

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

San Francisco Municipal Transportation Agency Final DBE Report

September 2012

Federal Transit Administration

PREPARED BY
Milligan & Company, LLC



U.S. Department of Transportation
Federal Transit Administration

COMPLIANCE REVIEW REPORT
OF THE
San Francisco Municipal Transportation Agency
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
FINAL REPORT

September 2012

**Prepared for the
Federal Transit Administration
Office of Civil Rights**

by

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Section 1 – General Information

Grant Recipient: San Francisco Municipal Transportation Authority
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City/State: San Francisco, CA

Grantee Number: 1697

Executive Official: Edward Reiskin
Director of Transportation

On Site Liaison: Virginia Harmon
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Site Visit Dates: February 7 – 9, 2012

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Section 2 – Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A., (18), October 1, 2011 and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The San Francisco Municipal Transportation Authority (SFMTA) 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 SFMTA's DBE program and were the basis for the selection of compliance elements that were reviewed.

Section 3 – Purpose and Objectives

PURPOSE

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the San Francisco Municipal Transportation Authority's (SFMTA) Disadvantaged Business Enterprise (DBE) program is necessary.

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

Section 4 – Background Information

San Francisco Municipal Transportation Authority (SFMTA) was formed in 1912 after voters approved bond issues for a new municipal streetcar line. The public transportation system includes bus, trolley bus, light rail, streetcar, and cable car service. SFMTA is the seventh largest transit agency in the country with daily ridership of over 731,000 people over a service area of almost 47 square miles.

SFMTA's board of directors consists of seven members who are appointed by the Mayor. The Board is currently chaired by Tom Nolan who joined the board in 2006. Edward Reiskin joined SFMTA as the Director of Transportation in July of 2011.

SFMTA's light rail system consists of six lines: (not including the F Market and Wharves streetcar line), J Church, K Ingleside, L Taraval, M Ocean View, N Judah, and T Third Street. The service runs through 33 surface and subway stations and carries almost 171,000 passengers each weekday. The rolling stock includes 151 Breda light rail vehicles.

The agency's bus service consists of 54 routes with an average weekday ridership of 299,000 passengers. The fleet consists of 86 hybrid buses and 495 Diesel buses. There are 16 trolley bus routes with the fleet consisting of 344 Electric Trolley Buses. Sixty of the trolley buses are the 60 foot long articulated buses and the remaining 284 buses are the standard 40 foot long buses. SFMTA also operates three cable car lines: the historic Powell – Hyde, Powell – Mason, and California lines. The newest cable car, Cable Car 15, was put into service in June of 2009.

SFMTA is focusing their efforts on the expansion of their light rail system. Construction continues on the Central Subway Project, a 1.7 mile expansion of the T Third Street Light Rail Line. The line will be extended from the 4th Street Caltrain Station to Chinatown. The project will also include four new stations: 4th and Brannan Station, Yerba Buena / Moscone Station, Union Square / Market Street Station, and the Chinatown Station.

Section 5 – Scope and Methodology

Scope

This report will examine how the following thirteen required DBE program components, specified by the FTA, are implemented.

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 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. Include an element to structure contracting requirements to allow competition by small businesses [49 CFR 26.39].
9. 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].
10. 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].
11. 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].

12. 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].
13. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. [49 CFR Part 26.37] Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

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

Subsequent to the entrance conference, a review was conducted of SFMTA's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer. Interviews were then conducted with SFMTA 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, SFMTA 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 SFMTA.

Following the site visit, a draft report was compiled.

NOTE: All corrective action materials and information that address findings in the report should be sent to the attention of:

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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. However, an advisory comment was made regarding the DBE program.

The initial DBE program San Francisco Municipal Transportation Agency submitted to FTA was approved in February 2000. Prior to the site visit, SFMTA provided a copy of its current DBE program that was last revised on April 3, 2006. The 2006 program reflected activities synonymous with a race conscious program (e.g. good faith efforts requirements and contract specific goals). The program also included outdated sized standards, monitoring procedures, certification requirements and other program areas that have changed since 2006. The program did not mirror the current race neutral DBE program operated by SFMTA and did not speak address the Small Business Enterprise (SBE) program and its correlation with the DBE program.

Without adequate justification for a race conscious DBE program, SFMTA suspended race conscious efforts in 2006 and began implementing the DBE program requirements through its SBE program. SFMTA developed an SBE program for federally-funded construction contracts and another for professional service contracts. The applicability of the SBE program to the DBE program was outlined in these documents. SFMTA noted that, *“Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's ("FTA") March 23, 2006, publication of the Department of Transportation's ("DOT") guidance concerning the federal Disadvantaged Business Enterprise ("DBE") program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation. The SFMTA's SBE Program is in accordance with DOT's guidance that, absent a disparity study, the SFMTA must meet its overall annual DBE goal using race-neutral means.”*

During the on-site review, SFMTA provided a copy of the DBE program updates that were on file as a result of the 2011 DBE rule changes. The program amendments addressed rule changes in business size standards, personal net worth limits, out-of-state certifications, and substitution of DBE on contracts. Amended monitoring procedures were also provided during the on-site review. The DBE program amendments did not include revision/accepted dates. The review team suggested that SFMTA include revision dates on the amended material for record keeping purposes.

There was also limited information on SFMTA's website concerning the DBE program. SFMTA noted that website updates are in progress and it anticipates adding DBE

information on the SFMTA Contract Compliance Office homepage by March 15, 2012. A draft of the webpage content was provided during the review. The DBE policy statement, SBE program, California UCP, FAQs, staff resources, and Central Subway Project website links are anticipated to be included on the webpage.

Advisory Comment: SFMTA should maintain and keep its DBE program plan current with DBE regulations. SFMTA's DBE program should be updated regularly to reflect current DBE regulations and SFMTA program changes.

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, no deficiencies were found with the requirements for a policy statement. However, an advisory comment was made regarding the DBELO.

The DBE Program revised on April 3, 2006, included a DBE policy statement in Appendix 2 that discussed the program's applicability, objectives, and identified the Director of the Contract Compliance Office as responsible for development and implementation of the program. However, the policy was not signed or dated by the Chair/SFMTA Board of Directors. There was no current DBE policy statement included on the SFMTA website. During the on-site review, SFMTA provided a DBE Policy Statement signed by the Director of Transportation and dated February 7, 2012. The policy stated that the Agency Oversight Manager/DBE Liaison Officer (DBELO) shall be responsible for development, implementation, and monitoring of the program and included the DBELO's address and phone number. The review team notes that FTA considers including the name of the DBELO as a preferred practice. The policy was said to be circulated to all SFMTA personnel and to members of the community performing or interested in performing work on SFMTA contracts.

Advisory Comment: Include the DBELO's name in applicable SFMTA materials.

SFMTA Response:

The DBELO's name and contact information have been incorporated into the SBE Program inserts which are included in all bid documents and published on the SFMTA's website.

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 DBE Liaison Officer (DBELO). However, an advisory comment was made regarding the DBELO.

The organizational chart identified Ms. Virginia Harmon as the Agency Oversight Manager and the DBELO. Ms. Harmon has oversight of four departments to include Employee Wellness, EEO/ADA, Contract Compliance, and Agency Audit/Title VI Compliance departments. Mr. Andre Boursse is the Manager of the Contract Compliance Office (CCO) and that office has responsibility for implementing the DBE program requirements. The CCO has approximately twelve staff positions with three vacancies according to the chart provided during the review. The DBELO confirmed that the agency has sufficient staff to administer the DBE program.

The organizational chart shows that the Agency Oversight Manager reports to the Director of Administration, Debra Johnson and has a dotted line to the Director of Transportation. Ms. Harmon stated during the review that she has direct and independent access to the Director at any time for program matters. An appointment calendar confirmation of a meeting the DBELO recently had with the Director of Transportation was provided during the review. Even though the appointment confirmation included the Director of Administration, Ms. Harmon confirmed that the Director of Transportation has an “open door” policy and she can meet with him at any time.

Additional FTA Comment: FTA understands that Mr. Boursse is no longer an employee of SFMTA. Please provide information on the affect that this has on the implementation of the DBE program.

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, no deficiencies were found with the requirements for financial institutions.

SFMTA included verbiage pertaining to financial institutions in its DBE program. The program stated that the CCO would explore the full extent of services offered by DBE

owned banks and institutions in which SFMTA and primes may use their services. During the onsite review, SFMTA provided information on four available banks in the Bay Area for use by SFMTA and prime contractors.

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. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory as soon as changes are made and shall revise the print version of the Directory at least once a year. The directory must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

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

The California UCP directory is the repository for all DBEs certified by SFMTA and other certifying agencies in California. The directory is hosted by California Department of Transportation and includes the NAICS and work codes to describe the type of service performed by the firm.

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, no deficiencies were found with the requirement for overconcentration.

According to their DBE program plan, SFMTA states that it is currently unaware of any type of work that has any burdensome overconcentration of DBE participation. Since this program plan section was last revised in 2006, the review team requested information on the current status of overconcentration in SFMTA DBE participation. The SFMTA representatives indicated that they have a SBE program and do not foresee DBE overconcentration becoming an issue; however, participation is reviewed during the goal setting process. This process had not been previously documented by SFMTA. Therefore, the Contract Compliance Office Manager provided a note to the review team, dated February 8, 2012, that described the manner which overconcentration was reviewed during the overall and individual contract goal setting process.

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 area of Business Development Programs (BDP) did not apply.

SFMTA does not participate in a Business Development Program in accordance with Appendix C of the DBE regulations requiring term limits in developmental and transitional stages.

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 which may preclude them from participating as prime or subcontractors. This element section must be submitted to FTA by February 28, 2012.

Discussion: The DBE Compliance Review was conducted prior to the small business element submission date. However, SFMTA provided a draft during the review of their small business element to meet this requirement.

SFMTA adopted its SBE program in 2006 after the Ninth Circuit Court decision to suspend race conscious DBE programs absent sufficient evidence of discrimination or its effects. Their SBE program will be utilized to meet the small business element requirement. A firm's average three year gross revenues must not exceed size requirements of the SBA and the DOT size cap of \$22.41 million. To qualify for SBE certification, a firm must be certified by the State of California's Small Business Program, the City and County of San Francisco Local Business Enterprise (LBE) program, or the California UCP as a DBE. SFMTA expressed that additional verification will be necessary to ensure that firms certified by these agencies meet SBA and DOT size requirements. The feasibility of implementing a micro-small business program is currently under review by SFMTA.

SFMTA reviews scopes of work for SBE goals prior to soliciting bids or proposals. The bidder must meet or make good faith efforts to meet the SBE contract goals. If the goal is not met and good faith efforts are not accepted, the firm is ineligible for award of the contract. Other efforts to foster small business participation in SFMTA DOT assisted activities include unbundling contracts, SBE set-asides, outreach efforts, and the City of San Francisco small business bonding assistance program.

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, no deficiencies were found with the requirements for calculation of goal.

Information was collected on SFMTA's DBE goal methodologies for Fiscal Years (FY) 2009, 2010 and the 2011 – 2013 triennial periods. The overall goal for FY 2009 was 29% and 22% for the 2010 fiscal year goal, both projected to be met through race neutral means.

The DBE goal and methodology is submitted to the SFMTA Board of Directors for adoption. The board resolution and goal methodology is submitted to FTA for approval. The FY 2011 – 2013 was submitted to FTA Region 9 Civil Rights Officer on August 5, 2010 after an extension was granted. SFMTA projected to meet the 22% triennial goal by race neutral means through its SBE program.

Step 1: Determining the Base Figure

A combination of charts and narrative information was used to describe the methodology for the FY 2011 – 2013 goal. The relative availability was determined using the 2002 U.S. Census Bureau data for San Francisco Consolidated Metropolitan Statistical Area (CMSA) and the DBE directory. A two-digit NAICS code was assigned for each of the 27 contracts SFMTA anticipated to award during the three-year goal period. The two-digit codes corresponded with the CMSA availability by minority groups and industries. This availability data was cross referenced with the percentage weights for each major contract category, i.e. Construction-23, Manufacturing- 31-33, Transportation & Warehousing- 48-49, and Professional Services- 54.

SFMTA anticipated \$996,645,000 in awards with 96.37% (\$960,445,000) in construction, 1.83% (\$18,200,000) in manufacturing, 1.4% (\$14,000,000) in transportation and warehousing, and .40% (\$4,000,000) in professional services. Table four outlined the summary of DBE availability by NAICS code and weighted FTA dollars. There was an error in the construction line item. The percent of available DBE firms for construction was 26.40% (13,238 DBEs/50,130 all firms in construction). SFMTA included an incorrect weighted construction percentage of 93.37% instead of the 96.37% weighted amount mentioned above. The weighted DBE availability for construction was 24.65% (26.40% x 93.37%) instead of 25.44% (26.40% x 96.37%). Once the remaining categories were computed, the base figure was 26.22% (construction- 24.65% + manufacturing- .62% + transportation- .78%, and professional services- .17%).

The base figure should have been 27.01% using the correct weighted construction percentage of 25.44.

Step 2: Adjusting the Base Figure

The step two adjustment included FTA funded projects from 2005 – 2010 as follows:

FY 2009-10:	Annual DBE goal was 22%, actual DBE commitments equaled 24% <small>(1st,2nd Quarter)</small>
FY 2008-09:	Annual DBE goal was 29%, actual DBE commitments equaled 10%
FY 2007-08:	Annual DBE goal was 25%, actual DBE commitments equaled 24%
FY 2006-07:	Annual DBE goal was 26%, actual DBE commitments equaled 0%
FY 2005-06:	Annual DBE goal was 26%, actual DBE commitments equaled 11%
FY 2004-05:	Annual DBE goal was 26%, actual DBE commitments equaled 25%

The median number of actual DBE commitments was used to determine the past participation. The numbers placed in lowest to highest value are 0, 10, 11, 24, 25. SFMTA did not take the zero value into account and averaged the 11 and 24 numbers to determine the median at 17.5%. It was presumed by the review team that the zero percent participation could have been an anomalous result due to effects of the Ninth Circuit Court decision. The base figure of 26.22% and the past participation of 17.5% were averaged together for a total of 21.86% or 22% when rounded. If SFMTA averaged the 17.5% past participation with the correct base figure of 27.01%, 22.25% would have been the adjusted base figure. Therefore, the step one error had no significant impact on the calculated 22% overall goal for FY 2011 – 2013.

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.

In establishing the overall goal, the DBE regulations require public participation through consultation with minority, women and contractor group in addition to publishing the proposed goal for public comment. A public participation meeting was conducted on April 21, 2010 by SFMTA and members of the Business Outreach Committee (BOC). The BOC includes transportation agencies in and around the bay area. A town hall meeting was also conducted on May 4, 2010. SFMTA included the discussions with the interest groups in their FY 2011 – 2013 goal setting methodology submission.

Before the overall goal is submitted, grantees are required to publish a notice of the proposed goal and accept comments for 45 days. SFMTA indicated in their methodology that the proposed overall DBE goal would be advertised beginning August 13, 2010 for a 30-day public review period, and a concurrent 45-day comment period. The April 10,

2008, FTA Dear Colleague letter from the Acting Director of Civil Rights recommends publishing the required notice by June 15th to ensure that goals are submitted by the August 1st due date.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA's Office of Civil Rights a plan and timeline to conduct the public participation and advertising process for the next overall goal submission.

SFMTA Response:

The SFMTA will implement the following plan and timeline to conduct the public participation and advertising process for the next overall DBE goal submission:

The SFMTA will participate in the Business Outreach Committee's Public Participation meeting held annually in April. This meeting allows participating agencies to consult with minority, women and contractor groups to gather input and comments concerning its efforts to establish a level playing field for the participation of DBEs.

No later than May 15, 2013, the SFMTA will publish a notice announcing our proposed overall DBE goal for FFY 2014-2016, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice. The notice will inform the public that the SFMTA will accept comments concerning the proposed goal for a period of 45 days from the notice date.

The SFMTA will submit to FTA its overall DBE goal for FFY 2014-2016 no later than August 1, 2013.

FTA Response:

FTA concurs with SFMTA's proposed actions. The advertisement of the proposed goal and submission dates will be verified when the SFMTA's FFY 2014-2016 goal methodology is submitted to FTA. **This deficiency is now closed.**

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, no deficiencies were found with the requirement for transit vehicle manufacturers.

SFMTA included a TVM section in their DBE program that stated TVMs, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must comply with 49 CFR Part 26.49 by having an established overall DBE participation goal that has been approved or not disapproved by FTA. During the review, SFMTA provided a TVM contract proposal boilerplate for meeting DBE requirements. The document outlined procedures for TVMs to bid on FTA-assisted transit vehicle contracts and steps

to submit an annual goal to FTA for approval. A sample TVM certification of compliance with 49 CFR Part 26 was also included in the boilerplate.

The review team requested copies of completed TVM certification compliance forms from the most recent vehicle procurements. SFMTA provided information from the contract document for 30-Foot Low Floor Hybrid-Electric Diesel Coaches (Contract Proposal No. 350-30) completed by Orion Bus Industries on April 27, 2006. The contract document for Standard Low Floor Hybrid-Electric Diesel Coaches (Contract Proposal No. 350) completed by Orion Bus Industries on November 22, 2004 was also provided. The correct reference to the DBE regulation was included in both TVM certification compliance forms. SFMTA explained that they have no recent transit vehicles procurements, but confirmed during the review that the FTA website of approved TVM programs will be used to supplement verification of compliance with DBE requirements.

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.

As a result of the Ninth Circuit Court decision, SFMTA has achieved DBE participation through race neutral means since 2006. The FY 2011 – 2013 methodology continued with race neutral means to meet the 22% overall goal. The methodology included steps SFMTA would employ to use race-neutral means of increasing DBE participation. Some of these methods included arranging solicitations to facilitate solicitations, unbundling of contracts, bonding and financial assistance, and implementing SBE goals to encourage greater participation from small businesses.

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 race-conscious participation towards meeting overall goals and use of contract goals.

No race conscious efforts were discovered during the compliance review.

SFMTA was required to operate a race neutral program absent evidence of discrimination, or its effects, among the presumptively disadvantaged groups in the DBE program to support the use of race conscious measures to attain DBE participation on

DOT assisted activities. The SFMTA legal representative briefly discussed efforts to conduct a disparity study after the Ninth Circuit Court decision which was complete in 2009. The study was based on contracting data prior to 2005 while SFMTA had a race conscious DBE program. The current disparity study was not released since the study was commissioned by the City of San Francisco legal office and was considered privileged information. Efforts are underway to conduct a study based on 2006-2009 data based on SFMTA's race neutral contracting activities. However, no specific timeline was provided during the review.

F) Good Faith Efforts

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

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

SFMTA does not include DBE contract goals in FTA-assisted contracts and procurements. Therefore, good faith efforts towards meeting DBE contract goals for award were not applicable. However, SFMTA does set SBE goals and have procedures for determining if the proposer made good faith efforts towards meeting SBE goals for contract award. The SBE program insert for contracts includes a good faith effort section. The Contract Compliance Office evaluates bids for SBE requirements and provides a recommendation to the Executive Director/CEO for award of the contract.

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.

SFMTA's DBE program discusses counting DBE participation toward goals to include certification requirements, commercially useful functions, DBE subcontracting to other DBEs or non-DBEs, counting regular dealers, manufacturers, and joint ventures. No issues were discovered during the review with counting DBE participation on FTA-assisted projects.

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.

SFMTA states in the DBE program that quotas will not be used in any way in the administration of their DBE program. No DBE quotas or set-asides were discovered during the review.

As part of SFMTA's SBE program, SBE set-asides are utilized. The Third Street Light Rail Program Phase 2- Central Subway, Union Square/Market Street Station Utility Relocation contract (Contract No. 1251) included an SBE-Trucking set-aside. The contract called for a 20% SBE participation goal. Bidders were advised to set-aside 100 percent of the trucking/hauling work and dispose of material from the project to SBE certified truckers. The SBE trucking participation would not count towards the 20% SBE participation. The trucker must have been certified by one of the approved programs listed in the SFMTA SBE program plan (SBE, DBE or LBE).

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 the DBE Compliance Review, no deficiencies were found with the requirement for meeting goals.

Based on SFMTA's FY 2011 semi-annual report, DBE achievement was 12% and the FY 2011-2013 goal is 22%. SFMTA submitted an analysis to the Regional Administrator and Civil Rights Officer for Region IX dated December 21, 2011.

The DBE goal shortfall was attributed to the Ninth Circuit Court decision through the absence of setting contract specific DBE goals. Twelve contracts were awarded in FY 2011 and the City's Department of Public Works awarded one FTA-assisted contract. Even though the 22% was not achieved for FY 2011, SFMTA noted that they obtained 24% SBE participation, of which 33 were DBEs.

Another factor that SFMTA noted was the \$233.5 million Central Subway Tunneling Contract awarded in FY 2011. The tunnel contract involved highly specialized work that offered few subcontract opportunities. After an availability analysis, SFMTA set a 6% SBE goal on the contract, which was largely met by one non-DBE SBE contractor. SFMTA concluded that the tunnel contract represented 69% of the contract dollars awarded in FY 2011 and had a substantial impact on the lack of DBE participation.

The corrective actions submitted for the shortfall analysis include implementing other aspects of their SBE Program to include unbundling contracts, small business bonding, and financing, technical assistance and SBE set-asides. Anticipated station construction and track work on the Central Subway contracts will have greater availability for higher SBE goals, which SFMTA hopes will result in increased DBE participation.

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.

SFMTA states in Appendix 4A and 4B of its DBE program that the contractor makes assurances pursuant to 49 CFR Part 26.13 and will include these assurances in any agreements it makes with subcontractors. SFMTA also removed the contract assurance language found in Appendix 4A and 4B of its DBE program. The SBE program requirements are included in SFMTA construction and professional services contracts. The SBE Appendix 4A and 4B included in contracts cites that, "SFMTA has signed the federal assurance regarding non-discrimination required under 49 CFR Section 26.13." There was no contract assurance provision found in the SBE program requiring inclusion of Part 26.13 language in contracts and subcontracts.

The review team examined three prime contracts and eight subcontracts for compliance with contract assurance clause inclusion. The contract assurance language was missing from the three prime contracts reviewed as well as the eight subcontracts.

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

Prime Contractor	Project	Contract No.	Subcontractor
PB Telamon	Central Subway Utilities Relocation Final Design	CCS-155	SOHA Engineers (DBE)
Synergy Project Management	Central Subway Union Square/Market Street Station Utilities Relocation	CN-1251	Phoenix Electric (DBE)
NTK Construction (DBE)	Church and Dubose Track Improvement	CN-1239	TLK Steel
NTK Construction (DBE)	Church and Dubose Track Improvement	CN-1239	Watertight Restoration, Inc.
NTK Construction (DBE)	Church and Dubose Track Improvement	CN-1239	Ghilotti Bros, Inc.
NTK Construction (DBE)	Church and Dubose Track Improvement	CN-1239	Del Secco Diamond Core & Saw
NTK Construction (DBE)	Church and Dubose Track Improvement	CN-1239	Hernandez Engineering
NTK Construction (DBE)	Church and Dubose Track Improvement	CN-1239	F. Ferrando and Co. (DBE)

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan to ensure that the contract assurance clause is placed in every DOT-assisted contract and subcontract.

SFMTA Response:

The contract assurance clause contained in 49 CFR 26.13 has been included in contract boilerplates, as well as the SBE Program inserts that are incorporated by reference into all DOT-assisted contracts. In addition, the SFMTA's Contract Compliance Office (CCO) has amended its contract monitoring procedures to ensure that copies of all subcontracts are obtained and monitored for inclusion of the contract assurance clause.

FTA Response:

FTA concurs with SFMTA's proposed actions. By October 27, 2012, SFMTA must provide FTA's Office of Civil Rights a copy of the amended contract monitoring procedures and method for tracking subcontracts that have been reviewed.

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 the requirements for prompt payment and return of retainage.

Prompt Payment

The SFMTA DBE program includes a three (3) working day prompt payment clause and the DBE program further states that “*the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant.*” The review team requested financial information on the Central Subway Project from SFMTA, for two prime contractors and two of their subcontractors to evaluate prompt payment of subcontractors. PB Telamon paid the DBE subcontractor, SOHA Engineers, an average of two (2) days from receipt of payment from SFMTA. Synergy Project Management paid the DBE subcontractor, Phoenix Electric, an average of twelve (12) days from receipt of payment from SFMTA.

The prompt payment clause was included in all the prime contracts reviewed as well as in the PB Telamon subcontract with SOHA Engineers. NTK’s subcontracts with TLK Steel, Watertight Restoration, Ghilotti Bros, Del Secco Diamond Core and Saw, Hernandez Engineering and F. Ferrando each stated that the subcontract was to be paid within 10 days, which is more than the three days required by the DBE Program Plan. Synergy’s subcontract with Phoenix Electric did not include a prompt payment clause.

Subsequent to the review, SFMTA provided additional clarification concerning prompt payment on the Central Subway Project. SFMTA noted that their policy requires primes to pay subcontractors within three (3) working days (not calendar days) from receipt of payment from SFMTA. SFMTA stated that their analysis of payments to Phoenix Electric was an average of five (5) days rather than the twelve (12) days calculated by the review team. The analysis conducted by SFMTA showed that Phoenix received payment from the prime on average in 12.2 calendar days and 8.4 working days. When SFMTA removed disputed payments from the calculation, the average number of days was reduced to seven (7) calendar days and five (5) working days. SFMTA reviewed all subcontractor payments on the project and determined payment receipt on average of 4.1 working days after disputed payments were removed from the calculation. SFMTA stated that they realize additional work is needed to ensure that subcontractors are paid consistent with their prompt payment policy.

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, they must have prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

SFMTA's policy on withholding retainage states that the consultant may withhold retention from subcontractors if the City withholds retention from consultant. Contractors should release retention within 30 days to subconsultants. However, the Plan states that retention should be released upon the satisfactory completion of all work required of a subconsultant. Satisfactory completion is defined by SFMTA as being *"when all the tasks called for in the subcontract have been accomplished and documented as required by City."* The DBE program or SBE program does not include a provision for incremental acceptance of portion of the prime contract.

None of the prime contracts or the subcontract agreements contains language for incremental acceptance. The PB Telamon prime contract was the only contract that included the correct return of retainage language. The Synergy and the NTK prime agreements contained conflicting language. The General Conditions of the each contract states 40 days for return of retention and the Small Business Enterprise (SBE) addendum to the contract states 30 days. The SOHA Engineers and the Phoenix Electric subcontracts do not contain provisions for the return of retention. All six of the NTK subcontracts state that final payment to the subcontractor will be made seven days after the entire work required by the prime contract has been fully completed, which is also inconsistent with the DBE regulations.

During the review, SFMTA provided *CCO Contract Monitoring Procedures* that discussed release of retention prior to contract closeout in addition to other monitoring procedures. SFMTA referenced a section in the procedures they felt as meeting the incremental acceptance requirement. The section read as follows, *"Based on the project schedule, the project manager, in consultation with CCO and the prime contractor, shall identify when the work of subconsultants/subcontractors at all tiers will likely be satisfactorily completed, i.e., when all the tasks called for in the subcontract with the prime contractor have been accomplished and documented as required by the SFMTA."* The review team individually discussed this process with SFMTA CCO, Central Subway Project Manager and Acting Director, Capital Programs and Construction. The review team received conflicting statements regarding when subcontractors retention is actually released.

Prior to the exit conference, the Acting Director, Capital Program and Construction provided a copy of a memorandum to all Project Managers in Capital Program and Construction regarding release of retention policies. The memo included the section from the CCO Contract monitoring procedures, release of retention to prime in order to pay subs, release of retention within 30 days, and contractor penalties for failure to adhere to policies.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan and timeline to ensure that:

- prime contractors are following SFMTA prompt payment policy,
- contract boilerplate release of retention provisions are consistent with SFMTA retention policy, and
- evidence that applicable staff have been trained on the retention policy.

SFMTA Response:

CCO has amended its contract monitoring procedures to ensure that payment reports submitted by prime contractors are reviewed for compliance with the SFMTA's prompt payment policy. With regard to release of retention, contract boilerplate provisions have been amended to reflect the SFMTA's policy. Meetings to train the appropriate project staff have been scheduled to take place no later than June 30, 2012.

FTA Response:

FTA concurs with SFMTA's proposed actions. By October 27, 2012, SFMTA must provide FTA's Office of Civil Rights a copy of the amended contract monitoring procedures, a contract boilerplate outlining SFMTA's policy, and documentation that the project staff training on SFMTA's retention policy was conducted.

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 SFMTA DBE Program Plan included a liquidated damages section that imposed monetary damages if the contractor failed to meet any or all of the DBE participation goals. The liquidated damages amount equals the difference between the DBE participation goals and the actual DBE goal attainment at the time a deficiency is determined, multiplied by the liquidated damage assessment. The contractor would pay an amount to be determined for each tenth (0.1%) percentage point below the DBE goals.

DBE participation goals are no longer incorporated in SFMTA contracts nor is the DBE liquidated damage language. Administrative Remedies are included in the SBE bid documents that describe the SBE monitoring and enforcement actions.

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 review team selected the following certification records:

Firm Name	Status	Deficient-Area
PNB Distributors, Inc	Denied	No
R&S Glazing Specialties, Inc.	Denied	No
Sally Swanson Architects, Inc.	New certification	Yes – Procedures
Yerba Buena Engineering & Construction	Existing certification	Yes – Procedures
NTK Construction, Inc.	Existing certification	Yes – Procedures
Kizmo	Removal	No
DAJA	Removal	Yes – Procedures

The review team found no issues after reviewing the certification records for compliance with certification standards.

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: During this DBE Compliance Review, deficiencies were found with the requirements for Certification Procedures.

It is the policy of SFMTA that a one page Annual "No Change" Affidavit is collected from the DBE firm along with the most recent business tax return. The reviewers checked each file, where relevant, for the required annual update form. It was found that Yerba Buena Engineering & Construction, NTK Construction, and DAJA, all firms who had been certified with the agency for over five years, were missing the annual updates for several years. The review team advised SFMTA to ensure that all files contain the required annual no change affidavits.

SFMTA certified Sally Swanson Architects, Inc. as a DBE firm. The reviewers found that the introductory letter dated March 7, 2011, implied that the firm must renew their certification and that there is an expiration date for participation in the program. The file also included a California UCP DBE participant certificate which approved the firm's entry into the program. The certificate listed April 1, 2016 as the expiration date for the firm's DBE certification status.

Part 26.83(h) of the regulations state that *"Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification*

or require “recertification” of currently certified firms.” The review team noted that SFMTA must advise the California UCP to remove expiration dates from the certificates.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to FTA Office of Civil Rights a plan and schedule to ensure that:

- annual updates are collected as required,
- UCP correspondence, program material and other communication reflect current DBE requirements regarding certification status

SFMTA Response:

Effective immediately, No Change Declaration (annual update) forms will be collected from certified DBEs on an annual basis. The SFMTA has started the process of collecting annual update information from all certified DBEs that have not submitted such information. As of January 28, 2011, the California UCP no longer includes expiration dates in its DBE certification certificates or introductory letters. Effective immediately, expiration dates will not be included in any of the SFMTA's DBE certification certificates or introductory letters of certification.

FTA Response:

FTA concurs with SFMTA's proposed actions. **This deficiency is now closed.**

13. Record Keeping and Enforcements

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

Discussion: During this DBE Compliance Review, no deficiencies were found with the FTA requirement for maintaining the bidders list, monitoring and reporting. However, an advisory comment was made regarding the bidders list.

Bidders List

The SBE bid documents include a Bidders List Form (SBE Form No. 2A) which must be submitted on the day of bid opening. The SBE program states that SFMTA will create and maintain a Bidder List consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts on DOT-assisted projects. It further states that the firm's name, address, status as an SBE or non-SBE, and the age of the firm will be collected. The actual form requests the firm's name, address, phone, DBE certification status, years in business, and annual gross receipts. The CCO collects the Bidders List Form and “maintains” a paper file for their records. The review team advised SFMTA that the purpose of the bidders list is to provide pertinent information during the goal setting process and collecting bidder data in electronic format would assist in this effort. The SFMTA legal representative indicated that its interpretation of “maintain” in the DBE regulation did not necessarily mean that the data had to be in electronic format. The

review team discussed best practices of vendor procurement registration databases meeting the bidders list requirement.

Advisory Comment: Review feasibility to maintain the bidders list in format for market data analysis during the goal setting process.

SFMTA Response:

The SFMTA is currently implementing a Project Controls software solution that will integrate the Agency's many project-related functions into one platform. The SFMTA's Contract Compliance Office (CCO) is currently working with the Project Controls team to include a bidder's list functionality that will allow the SFMTA to electronically collect and aggregate bidder's list data pursuant to the requirements of 49 CFR Section 26.1 1.

Monitoring

The SBE program bid document includes language regarding monitoring and enforcement mechanisms. The contractors are required to supply CCO with copies of all contracts with SBE and non-SBE subcontractor and suppliers. The CCO compliance files provided to the review team included the subcontract agreements. Additional compliance forms are required from the contractor to include; subcontract participation declaration, progress payment report, subcontractor payment declaration, modification of construction contracts, and contractor exit report and declarations.

SFMTA maintains a running tally of actual payments to SBE firms for work committed at contract award. The payment data is entered in the City's Diversity Tracking System (DTS) and CCO's internal payment tracking database. The SBE firms certified as DBEs are also included in the tracking and reporting mechanisms. Prompt payment audits are conducted using the DTS to highlight discrepancies between prime payment allocations and participation reports. Staff will request cancelled checks or proof of electronic payment to subcontractors to alleviate the discrepancy.

The SBE program states that CCO will monitor and track the actual SBE participation through contractor and subcontractor reports of payments, site visits and other appropriate monitoring. More detailed procedures are outlined in the *CCO Contract Monitoring Procedures* provided to the review team during the review. Field reports were provided to the review team describing scopes of work performed by the DBE firm, Phoenix Electric, and its workforce for commercial useful function and certified payroll compliance. CCO staff members will certify in writing that they have reviewed the contracting records and monitored work sites in accordance to new DBE regulations.

The review team noted previously that improvements were needed in prompt payment monitoring and reviewing subcontract agreements for contract assurance flow down requirements. These deficiencies will be addressed through the corrective actions listed in Section 10, Required Contract Provisions of this report.

Reporting

The review team received the DBE reports completed by SFMTA from the FTA TEAM system and additional reports were provided by SFMTA prior to the review. Semi-

annual and ARRA reports from FY 2009, 2010 and 2011 were reviewed for compliance with reporting requirements. No issues were discovered with completion of the reporting forms. The review team also conducted an analysis of DBE participation for each fiscal to verify past participation numbers used in goal setting and the FY 2011 goal short fall analysis. The review team found no issues with the numbers used in the goal setting or short fall analysis reports.

Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action	Response Days/Date
1. Program Plan	26.21	AC	Keep DBE program plan updated		
2. Policy Statement	26.23	AC	Include DBELO name in SFMTA material. Update policy statement for DBE program plan		
3. DBE Liaison Officer	26.25	ND			
4. Financial Institutions	26.27	ND			
5. DBE Directory	26.31	ND			
6. Overconcentration	26.33	ND			
7. Business Development Programs	26.35	N/A			
8. Fostering Small Business Participation	26.39	N/A			
9. Determining / Meeting Goals					
A. Calculation	26.45	ND			
B. Public Participation	26.45	D	Goal advertisement after submission date	Provide a plan and timeline to conduct the public participation and advertising process for the next overall goal submission	Closed
C. TVM	26.45	ND			
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			
10. Required Contract					

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action	Response Days/Date
Provisions					
A. Contract Assurance	26.13	D	Contract assurance language missing in contract and subcontract agreements	Provide copy of amended contract monitoring procedures and method for tracking subcontracts that have been reviewed.	October 27, 2012
B. Prompt Payment	26.29	D	Payment beyond allowed by policy Retention provision inconsistently stated in contracts	Provide copy of amended contract monitoring procedures, contract boilerplate, and documentation that training was conducted	October 27, 2012
C. Legal Remedies	26.37	ND			
11. Certification Standards	26.67	ND			
12. Certification Procedures	26.83	D	Annual updates missing Expiration, renewal language still used	Ensure that annual updates are collected Remove certification expiration dates and renewal information	Closed
13. Record Keeping and Enforcements					
A. Bidders List	26.11	AC	Review feasibility of maintaining bidders list in useable format		
B. Monitoring	26.37 26.55	ND			
C. Reporting	26.11	ND			

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
FTA:				
Derrin Jourdan	FTA – Region IX	Regional Civil Rights Officer	415-744-2729	Derrin.jourdan@dot.gov
SFMTA Members:				
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DBE Subcontractor Representative				
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