers and minority business prior to the goal being published.</p>	Not Applicable
	C) Transit Vehicle Manufacturers (TVM)	26.49	Advisory Comment	COTPA acquired six Gillig Corporation buses in 2008 through a “piggyback” arrangement with Akron METRO. Akron METRO provided COTPA with a written assurance from Gillig that their TVM certificate was in order, but did not provide a copy of the TVM certificate itself. Following the review team’s site visit, Jim Meeks, COTPA’s procurement manager, and the FTA Region 6 RCRO could not find a copy of the TVM certificate with Akron METRO or FTA headquarters. FTA agreed to accept the letter of assurance regarding the TVM certificate, but COTPA is encouraged to obtain up-to-date TVM certificates for future transit vehicle purchases.	It is recommended that COTPA acquire an up-to-date TVM certificate for any future transit vehicle purchases.	Not Applicable

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
	D) Race Neutral	26.51	Advisory Comment	COTPA’s methodology in deriving their race neutral goal is not adequately explained in the Program Plan. COTPA used the un-weighted 1.03 percent DBE business availability percentage as the race conscious element of the overall goal and set the race neutral goal as the remainder. COTPA did not explain why they follow this methodology. During the step two adjustment, COTPA made a number of assumptions. These assumptions include: (1) 25 contractors would register as DBEs in the near future, (2) four other minority or women owned contractors have been identified for particular jobs and would be encouraged to register as DBEs, and (3) more than 29 new DBEs would be registered by FY 2014. COTPA then used an estimate of 42.5 DBEs (the existing 13 plus an additional 29.5) as the adjusted numerator. The rationale behind this process was not fully articulated. Also in step two, the previously referenced 1.03 percentage was used as an input for the final averaged goal calculation. This decision was also not adequately explained or justified.	COTPA needs to have a stronger and better documented process for articulating their race neutral and race conscious goals.	Not Applicable
	E) Race Conscious	26.51	Advisory Comment	COTPA used the un-weighted 1.03 percent goal as the race conscious element of the overall goal. This step does not follow accepted goal setting practice and was not explained adequately in the methodology. During the step two adjustment, COTPA stated that their adjustment included an assumption that 25 contractors would register, that four other contractors have been identified for particular jobs, and that more than 29 DBEs would be present by FY 2014. COTPA then used a figure of 42.5 DBEs (the existing 13 plus an additional 29.5) as the adjusted numerator. The rationale behind this process was not fully articulated. Also in step two, the previously referenced 1.03 percent race conscious goal was used as an input for the final averaged goal calculation. This decision was also not adequately explained or justified.	COTPA needs to have a stronger and better documented process for articulating their race neutral and race conscious goals.	Not Applicable

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
	F) Good Faith Efforts	26.53	Deficiency	The DBE Program Plan does not include detailed guidance on how contractors can demonstrate a good faith effort.	COTPA must include detailed guidance in the Program Plan and solicitation documents about how contractors can demonstrate a good faith effort, and documented implementation of this requirement	March 25, 2013
	G) Protecting Against Termination for Convenience	26.53	No Deficiency	The 2012 COTPA Program Plan provides guidance for modifying or terminating subcontractor roles on contracts (p. 9 and Attachment 10). The guidance also identifies legal remedies available to prime contractors and subcontractors if a dispute occurs between them with relation to subcontractor modification or replacement.	Not Applicable	Not Applicable
	H) Counting DBE Participation	26.55	Advisory Comment	COTPA states on page 8 of its Program Plan that it will monitor DBE participation as provided in 49 CFR 26.55. COTPA should use information from 49 CFR 26.55 to develop a detailed description of how it will count DBE participation.	The Program Plan should include basic, but expanded language on counting DBE participation, extracted from parts of the rule, in 49 CFR 26.55.	Not Applicable
	I) Quotas	26.43	No Deficiency	COTPA does use quotas and states as much on page 5 of its Program Plan.	Not Applicable	Not Applicable
9	Required Contract Provisions					
	A) Contract Assurance	26.13	Deficiency	COTPA must ensure flow down of the required contract clauses. Accordingly, COTPA's Program Plan and prime contracts must provide a timeframe for when prime contractors must submit subcontract agreements to COTPA. To close this deficiency, COTPA must submit to FTA a copy of their Program Plan that specifies the timeframe prime contractors have after prime contract award to submit copies of all subcontract agreements to COTPA. COTPA must also send FTA a copy of their new contract template that includes language about the requirement.	COTPA must submit the updated Program Plan and contract template, and documented implementation of this requirement.	March 25, 2013

Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
	B) Prompt Payment and Return of Retainage	26.29	Deficiency	COTPA must ensure flow down of the required contract clauses. Accordingly, COTPA’s Program Plan and prime contracts must provide a timeframe for when prime contractors must submit subcontract agreements to COTPA. To close this deficiency, COTPA must submit to FTA a copy of their Program Plan that specifies the timeframe prime contractors have after prime contract award to submit copies of all subcontract agreements to COTPA. COTPA must also send FTA a copy of their new contract template that includes language about the requirement.	COTPA must submit the updated Program Plan and contract template; and documented implementation of this requirement.	March 25, 2013
	C) Legal Remedies	26.37	Deficiency	COTPA must ensure flow down of the required contract clauses. Accordingly, COTPA’s Program Plan and prime contracts must provide a timeframe for when prime contractors must submit subcontract agreements to COTPA. To close this deficiency, COTPA must submit to FTA a copy of their Program Plan that specifies the timeframe prime contractors have after prime contract award to submit copies of all subcontract agreements to COTPA. COTPA must also send FTA a copy of their new contract template that includes language about the requirement.	COTPA must submit the updated Program Plan and contract template, and documented implementation of this requirement.	March 25, 2013
10	Certification Standards	26.67	Advisory Comment	COTPA is not a certifying agency; the Oklahoma Department of Transportation (ODOT) certifies DBEs through the Oklahoma Unified Certification Program (OUCP). COTPA could include background information, such as a description of DBE qualifications, and a link to the OUCP website in its Program Plan. Additionally, one of the DBE-eligible COTPA contractors interviewed for this review indicated that she had applied to become a DBE but that, for unknown reasons, the process stalled within the OUCP.	COTPA is encouraged to engage with the FTA and OUCP to identify and address any deficiencies with the OUCP DBE certification process.	Not Applicable
11	Certification Procedures	26.83	Advisory Comment	COTPA is not a certifying agency; the Oklahoma Department of Transportation (ODOT) certifies DBEs through the Oklahoma Unified Certification Program (OUCP). COTPA could include basic background on the certification process and a link to the OUCP website in its Program Plan. Additionally, one of the DBE-eligible COTPA contractors interviewed for this review indicated that she had applied to become a DBE but that, for unknown reasons, the process stalled within the OUCP.	COTPA is encouraged to engage with the FTA and OUCP to identify and address any deficiencies with the OUCP DBE certification process.	Not Applicable
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Item	Requirement of 49 CFR Part 26	Reference	Site Visit Finding	Description of Findings	Suggested Corrective Action	Response Days/Date
	A) Bidders List	26.11	Deficiency	COTPA does maintain a bidders list for its projects. The version provided to the review team contained information on bidders from 2009 and onward. This bidders list contains some, but not all of the data elements as outlined in 49 CFR 26.11. COTPA should add two fields to its bidders list: age of firm and gross annual receipts (may be exact figure or range).	COTPA must submit to FTA a copy of their new bidders list that includes the age of the vendor and their gross annual receipts	March 25, 2013
	B) Monitoring	26.37 / 26.55	No Deficiency	COTPA lists several monitoring and enforcement mechanisms on pages 4 and 5 and in Attachment 4 of its Program Plan. An on-site visit form designed to ensure that DBEs are actually performing the contracted work is displayed in Attachment 5 of the COTPA Program Plan. COTPA should ensure that accurate running attainments are reported in their Uniform Reports submitted to FTA.	Not Applicable	Not Applicable
	C) Reporting to DOT	26.11	Deficiency	The review team has received several Uniform Reports dating from the second half of FY 2009 and onwards. During this DBE Compliance Review, deficiencies were found within the Uniform Report of DBE Awards/Commitments and Payments. It is unclear if these reports have been submitted correctly. The status of the FY 2011 report submitted for June 1, 2011 is incorrect/incomplete. It is not clear if COTPA has completed the report or made the appropriate corrections. Next, the report shows that there were 39 prime contracts awarded for \$7,964,377 with no subcontracts or DBE participation. Although this may be correct, COTPA may consider reviewing their contracts to ensure that there is no missing data. Finally, the report shows that there were 9 race conscious contracts completed with a value of \$1,659,715. However, the report lists zero dollars as the DBE participation needed to achieve the goal. Race conscious contracts would have contract goals expressed as a percentage of the contract and the amount of DBE participation needed to meet the goal would be above zero dollars.	COTPA must verify that the status of their FY 2011 report submitted for June 1 is complete. Also, COTPA should participate in FTA facilitated training sessions on DBE report.	Deficiency is Closed