

# FTA

FEDERAL TRANSIT ADMINISTRATION

## King County Department of Transportation DBE Final Report

February 2013

Federal Transit Administration

PREPARED BY  
Milligan & Company, LLC



U.S. Department of Transportation  
Federal Transit Administration

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## Section 1 – General Information

Grant Recipient: King County Department of Transportation  
1 South Jackson Street

City/State: Seattle, WA

Grantee Number: 1731

Executive Official: Howard Taniguchi  
Department Director

On Site Liaison: Sandy Hanks  
Manager, Business Development and Contract Compliance  
(206) 296-3439

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Site Visit Dates: May 1–3, 2012

Compliance Review Team  
Members: Benjamin Sumpter, Lead Reviewer  
Habibatu Atta  
Kristin Szwajkowski

## **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. (18), October 1, 2011, and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The King County Department of Transportation (King County) 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 King County’s DBE program and were the basis for the selection of compliance elements that were reviewed.

## Section 3 – Purpose and Objectives

### PURPOSE

The FTA’s 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 King County Department of Transportation’s (King County) Disadvantaged Business Enterprise (DBE) program is necessary.

The primary purpose of the compliance review is to determine the extent to which King County 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 King County’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 King County 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 King County’s DBE 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 King County’s Disadvantaged Business Enterprise Program Plan from a variety of sources – DBE program managers, other King County management personnel, DBEs, and prime contractors.

## **Section 4 – Background Information**

King County Department of Transportation (King County) consists of the Director’s Office and five divisions. The Director’s Office is responsible for providing leadership and direction to King County and has put forth such initiatives as reducing greenhouse gas (GHG) emissions and emergency response strategies. The five divisions include Metro Transit, Road Service, Airport, Fleet Administration, and Marine.

### *Metro Transit Division*

The Metro Transit Division is responsible for King County’s public transportation system, which includes bus, trolley bus, light rail, vanpool, and paratransit service. Metro has a daily ridership of more than 392,000 people over a service area of almost 2,134 square miles.

### *Road Service Division*

The Road Service Division is responsible for designing, building, and maintaining 2,000 miles of roadway, 185 bridges, walkways, and bicycle facilities, as well as the traffic management system in unincorporated areas throughout King County. The division also conducts contract construction and maintenance services to local cities, two adjoining counties, and special districts.

### *Airport Division*

The Airport Division is responsible for managing the King County International Airport. The airport was opened in 1928 and currently supports 300,000 takeoffs and landings annually. The airport serves as a base to the Museum of Flight and 150 businesses including helicopter services, flight schools, air cargo companies, and charter operations.

### *Fleet Administration Division*

The Fleet Administration Division is responsible for the acquisition, maintenance, replacement, and disposal of King County’s 2,600 service vehicles and off-road equipment. It also provides fleet management services including purchasing and storing construction materials, hand tools, traffic signs, and additional equipment.

### *Marine Division*

The Marine Division is responsible for managing the King County Water Taxi service, which provides passenger only ferry services. The division was created in 2008 and operates two taxi routes: Vashon Island to Downtown Seattle and West Seattle to Downtown Seattle.



## **Section 5 – Scope and Methodology**

### **Scope**

Implementation of the following 13 required DBE program components specified by FTA are reviewed in this report.

1. A DBE program conforming to this part by August 31, 1999, to the concerned operating administration (OA). You do not have to submit regular updates of your DBE Programs as long as you remain in compliance. However, you must submit significant changes in the program for approval [49 CFR 26.21].
2. A signed policy statement expressing a commitment to your 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 must be made available to the public and updated at least annually [49 CFR 26.31].
6. The recipient must determine if overconcentration exists and address this problem if necessary [49 CFR 26.33].
7. The recipient may provide assistance to DBEs through Business Development Programs to help them compete successfully outside of the DBE Program [49 CFR 26.35].
8. The recipient's DBE Program Plan must include an element to structure contracting requirements to allow competition by small businesses [49 CFR 26.39].
9. The overall goal of the recipient's program 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 its DOT-assisted contracts [49 CFR 26.43 – 26.53].
10. All contracts must include a non-discrimination clause and a prompt payment clause and must implement appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
11. A certification process must be in place 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].
12. A certification procedure must include document review and an on-site visit and must determine eligibility consistent with Subpart D of the regulations [49 CFR 26.83].

13. Implementation of appropriate mechanisms must 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].

### **Methodology**

The initial step in the scope of this Compliance Review consisted of consultation with the FTA's 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 King County by FTA's Office of Civil Rights. The agenda letter notified King County of the planned site visit, requested preliminary documents, and informed King County of additional documents needed and areas that would be covered during the on-site portion of the review. It also informed King County 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 FTA representatives, King County staff, and the review team.

Subsequent to the entrance conference, a review was conducted of King County's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer. Interviews were then conducted with King County regarding DBE program administration, record keeping and monitoring. These interviews included staff from Diversity, Procurement, and Finance. A sample of contracts were then selected and reviewed for their DBE elements. Additionally, interviews with prime contractors, subcontractors, and interested parties were conducted.

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

Following the site visit, the review team prepared the draft report based on the desk review and site visit. Subsequently, the recipient's responses to the draft report were incorporated into this final compliance review report.

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

Chris MacNeith  
FTA Region X, Civil Rights  
915 Second Ave, Suite 3142  
Seattle, WA 98174  
[christopher.macneith@dot.gov](mailto:christopher.macneith@dot.gov)

## Section 6 – Issues and Recommendations

### 1. DBE Program Plan

Basic Requirement (49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirements for a program plan.

King County revised its DBE program plan as part of its small business element submission in February 2012. Several corrective actions and recommendations listed in this report will require additional updates to the program plan.

### 2. DBE Policy Statement

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

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirements for a policy statement.

The policy statement was included in the revised DBE program plan; however, it was not signed by the CEO. There was no verification available as to how the policy was distributed internally and externally. The DBE Liaison Officer (DBELO) indicated that the policy was in the process of appearing on the website.

Subsequent to the review, King County provided a signed copy of the policy statement by King County Executive, Dow Constantine. The policy was amended to include that the document would be sent to the standard department countywide distribution list. This included the Executive Office, the King County Civil Rights Commission, and all departments within the County. It also reiterated that the document would be distributed to both DBE and non-DBE businesses through outreach forums, and posting on the website. The policy statement now appears on the King County Business Development and Contract Compliance website.

This deficiency is now closed.

### 3. 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, **no deficiencies** were found with the requirements for the DBELO.

The DBELO of record is Sandy Hanks, Manager of Business Development and Contract Compliance. Ms. Hanks' contact information is included in the DBE program plan. She reported that the Civil Rights staff has been reduced over the past 10 years from approximately 12 to 3 and that a consultant primarily works on the small business program. The DBELO stated that current staff is adequate to administer the DBE program with the assistance of collateral duties from other department personnel to supplement the staff reduction.

The DBELO also indicated that she has direct and independent access to the County Executive regarding DBE matters. An organizational chart was included in the DBE program plan that reflected a reporting line access to the County Executive as the DBELO. Ms. Hanks reported that she met with the former County Executive several years ago regarding a DBE matter. She indicated that she has not had to meet with the current County Executive, Mr. Dow Constantine, regarding any DBE matters, but acknowledged his effort to enhance small and disadvantaged business participation in King County with procurement reform initiatives and inclusion of the DBE program in the strategic plan. Ms. Hanks also mentioned she is part of the monthly meetings with the head of Finance and all departments involved in contracts.

#### **4. 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, **deficiencies** were found with the requirements for financial institutions.

The financial institutions section in King County's DBE program plan stated that it had not found any such institutions in the Unified Washington State Directory of certified minority, women, and disadvantaged business enterprises.

The review team advised King County to expand the search for "minority-owned" financial institutions to the Department of the Treasury and Federal Reserve websites. King County should also describe how often it will search for these financial institutions. The program plan also describes that primes will be encouraged to use these financial institutions. King County was advised to also describe how primes will be made aware of these institutions.

Corrective Action and Schedule: Within 30 days of the receipt of the final report, submit to FTA's Office of Civil Rights:

- a revised DBE program plan indicating specifics on who will conduct the financial institutions research and how this research will be conducted, and

- the results of the first research of financial institutions conducted, along with any subsequent actions taken.

**King County Response:**

King County has revised its DBE program plan to identify specifics on who will conduct the financial institutions research and how this research will be conducted. A copy of the revised DBE program plan is attached.

The following corrective actions have been taken and the King County DBE program plan revised to read as follows:

It is King County policy to investigate the full extent of services offered by financial institutions owned and controlled by socially- and economically-disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on FTA assisted contracts to make use of these institutions. King County has reviewed the Federal Reserve Board's statistical release on minority-owned financial institutions at the following the Federal Reserve website:  
<http://federalreserve.gov/releases/mob>.

The Federal Reserve Board releases this information quarterly. The current release at the time for this program update showed there were no minority-owned financial institutions in Washington (see Exhibit A). The King County DBE Liaison Officer will annually re-evaluate the availability of DBE financial institutions.

**FTA Response:**

FTA concurs with the corrective action taken by King County. This deficiency is now closed.

**5. DBE Directory**

Basic Requirement (49 CFR Part 26.31): A DBE directory must be available to interested parties including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirement for a DBE directory.

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) is the certifying body for the Washington State Unified Certification Program. The directory is maintained by OMWBE and contains all the required elements of this section.

**6. Overconcentration**

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

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirement for overconcentration.

The DBE program plan discussed steps King County would take if overconcentration was discovered. The review team advised King County to define a timeframe to evaluate data to determine if overconcentration exists. The DBELO spoke of challenges to recruit and retain DBEs in the program and did not foresee an issue with overconcentration in a Ninth Circuit environment.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- a revised DBE program plan indicating specifics on who will conduct an overconcentration analysis and how often the analysis will be conducted, and the results of the first analysis conducted in this area, along with any subsequent actions taken.

**King County Response:**

King County has conducted an analysis of DBE overconcentration by comparing the availability of DBEs for Certain Types of Work to Non-DBEs for the same Type of Work in King County's market area. The state of Washington Unified Certification Provider compiled the availability data used in the analysis to identify DBEs by NAICS code. These data were compared with the availability of all firms within the same NAICS codes using US Census Bureau data (Exhibit B of response).

The following corrective actions have been taken and the King County DBE program plan has been revised to read as follows:

King County has not identified that overconcentration exists in the types of work that DBEs perform. If King County determines that DBE participation is overconcentrated for certain types of work or contracting opportunities to the extent that it unduly burdens contracting opportunities for non-DBEs to participate in that type of work, King County will take appropriate measures to address the overconcentration.

King County will seek approval of such measures from the appropriate operating administrations and, at that time, the measures will become a part of the County's DBE Program. Currently, King County is unaware of any types of work that have a burdensome overconcentration of DBE participation; however, King County will continue to monitor for indications of over-concentration. King County will re-evaluate for overconcentration annually.

**FTA Response:**

FTA has reviewed the corrective action to revise King County's DBE program plan regarding overconcentration. The revision states that King County will take appropriate measures to address the overconcentration and re-evaluation would occur annually. More detail is requested regarding what appropriate measures King County would implement if overconcentration is discovered. The corrective action plan King County submitted in

the FY 2011 Shortfall Analysis described overconcentration measures to “include the use of incentives, technical assistance, and other means to assist DBEs in performing work outside of the specific field in which the county has determined that non-DBEs are overly burdened.”

Corrective Action and Schedule: Within 30 days of the issuance of the final report, submit to FTA’s Office of Civil Rights:

- revised DBE program plan language that outlines what appropriate measures King County would implement in response to overconcentration.

## **7. Business Development Programs**

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

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

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

## **8. Fostering Small Business Participation**

Basic Requirement (49 CFR Part 26.39): DBE regulations require that the recipient must include an element to structure contracting requirements to allow competition by small businesses. Reasonable steps should be made to eliminate obstacles to the participation of small businesses, including unnecessary bundling of contracting requirements that may preclude them from participating as prime or subcontractors. This element section must be submitted to FTA by February 28, 2012.

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirement for Fostering Small Business Participation.

The review team examined two documents that address increasing awards to small businesses: King County’s revised DBE Program Plan and its Shortfall Analysis for FY 2010 and 2011.

*Revised DBE Program Plan:*

King County revised its DBE program plan to include the small business element requirement in February 2012. The DBELO indicated that the element was submitted to FTA during the first week in March 2012. King County has an existing small business program for locally-funded projects and proposed to apply this program to FTA-assisted contracts. Plans are underway to implement this element on or before September 1, 2012, to ensure the element is operational within nine months of approval.

King County performs its own certification of small businesses. To qualify as a small contractor or supplier, King County states that a business must be at or below 50 percent of the federal Small Business Administration's size standard, and the personal net worth (PNW) of each owner cannot exceed \$750,000. The DBELO indicated during the compliance review that the personal net worth cap would remain at its current level despite an adjustment of personal net worth to \$1.32 million in the DBE program. The review team advised King County to review the current Official USDOT Questions & Answers for guidance concerning using a PNW as part of the small business element. "A recipient has the option of establishing a PNW threshold as an eligibility criterion for its small business program element. Except in a micro-small business program (where a PNW threshold could be lower), if a recipient chooses to establish such a requirement as part of its program, the PNW threshold should be consistent with the one in 49 CFR Part 26."

*Small Business Provisions in Shortfall Analysis:*

A section of the FY2011 shortfall analysis discusses the County's Contracting Opportunities Program (as does King County's DBE Program Plan). The discussion in this document contains more provisions and actions to be taken than are enumerated in the DBE program plan revisions. For instance, this discussion includes a Small Works Roster for public works contracts under \$35,000, while the DBE Program Plan discusses applying the small business element to contracts with an estimated value of \$25,000. The shortfall analysis discussion details setting voluntary goals for woman and minority firms, which is most likely not allowed for FTA-funded projects. The shortfall analysis also discusses re-engineering of business processes and documents to make the process more user-friendly for small businesses. This is an example of a good tool to foster small business participation that is not included in the DBE program plan.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights a revised Small Business Element of the DBE program plan that includes:

- milestones for completion of steps to be taken to implement the program, leading up to September 1, 2012
- clarification of certification criteria for small businesses
- clarity between the Small Business Program submitted in conjunction with the Shortfall Analysis and the Fostering Small Business Element submitted as part of the DBE program plan

**King County Response:**

King County has revised the Small Business Element (Exhibit C of the response) of its DBE program plan to a) remove the September 2012 Small Business Element implementation date related to milestones to complete the implementation; b) clarify the certification criteria by revising the Personal Net Worth threshold to \$1.32 million to meet the requirements set forth in 49 CFR Part 26.5 that identifies the PNW threshold at \$1.32 million; and c) provide clarity between the Shortfall Analysis and the Small Business Element in its DBE program plan.



Accomplishment of the Correction Action: The following corrective actions have been taken and the King County DBE program plan revised to read as follows:

*Milestones re: Small Business Element:* King County has removed the September 2012 implementation date for the Small Business Element and revised the language specific to this element in its DBE program plan to read as follows:

“King County will implement its race-neutral small business program for projects assisted with FTA funds within nine months of written approval from the FTA to ensure the small business element is operational.”

The revised language deletes the September 1, 2012, implementation date. This deletion complies with the instruction from Mr. Benjamin Sumpter, Lead Reviewer for the on-site Compliance Review conducted May 13, 2012. During the exit conference, Mr. Sumpter communicated that FTA headquarters advises King County not to implement its Small Business Element until after receiving written approval from their office.

King County has an existing local Small Business Program that emulates the Small Business Element described in its DBE program plan. After receiving written approval from FTA Headquarters to implement the Small Business Element, King County will proceed by applying its local Small Business Program to FTA assisted contracts. The development of milestones to complete steps for implementation is not required.

- a) Clarification of Certification for Small Businesses: King County has revised the PNW threshold for small business certification to be consistent with 49 CFR Part 26.5 that identify the PNW threshold at \$1.32 million for FTA-assisted projects.

King County has also reviewed the Official USDOT questions and answers regarding the Small Business Element PNW threshold at <http://osdbu.dot.gov/DBEProgram/dbeqna.cfm>. The guidance instructs that since the Small Business Element developed by a recipient is a part of its DBE program plan, recipients must use the definition of a small business concern in 49 CFR Part 26.5 that identifies the PNW threshold at \$1.32 million. This ensures that all small businesses allowed to participate in the program (DBEs and non-DBEs alike) are subject to the same size standards and, consequently, compete with similarly-sized businesses.

- b) Clarity between Shortfall Analysis and DBE Program Plan: King County has revised its Shortfall Analysis (see Exhibit D) to address the Compliance Review findings. For example, King County has removed the reference to and will not set voluntary goals for woman and minority firms on FTA-funded projects. The DBE Program Plan has been updated to incorporate provisions and actions enumerated in the Shortfall Analysis to include the business process re-engineering efforts designed to make the public contracting process more user-friendly for small businesses.

**FTA Response:**

FTA concurs with the corrective actions taken by King County. This deficiency is now closed.

## **9. 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.

The King County FFY 2012–2014 DBE Goal Methodology was submitted to FTA on December 28, 2011. The proposed overall goal for the three fiscal years was 8%, to be met by race-neutral means. The review team discussed a recommended timeline in order to submit goals by August 1<sup>st</sup> of the required submittal year.

The Region 10 Civil Rights Officer requested that King County update its methodology to include a chart with the NAICS and weighted percentages. The chart was incorporated in the methodology, and a revision was sent to FTA on April 26, 2012. The revised methodology affected the base figure but had no impact on King County's overall goal calculation.

#### **Step 1: Determining the Base Figure**

The DBE goal methodology submission projected \$19,164,949 in FTA-assisted contracts for fiscal years 2012–2014. The 2009 U.S. Census Bureau's County Business Patterns was used as the denominator for the estimated number of contractors providing services in the applicable NAICS code for the market area (King County). The Washington State Office of Minority and Women Business Enterprise's (OMWBE) DBE directory was used as the numerator of ready, willing, and able DBEs in the applicable NAICS codes. The weighted calculation for Step One was 10.4%. After the methodology was revised with the recommended FTA chart, the Step One base figure increased to 10.83% or 11% when rounded.

#### **Step 2: Adjusting the Base Figure**

Historical DBE participation method was used to adjust the Step One base figure. The actual DBE participation for the past three years was calculated as 1% for 2009, 0% for 2010, and 7% for 2011. King County calculated 2.7% for past participation. The historical DBE participation for the past three years was averaged together instead of choosing the median number as prescribed in the tips for goal setting. However, the results would be the same with either method in this particular instance. The review team advised King County to use the median number for future past participation adjustments.

The average past participation number (2.7%) was subtracted from the base figure (10.4%) for a 7.7%, or 8% when rounded, overall goal determination. The revised goal methodology rounded up the past participation number (2.7%) to 3% and rounded up the base figure (10.83%) to 11% and performed the same subtraction to arrive at the same 8% goal. The review team advised King County to average the median past participation number with the base figure number to get the proposed overall goal.

The review team also noted differences in DBE past participation calculations. DBE participation for FFYs 2011, 2010, and 2009 was reported at 7%, 0%, and 1%, respectively, by King County. The review team calculated DBE participation at 1%, 4.9%, and 0% for those fiscal years based on awards and commitments from the Uniform DBE Report. The review team advised King County to calculate past participation appropriately when conducting a step two analysis.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- a revision of the goal methodology to include the use of the median number for past participation and to average the median number with the base figure
- details on how past participation will be calculated
- implemented procedures to ensure timely submission of overall goals to FTA

**King County Response:**

King County has revised the goal methodology (Exhibit E of the response) to include use of the median number for past participation and averaged the median number with the step one base figure. Details are included on the contract types and a description and calculation of past participation. The development of a timeline and milestones to complete steps to ensure submission the overall DBE goal to the FTA by August 1 of the submittal year is provided in Exhibit F.

King County has revised its goal methodology to use the awards and commitments from the Uniform DBE Reports and to address the findings and recommendations resulting from the Compliance Review.

**FTA Response:**

FTA concurs with the corrective actions taken by King County. This deficiency is now closed.

**B) Public Participation**

Basic Requirement (49 CFR Part 26.45): In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A 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, **deficiencies** were found with the requirement for Public Participation and Outreach.

The FFY 2012–2014 goal methodology included information concerning consultation with DBEs and SBEs. King County outlined in the methodology that they participated in public meetings with the King County Civil Rights Commission and business and community organizations during FFY 2010 and 2011. The review team advised King

County to include actual meeting dates with the groups and specifics about the discussion of the overall goal.

During the compliance review, King County provided the following meeting dates: September 21, 2010; November 4, 2010; December 7, 2010; March 8, 2011; and June 29, 2011. The meetings consisted of working groups seeking input and feedback from community members concerning the County’s procurement process and suggestions for increasing opportunities for small and disadvantaged businesses. A report on the procurement reform was also provided to the review team outlining the achievements and comments regarding the procurement reform initiative.

King County provided advertising verification during the compliance review. The goal was published in the *Seattle Times*, *Seattle Scanner*, *Northwest Asian Weekly*, and *Daily Journal of Commerce* from December 2011 to January 2012. The review team advised King County to advertise the proposed overall goal by June 15 as prescribed by FTA’s “Dear Colleague” letter in 2008.

**Corrective Action and Schedule:** Within 30 days of receipt of the final report, submit to FTA’s Office of Civil Rights:

- a proposed timeline that will be used to ensure advertisement of goals to allow for a 45-day comment period and submission of goals by the due date

**King County Response:**

King County understands the importance of implementing an effective timeline of actions to ensure advertisement of the DBE goal and notification for accepting public comments on the goal for 45 days. King County has developed procedures in the form of the timeline and actions steps (Exhibit F of the response), identified in the table below, to ensure advertisement of goals to allow for a 45-day comment period and submission of goals by the due date.

Adherence to the timeline and actions identified in the table below will enable King County to submit the DBE goal by August 1st of the required submittal year.

The County will begin the goal setting process by April 1 of the submittal year. The table below contains a timeline of actions to complete the goal, accept public comment, make adjustments, if needed, and submit the goal to the FTA by August 1.

**Table 1**

<b>Due Date</b>	<b>Timeline for Goal-Setting Activities / Public Participation</b>
April 1	Identify the most refined data for calculating the step one base figure.
April 15	Determine the step one base figure and any necessary adjustments.
May 1	Advertise Goal and Notice for Public Comment.
May 1–June 15	<b>PUBLIC PARTICIPATION:</b> Consultation w/organizations and others serving or representing DBEs, small businesses, including minority or women owned businesses for additional sources of information for consideration in Step Two.
June 15–July 1	Internal Review.
July –July 15	Goal adjustments (if needed).
July 15–July 30	Finalize goal submittal.
August 1	Submit goal to FTA Regional Civil Rights Officer.

**FTA Response:**

FTA does not concur with the proposed timeline for goal setting activities and public participation. King County's proposed timeline in Table 1 above to advertise goal and notice for public comment by May 1 and then conduct consultation with organizations and others from May1–June 15 needs to be revised. FTA references the Official Questions and Answers in section 26.45 (g), *What steps are recipients expected to take to satisfy the consultation component of the public participation required for goal setting? (Posted 6/18/08). Consultation is expected to occur before the proposed goal is established and prior to publication of the proposed overall goal for inspection and comment by the general public.*

**Corrective Action and Schedule:** Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- revised goal setting/publication timeline that reflects the consultation period occurring prior to the public comment period

**C) 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, **deficiencies** were found with the requirement for transit vehicle manufacturers.

The review team requested DBE contract information for the latest vehicle procurements. King County provided TVM certifications for MB06-2 from New Flyer of America in 2007 and MB08-1 from Daimler Buses North America in 2009. Both certifications cited compliance with 49 CFR Section 23.67. The review team advised King County to revise templates to reflect current regulations of 49 CFR Part 26 rather than 23, specifically Part 26.49 of the DBE regulations.

**Corrective Action and Schedule:** Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights a revised certification that makes reference to the appropriate TVM section in the DBE regulations.

**King County Response:**

King County has corrected the citation in its TVM certification form and included the corrected form in its most recent bus procurement. A copy of the TVM form was attached as Exhibit H to the response.

The correction to the TVM certification was performed during the FTA DBE Review.

**FTA Response:**

FTA concurs with the corrective action taken by King County. This deficiency is now closed.

#### **D) 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, **no deficiencies** were found in the area of race-neutral participation.

The Ninth Circuit Decision requires DOT grantees in its jurisdiction to conduct disparity studies to support use of race-conscious measures to achieve DBE participation. King County participated in a disparity study consortium with approximately nine agencies shortly after the Decision. The study was primarily based on highway activity and was not useful for the contracting elements procured by King County. King County will propose for the state DOT office to include its data for the upcoming disparity study by the State of Washington.

King County has a race-neutral DBE program and outlines race-neutral implementation efforts to achieve DBE participation in their program plan. DBE participation levels have been below the goals, but King County expressed that the Small Business Element will assist in achieving the race-neutral DBE goals.

#### **E) Race-Conscious DBE Participation**

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirements for race-conscious participation on overall and contract goals.

King County does not use race-conscious measures to meet DBE participation on contract goals or overall goals. The review team found no evidence of King County using race-conscious language in contracting materials.

#### **F) Good Faith Efforts**

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found in the area of good faith efforts requirements.

GFE determinations are not applicable in race-neutral DBE programs. The program plan states that King County FTA-assisted projects will be awarded without the lowest responsive bidder meeting a DBE goal or demonstrating good faith efforts to meet a DBE

goal. The review team found no evidence of good faith effort language or procedures for DBE participation. King County includes GFE requirements in regards to its local Small Business Program and proposes to include the same as part of the DBE Small Business Element.

### **G) Counting DBE Participation**

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

Discussion: During this DBE Compliance Review, **no deficiencies** were found with the requirements for counting DBE participation.

The King County DBE contract provisions include detailed information regarding counting DBE participation. Counting requirements for subcontracted work, joint ventures, commercially useful function guidelines, truckers, manufacturers, and regular dealers are all outlined in the contract provisions.

### **H) 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 King County was found during the site visit.

### **I) Meeting Goals**

Basic Requirement (49 CFR Part 26.47): Selected recipients must submit an analysis and corrective action plan to FTA within 90 days of the end of the fiscal year outlining the factors why the overall goal was not met.

Discussion: During this DBE Compliance Review, **deficiencies** were found with the requirement for meeting goals. The Shortfall Analysis was submitted to FTA for failure to meet DBE goals for FFY 2011 and is pending FTA review.

King County was required to submit a Shortfall Analysis because the 9% DBE goal was not achieved during the 2011 Federal Fiscal Year. Actual DBE participation for FFY 2011 was reported at 7% by King County. The review team calculated DBE participation at 1% for FFY 2011 based on the Uniform DBE Report. The DBELO indicated that actual DBE participation was calculated based on payments made to DBEs during the fiscal year. However, the Shortfall Analysis is to be based on the results in the Uniform DBE Report. The DBE regulations cite the following in 49 CFR Part 26.47(c), *“If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that*

*fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith: 1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year; (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year.”*

The DBE goal and participation analysis is summarized below:

<b>FFY</b>	<b>DBE Goal</b>	<b>DBE Participation Reported by King County</b>	<b>DBE Participation Calculated from Reporting Forms</b>
2011	9%	7%	1%
2010	9%	0%	4.9%
2009	16%	1%	0%

King County was advised to use the Uniform DBE Report for determining DBE participation in goal setting and any Shortfall Analysis.

When King County revises its Shortfall Analysis, the following items should be considered based on the review of the Shortfall Analysis submitted:

- Focus the corrective actions on direct steps that will impact the amount of shortfall. Portions of the Shortfall Analysis submitted are restatements of items that have been long-term requirements of the DBE regulation and are not directly tied to reducing the shortfall. For instance, Section I – Administration of DBE Program Key Elements, items A through F, are general longstanding requirements of the DBE Program that are not unique to the shortfall and should be conducted as a part of routine and ongoing compliance.
- Several of the items in Section I, Item J – Other Race-neutral Means, are general statements that align with 26.51, but are not specific in nature or connected directly with impacting shortfall
- Section II – Small Business Provisions differs from the submitted Small Business Element section of the revised DBE Program Plan and should be aligned where possible if it is being used not only to comply with section 26.39, but also to address shortfall.

**Corrective Action and Schedule:** Within 30 days of receipt of the final report, submit to FTA’s Office of Civil Rights:

- a revised Shortfall Analysis that correctly reports past participation figures and that considers the review above on the previously submitted analysis.

**King County Response:**

King County has revised its Shortfall Analysis (Exhibit D of the response) using the results in the Uniform DBE Report.

The revised Shortfall Analysis now correctly reports past DBE participation percentages for King County and to align the small business provision with the Small Business Element section in the DBE program plan.



**FTA Response:**

FTA has reviewed the corrective actions taken by King County. King County revised the Shortfall Analysis to report accurate past participation percentages. The small business provision was also aligned with the Small Business Element in the DBE Program Plan. No other revisions to the analysis were addressed by King County from the considerations mentioned in the report.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA’s Office of Civil Rights:

- status of considerations to modify Shortfall Analysis based on recommendations in the Compliance Review report.

**10. 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.

King County states in its DBE Program Plan that it will ensure that the contract assurance clause found in 49 CFR Part 26 is placed in every FTA-assisted contract and subcontract. The review team examined four prime contracts and one DBE subcontract for compliance with contract assurance clause inclusion. Of the four prime contracts reviewed, only one contract, Kodo Construction, contained the correct contract assurance clause. However, it was not found in the one DBE subcontract.

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

<b>Prime Contractor</b>	<b>Project</b>	<b>Contract No.</b>	<b>DBE Subcontractor</b>
CH2M Hill, Inc.	D Line Rapid Ride Passenger Facilities and Transit Improvements Design – Professional Services	E00208E10	Hough Beck & Baird, Inc.
Kodo Construction	Transit Passenger Facilities Improvements	C00632C11	No DBE contract available for review
KPFF Consulting Engineers	Multidisciplinary Planning Services	E00169E09	No DBE contract available for review
Tokita Construction, Inc.	Construction of 42 Rapid Ride Bus Zones	C00451C09	Out West Landscape and Irrigation, Inc.*

\*A subcontract was not available for review for this subcontractor.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- procedures identifying when contracts will be revised to include the required non-discrimination assurance clause
- information on how King County will verify that these clauses are included in prime contracts and subcontracts.

**King County Response:**

King County is conducting a review of the contract boilerplate language in its FTA-assisted contract to ensure that the required non-discrimination assurance clause is included. In addition, King County is developing procedures to implement random audits of prime and subcontractors records on FTA-assisted projects to verify that the required non-discrimination assurance clause detailed by the regulations in 49 CFR Part 26.13 is included in prime contracts and subcontracts.

Efforts are being taken now to correct this deficiency by December 31, 2012.

**FTA Response:**

FTA concurs with the corrective action plan developed by King County. To close this deficiency, within 30 days of issuance of the final report, submit the completed action plan discussed in King County's response.

**B) Prompt Payment**

Basic Requirements (49 CFR Part 26.29): The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

Discussion: During this DBE Compliance Review, **deficiencies** were found with regard to the requirements for return of retainage.

*Prompt Payment*

The King County DBE Plan includes a 10-day prompt payment clause. The correct prompt payment clause was not included in three of the four prime contracts reviewed. The CH2M Hill contract stated 15 days, the Kodo Construction contract stated 30 days, and the KPFF contract stated 15 days—all of which are over the 10-day prompt payment provision in the DBE Plan. The subcontract with Hough Beck & Baird also did not include the 10-day prompt payment clause; instead, it stated that the payments terms are 15 days. The review found no prompt payment terms exceeding 30 days.

The review team was able to track the payments from King County to CH2M Hill to the subcontractor, Hough Beck & Baird. On average, Hough Beck & Baird was paid more than 50 days in advance of CH2M Hill receiving payment from King County. The representative from CH2M Hill interviewed during the review stated that payments from King County were delayed because the first several invoices were revised and resubmitted. CH2M made the decision to pay the subcontractor prior to the resolution of

invoice revisions. One payment between King County, Tokita Construction, and the subcontractor, Out West Landscape and Irrigation, was also tracked. The subcontractor invoice was under \$1,000 and was broken into two billings. The first payment from Tokita to Out West was 29 days after payment from King County, and the second payment was prior to payment from King County.

#### *Return of Retainage*

In June 2003, USDOT issued a Final Rule on DBE that contained new requirements for prompt return of retainage. According to the Final Rule, if an agency chooses to hold retainage from a prime contractor, it must have prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

King County's DBE Plan states that, "*The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause.*" The DBE plan does not include a provision for incremental acceptance of subcontractor's work. None of the contracts reviewed included language for return of retainage or for incremental acceptance of work. The review team did see a retainage bond on some contracts. King County's response was that Washington State legislation prohibits withholding retainage and incremental acceptance. King County's solution was to do a retainage bond in lieu of withholding retainage from the prime.

During the compliance review, King County added that state legislation conflicted with incremental acceptance provisions in the DBE program. Efforts to change state legislation in the past legislative sessions failed. Therefore, King County adopted a bond of lieu of retainage policy for their newer contracts. The review team advised King County to get approval from its operating administration regarding retainage bonds and update its DBE Program Plan to reflect the adopted retainage policy.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- revised DBE program that describes the retainage option chosen by King County. If the retainage bonds are to be used, King County must provide a description of this process in their DBE program.

#### **King County Response:**

King County is required by State law to secure retainage on public contracts. King County is currently requiring contractors to obtain a retainage bond on FTA-funded projects, and the County is paying for the bond. King County will update its DBE Program Plan to describe the process for using bonds for retainage consistent with the USDOT Final Rule.

King County will supply FTA with revised language from its DBE Program Plan, as well as contract language with the bond language.

King County will correct this deficiency and supply FTA with sample contract language and a description of its DBE Retainage Bond process by December 31, 2012.

**FTA Response:**

FTA concurs with the corrective action plan developed by King County.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- completed action plan discussed in King County's response for FTA's review and approval.

**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, **no deficiencies** were found with the requirement for legal remedies.

The revised contract provisions provided during the compliance review included a section entitled, Sanctions for Violations. It states, *"Any violation of the requirements of the provisions of this Section 00120 shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment, cancellation or suspension, in whole or in part, of the Contract by the County, or invoking the enforcement provisions of King County Code 12.16 that provide for penalties, liquidated damages or other remedies, and may result in ineligibility for County contracts."*

King County also has incorporated liquidated damages into its revised contract provisions for non-compliance with small business provisions. It plans to implement this process once its Small Business Element is approved.

**11. 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 requirements for Certification Standards.

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) performs DBE certification as the UCP entity for the state. King County DOT is not a certification partner in the UCP, and no certification files were reviewed during the onsite visit.

## **12. 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: King County is not a certifying member in the Washington UCP; therefore, this section is not applicable.

## **13. Record Keeping and Enforcements**

Basic Requirement (49 CFR Part 26.11, 26.55): The recipient must provide data about its DBE program to 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, **no deficiencies** were found with the FTA requirement for maintaining the bidders list; however, an advisory comment was made. **Deficiencies** were found in the areas of monitoring and reporting requirements.

### *Bidders List*

King County collects a bidders list as required by the regulations. The list is included in contracts and forwarded to the compliance department. The list is currently maintained in a file folder. The review team referred King County to additional guidance that the purpose of the bidders list is for assistance in goal setting. King County has an electronic monitoring system that enables contractors to report participation; however, the system does not contain the fields required in the bidders list.

Advisory Comment: The review team advised King County to consider maintaining an electronic version of the bidders list to assist it in the goal setting process.

### *Monitoring*

King County uses a monitoring electronic tool called Contractor and Apprenticeship Reporting Tracking System (CARTS). The contractor is responsible for entering subcontractors on their contracts. The system uses tax identification numbers checked against the OMWBE UCP directory to determine if the listed firm is a DBE firm. King County will also verify the information with License & Inspections. The payments are tracked and monitored in the system, which allows King County to monitor participation percentages towards commitments. King County will also question contractors nearing completion of the contract with low participation in comparison to their commitments.

The review team advised King County that additional monitoring is required to ensure that DBE requirements are included in subcontract agreements. King County also needs to ensure that subrecipient activity is also captured, monitored, and tracked. The City of Seattle has a partnership agreement with King County for Transit Service Speed and Reliability. The agreement includes design and construction services that lend well to DBE participation. The monitoring of subcontract agreements should also be performed on the City of Seattle's subrecipient contract with King County.

#### *Reporting*

The review team collected semiannual and ARRA reports from TEAM for fiscal years 2009 through 2011. The reports reviewed appeared to be accurate, aside from an occasional calculation error for line 14 Total in the older manual reports.

As previously mentioned, DBE "past participation" should be acquired from the awards and commitments information in the Uniform DBE Report. The total DBE dollars compared to prime contract dollars awarded would show DBE participation for the reporting period. Combined figures from the two reports for any fiscal year would yield past DBE participation for goal setting and in any Shortfall Analysis required.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- revised monitoring and reporting procedures for subrecipient activities on FTA-funded contracts
- documentation that procedures were implemented to verify that reporting forms were completed accurately and that DBE past participation is accurately reflected

#### **King County Response:**

King County is reviewing its revised monitoring and reporting procedures for subrecipient activities on FTA-funded contracts.

Efforts are underway to correct this deficiency by December 31, 2012.

#### **FTA Response:**

FTA concurs with the corrective action plan developed by King County.

Corrective Action and Schedule: Within 30 days of receipt of the final report, submit to FTA's Office of Civil Rights:

- completed action plan discussed in King County's response

## Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Corrective Action Plan	Response Days/Date
1. Program Plan	26.21	ND			
2. Policy Statement	26.23	D	Policy statement not signed by CEO Lacking verification of dissemination	Have CEO sign statement Disseminate policy	Closed
3. DBE Liaison Officer	26.25	ND			
4. Financial Institutions	26.27	D	Incorrect source to search for institutions	<ul style="list-style-type: none"> <li>Submit revised DBE Program Plan indicating specifics on who will conduct financial institutions research and how this research will be conducted.</li> <li>Submit results of first research of financial institutions conducted, along with any subsequent actions taken.</li> </ul>	Closed
5. DBE Directory	26.31	ND			
6. Overconcentration	26.33	D	No process for examining OC	Submit revised DBE Program Plan language that outlines what appropriate measures King County would implement in response to overconcentration.	March 11, 2013
7. Business Development Programs	26.35	N/A			
8. Fostering Small Business Participation	26.39	D	Review PNW threshold to be consistent with regulations, include milestones, evaluate alignment with Small Business Elements in Shortfall Analysis	Submit revised Small Business Element of DBE Program Plan.	Closed

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Corrective Action Plan	Response Days/Date
9. Determining / Meeting Goals					
A. Calculation	26.45	D	<ul style="list-style-type: none"> <li>Goals submitted late</li> <li>Calculation incorrect</li> <li>Past participation numbers need verification</li> </ul>	<ul style="list-style-type: none"> <li>Submit revision of goal methodology to include use of median number for past participation and to average median number with base figure/</li> <li>Submit details on how past participation will be calculated.</li> <li>Submit implemented procedures to ensure timely submission of overall goals to FTA.</li> </ul>	Closed
B. Public Participation	26.45	D	Advertised after August 1 <sup>st</sup>	Submit revised goal setting/public participation timeline that reflects consultation period occurring prior to public comment period.	March 11, 2013
C. TVM	26.45	D	Incorrect reference to Part 23	Submit updated TVM boilerplates to reflect Part 26.	Closed
D. Race-Neutral	26.51	ND			
E. Race-Conscious	26.51	ND			
F. Good Faith Efforts	26.53	ND			
G. Counting DBE Participation	26.55	ND			
H. Quotas	26.43	ND			
I. Meeting Goals	26.47	D	Incorrect past participation calculation	Submit status of considerations to modify shortfall analysis based on recommendations in the compliance review report.	March 11, 2013
10. Required Contract Provisions					
A. Contract Assurance	26.13	D	Contract assurance language missing/incomplete in contract and subcontract agreements	Submit completed action plan discussed in King County's response regarding verification of clause insertion and random audit program.	March 11, 2013
B. Prompt Payment	26.29	D	<p>Conflicting language in contracts</p> <p>Retention policy not reflected in DBE program</p>	Submit completed action plan discussed in King County's response for FTA's review and approval regarding revised DBE Program Plan and sample contract language.	March 11, 2013



<b>Requirement of 49 CFR Part 26</b>	<b>Ref.</b>	<b>Site Visit Finding</b>	<b>Description of Deficiencies</b>	<b>Corrective Action Plan</b>	<b>Response Days/Date</b>
C. Legal Remedies	26.37	ND			
11. Certification Standards	26.67	ND			
12. Certification Procedures	26.83	ND			
13. Record Keeping and Enforcements					
A. Bidders List	26.11	AC	Consider electronic version of bidders list for goal-setting assistance		
B. Monitoring	26.37 26.55	D	Need monitoring mechanisms for subrecipients and review of subcontracts for required language	Submit revised monitoring and reporting procedures for subrecipient activities on FTA funded contracts.	March 11, 2013
C. Reporting	26.11	D	Report calculation errors Not using report for past participation	Submit implemented procedures to verify that reporting forms are completed accurately and that DBE past participation is accurately reflected.	March 11, 2013

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

## Section 8 – List of Attendees

Name	Organization	Title	Phone	Email
<b>FTA:</b>				
Monica McCallum	FTA	Regional Operations Division Chief	(206) 220-7519	Monica.mccallum@dot.gov
Christopher MacNeith (conference call)	FTA	Region X -RCRO	(415) 744-2614	Christopher.macneith@dot.gov
<b>King County Members:</b>				
David Morrison	KCDOT	Grants Administrator	(206) 684-2154	David.morrison@kingcounty.gov
Sandy Hanks	KCDOT	DBELO	(206) 263-2717	Sandy.hanks@kingcounty.gov
Chris Egan	KCDOT	Supervisor, Technical Support	(206) 684-1397	Chris.egan@kingcounty.gov
Laurie Brown	KCDOT	Deputy Director	(206) 684-1570	Laurie.brown@kingcounty.gov
Ron Posthuma	KCDOT	Assistant Director	(206) 684-1007	Ron.posthuma@kingcounty.gov
Alan Abrams	KCDOT	Supervisor, Capital Projects	(206) 263-9327	Alan.abrams@kingcounty.gov
Thomas Kuffel	KCDOT	Senior Deputy Prosecuting Attorney	(206) 296-9685	Thomas.kuffel@kingcounty.gov
Debbie Porter	KCDOT	Grants Administrator	(206) 684-1026	Debbie.porter@kingcounty.gov
J. Paul Miller	KCDOT	Program Engineer	(206) 684-2224	Paul.miller@kingcounty.gov
Wendy Keller	KCDOT	Interim Procurement Manager	(206) 263-9336	Wendy.keller@kingcounty.gov
Steve Policar	KCDOT		(206) 684-1032	Steve.policar@kingcounty.gov
Randy Witt	KCDOT	Manager, Design & Construction	(206) 684-1401	Randy.witt@kingcounty.gov
<b>Prime Contractor Representative:</b>				
Kyle Tokita	Tokita Construction, Inc.	President	(206) 249-2530	Kyle@Tokitaconstruction.com
John McKenzie	CH2M Hill	Project Manager	(425) 453-5000	John.mckenzie@ch2m.com
<b>DBE Subcontractor Representative:</b>				
Juliet Vong	Hough, Beck, & Baird, Inc.	President	(206) 682-3051	Jvong@hbbseattle.com
<b>Interested Parties:</b>				
Fred Anderson	National Association of Minority Contractors, WA Chapter	President	(425) 771-7168	fred_leajak@frontier.com
Fernando Martinez	Northwest Minority Supplier Development Council	President & CEO	(206) 575-7748	fmartinez@northwestmsdc.org
<b>Milligan &amp; Co., LLC:</b>				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	(215) 496-9100	Bsumpter@milligancpa.com
Habibatu Atta	Milligan & Co., LLC	Reviewer	(215) 496-9100	Hatta@milligancpa.com
Kristin Szwajkowski	Milligan & Co., LLC	Reviewer	(215) 496-9100	Kszwajkowski@milligancpa.com