

FTA

FEDERAL TRANSIT ADMINISTRATION

Wisconsin Department of Transportation Disadvantaged Business Enterprise (DBE) Compliance Review Final Report

December 2012

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: Wisconsin Department of Transportation
4802 Sheboygan Avenue

City/State: Madison, WI 53707

Grantee Number: 1245

Executive Official: Frank Busalacci
Secretary of Transportation

On Site Liaison: Michele Carter
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Site Visit Dates: May 10–12, 2011

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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 sub-recipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (17), October 1, 2010, and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

The Wisconsin Department of Transportation (WisDOT) 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 WisDOT’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 sub-recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a Compliance Review of the Wisconsin Department of Transportation's (WisDOT) Disadvantaged Business Enterprise (DBE) program is necessary.

The primary purpose of the Compliance Review is to determine the extent to which WisDOT 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 WisDOT'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 their sub-recipients, 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
- 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 WisDOT 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 WisDOT's DBE Program Plan against the compliance standards set forth in the regulations and to document the compliance status of each component

- gather information and data regarding the operation of WisDOT's Disadvantaged Business Enterprise Program Plan from a variety of sources, including DBE program managers, other WisDOT management personnel, DBEs, and prime contractors

Section 4 – Background Information

Wisconsin Department of Transportation (WisDOT) was formed in 1967 when the Wisconsin Highway Commission, Wisconsin State Patrol, and Wisconsin Aeronautics Commission merged. WisDOT is responsible for planning, developing, and maintaining the state's highways as well as planning for the different systems and modes of transportation, including air, rail, and freight water transport and pedestrian and bicycle facilities. As of 2010, there were 72 counties in the state, with a population of almost 5,687,000 people.

The organization consists of three executive offices and five divisions. The executive offices are responsible for the overall monitoring of all policies and operations related to the state's transportation responsibilities and the five divisions:

- Office of General Counsel – responsible for legal matters, conducts research and drafts proposed legislation and legal opinions
- Office of Policy, Budget, and Finance – responsible for WisDOT's budgets and financial matters
- Office of Public Affairs – responsible for marketing and advertisement of WisDOT policies and programs to the public and for the distribution of internal communication materials

WisDOT's five divisions include the following:

- Business Management (DBM) – through the Business Services Bureau, the Human Resource Services Bureau, and the Information Technology Services, responsible for day-to-day handling of purchasing, records, facilities and fleet management, personnel, payroll, technology, and more
- Motor Vehicles (DMV) – through the Driver Services Bureau, Field Services Bureau, and Vehicle Services Bureau, responsible testing and providing licenses to drivers, registering vehicles, and handling the emissions testing program
- Transportation Investment Management (DTIM) – through the Planning and Economic Development Bureau, State Highway Programs Bureau, Transit, Local Roads, Rails, and Harbors Bureau, and the Aeronautics Bureau, responsible for planning, conducting research and analyzing data and providing maintenance for the different modes of transportation and highways within the state
- Transportation System Development (DTSD) – provides oversight of the development, maintenance, and operation of the state highway system
- Wisconsin State Patrol (WSP) – through the Public Security and Communications Bureau, Field Operations Bureau, Transportation Safety Bureau, and State Patrol Academy Office, responsible for the enforcement of traffic and criminal laws and the safety of motorists using technology, training programs for motorists and patrol officers, and safety program and policy development and analysis

Section 5 – Scope and Methodology

Scope

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

1. You must submit 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. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
8. An overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a recipient's DOT-assisted contracts [49 CFR 26.43 – 26.53].
9. All contracts must include a non-discrimination clause, a prompt payment clause and must implement appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
10. A certification process must be intact to determine if a potential DBE is legitimately socially and economically disadvantaged. The potential DBE must submit an application, a personal net worth statement and a statement of disadvantage, along with the proper supporting documentation [49 CFR 26.67].
11. The certification procedure must include document review and an on-site visit and determine eligibility consistent with Subpart D of the regulations [49 CFR 26.83].
12. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a

monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. [49 CFR 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 WisDOT by FTA's Office of Civil Rights. The agenda letter notified WisDOT of the planned site visit, requested preliminary documents, and informed WisDOT of additional documents needed and areas that would be covered during the on-site portion of the review. It also informed WisDOT 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, WisDOT staff, and the review team.

Subsequent to the entrance conference, a review was conducted of WisDOT's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer (DBE LO). Interviews were then conducted with WisDOT regarding DBE program administration, record keeping, and monitoring. These interviews included staff from Diversity, Procurement, and Finance. A sample of contracts was then selected and reviewed for its DBE elements.

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

Following the site visit, a draft report was compiled. Prior to the completion of the draft report, WisDOT submitted a revised DBE Program Plan dated February 28, 2012. Policies and procedures contained in that revision are referenced throughout this report. FTA transmitted the draft report to WisDOT for comments on December 12, 2012. On January 18, 2013, WisDOT provided comments to the draft report that were incorporated into this final report.

NOTE: Materials and information to address the findings and corrective actions 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.

During the site visit, WisDOT provided a comprehensive DBE Program Plan describing how it will administer the provisions of 49 CFR Part 26. The introduction indicated that the plan is a work in progress based upon the collaborative redesign efforts of the DBE Work Group. The DBE Work Group will take this redesign effort in two phases. Phase I will respond immediately to the changes mandated by 49 CFR Part 26 without making any major modifications to the existing program. Phase II efforts will be directed at long-term changes that will be needed for full compliance with new regulations. During the site visit, WisDOT was advised by the review team to include a date on its Program Plan that would specify where they are in the redesign process. Subsequently, WisDOT submitted the newly-revised DBE Program Plan in February 2012, and the most recent revision dates were included on the cover.

The Bureau of Transit, Local Roads, Railroads & Harbors Division of Transportation Investment Management has a *Transit Oversight Procedure Manual* last updated April 15, 2011. WisDOT developed these procedures for the administration and management of federal grant programs. Compliance with federal contract clauses is outlined in the manual to include the DBE Program Plan, goal setting, monitoring and reporting, DBE compliance and program administration, efforts to solicit DBEs, and annual review of procedures.

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' organizations 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 in the Program Plan is written in the first person by the Secretary of the Wisconsin Department of Transportation. The Secretary states that the policy has been disseminated to Board of Directors and all the components of the organization. The policy is also distributed to the DBE and non-DBE business communities that perform work on USDOT-assisted contracts.

Frank Busalacchi, the former Secretary of WisDOT, was succeeded by Mark Gottlieb, P.E., in January 2011. The policy statement has no name, signature, or date, and it is unclear what administration endorsed the policy statement in the Program Plan.

Corrective Action and Schedule: Within 30 days of the issuance of the final report, WisDOT must submit a signed and dated policy statement from the Secretary of Wisconsin Department of Transportation and evidence of the policy statement's dissemination. Many agencies include the policy statement on their public website to comply with this requirement.

Grantee Response: WisDOT has submitted an updated policy statement signed by Secretary Mark Gottlieb and dated January 18, 2013. The newly signed policy statement states that the "policy is posted on the WisDOT public website" and that copies were transmitted to WisDOT's stakeholder committees.

FTA Response: FTA agrees with WisDOT's response to the noted deficiency. This deficiency is now closed.

3. DBE Liaison Officer

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

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

The policy statement indicates that the Director of the DBE Programs Office has been delegated at the DBELO. In that capacity, the DBE Programs Director is responsible for implementing all aspects of the DBE program.

The Program Plan further indicates the name and contact information for the DBELO and her responsibilities for developing, implementing, and monitoring the DBE program in coordination with other appropriate officials. The plan states that Michele Carter, as Director, has direct, independent access to the Secretary concerning DBE program matters. The plan states that Ms. Carter has a staff of 13 professional employees. The organization chart provided to the review team indicates that as of April 18, 2011, there were two vacancies in the DBE section. Ms. Carter advised the review team that staffing is adequate, however; additional staff or consultants may be needed to implement some of the new DBE requirements from the 2011 DBE Final Rule.

Ms. Carter indicated that she had direct and independent access to the former Secretary through monthly meetings related to the DBE program. As of the date of the onsite review, Ms. Carter indicated that she has yet to meet with the Secretary in the current administration. However, a meeting between the Secretary and Ms. Carter was scheduled for the May 30 to discuss setting up a meeting schedule for the DBE program.

The DBE Program Office appeared to be disconnected from the Transit Office in regards to FTA-assisted DBE program activities, which impacts the DBELO's ability to manage the FTA portion of the state's DBE program. The DBELO indicated that it does track participation in its database system for transit construction-related activities, such as the Milwaukie Intermodal Facility. The review team recommended that the DBELO, who is responsible for all aspects of the DBE program, take a more proactive role in assisting the Transit Section with develop tracking and reporting tools for sub-recipient and other FTA-assisted activities. WisDOT's revised DBE program includes examples of areas where the Transit Section must collaborate with the DBE Programs Office and includes tools that can be used for its contracting activity.

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. However, an advisory comment was provided.

WisDOT's DBE Program Plan indicated that it would investigate to the full extent of services offered by financial institutions owned and controlled by socially- and economically-disadvantaged individuals in the community and make reasonable efforts to use these institutions and encourage prime contractors on USDOT-assisted contracts to make use of these institutions.

No information was provided as to the status of identifying any of these financial institutions. WisDOT indicated during the review that the Urban League in North Milwaukie provided \$400,000 for mobilization of DBEs on projects.

Advisory Comment: WisDOT is advised to document efforts to routinely seek out and use DBE financial institutions and to encourage prime contractors to use these institutions.

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 DBE directory is on WisDOT's Civil Rights Compliance website page. The directory is searchable by NAICS code or location and can be sorted by company name, NAICS code, or work classification. The record detail shows the basic contact information for the DBE, type of work narrative, applicable NAICS code, qualifying

group membership, Unified Certification Program (UCP) certifier, preferred work locations, and if the firm is an airport concessionaire. WisDOT indicated that the directory is updated daily.

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.

WisDOT states in its DBE Program Plan that it has not identified that overconcentration exists in the types of work the DBEs perform. The DBE Liaison Officer advised the review team that overconcentration was evaluated annually as part of the overall agency goal-setting process. This evaluation will now occur triennially with the new goal-setting requirements. The Transportation Advisory Committee (TRANS-AC) provides feedback to WisDOT regarding DBE matters. More is discussed about this committee in the Public Participation section of this report.

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, no deficiencies were found in the area of Business Development Programs.

WisDOT does not have a BDP, as outlined in Appendix C in the regulations. It has established a Mentor Protégé Program in accordance to Appendix D in the DBE regulations. WisDOT provided the review team a Mentor Protégé Program dated February 2004 that outlined the requirements for acceptance in the program. The proper references to 26.35 and Appendix D were included in the program.

8. Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45): To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is 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 WisDOT Bureau of Transit submitted its goal methodology for FY 2011–2013 to the Region V Civil Rights Officer on August 1, 2010. The methodology described the

responsibilities of the Transit section as oversight for programs that fund transit services to include public transit, urban systems using large buses, and rural areas using share-ride taxi systems, and specialized transit, primarily specialized systems serving targeted populations.

Step 1: Determining the Base Figure

WisDOT determined a base figure for the relative availability of DBEs using the Wisconsin UCP directory and the Census Bureau's County Business Pattern database. Under NAICS code 485 (Transit and Ground Passenger Transportation), the Wisconsin UCP directory indicated that there were 11 DBE firms and the County Business Pattern database indicated a total of 537 transit establishments. This equated to a 2% Step 1 base figure.

WisDOT included a statement in its methodology that it is in the process of revising its goal-setting methodology to capture the level of DBE participation in accordance with the DBE regulations and to ensure that all contractible opportunities are included in the goal setting. It was discussed that the Transit representatives should explore other contractible opportunities beyond one NAICS code to include in the goal-setting process. The Transit section produced an expanded list of contractible opportunities during the review, with up to 16 NAICS codes. These included consulting services and procuring mixed-mode transportation, fuel, industrial and computer equipment in addition to other categories. Once these new codes are included in the Step 1 process, the goal will need to be amended.

Step 2: Adjusting the Base Figure

A table was included in the Step 2 adjustment that outlined DBE Goals vs. Actual Achievements for the last six years. WisDOT indicated that they examined the goals set for the past six years and took the median percentage. The goals were either 7.5% or 9.6% for the past six years. The median percentage was determined to be 8.5% (the average of 7.5% and 9.6%). The 2% step one base figure was then added to—not averaged with—the 8.5% to arrive at 10.5%. The 10.5% figure was averaged (although it was unclear what this number was averaged with), which resulted in a 5.25% adjusted overall goal.

The review team discussed using the table information to derive past participation (not past goal) percentages and for determining the median number. Once the median number is established, the median number should be average with (not added to) the Step 1 base figure to get an overall adjusted goal.

The WisDOT goal methodology included a Step 3 process for race-neutral and race-conscious breakdown. WisDOT staff mentioned that the proposed methodology for calculating the race-neutral and race-conscious components will be determined by analyzing the DBE achievement of the goals for FY 2004–2009. WisDOT stated that until it is able to determine a final goal-setting methodology, the goal of 5.25% will be achieved by race neutral means. The table in the methodology indicated that the goals for the past six years were all race-neutral. The table indicated the 2008 and 2009 goals of 9.6% were to be achieved race-neutrally, and actual achievements were 3% and 8.5%,

respectively. According to the table, this failure to meet the goal through race-neutral means would constitute WisDOT using race-conscious measures to achieve its overall goal.

Corrective Action and Schedule: By August 1, 2013, WisDOT must submit a DBE goal methodology for FY 2014–2016 that is guided by the goal-setting principles issued by the Department. WisDOT’s submission must include:

- all of the reasonably anticipated FTA-assisted contracting opportunities that will be awarded between FY 2014–2016 for WisDOT and its sub-recipients
- an analysis of past participation to ascertain whether the contracting opportunities are sufficiently similar to warrant an adjustment in Step 2
- an analysis of WisDOT’s performance and the type of opportunities that will be available to determine whether race-conscious measures should be implemented

Grantee Response: WisDOT will undertake the following action items to produce its FY 2014 – 2016 DBE goal methodology:

- Identify all subrecipients reporting to WisDOT
- Properly define contractible opportunities
- Collect anticipated project information from Transit staff and subrecipients
- Review past FTA funded projects/contracts
- Project forward for 3 year goal setting period
- Prepare draft of anticipated contract opportunities
- Identify NAICs codes
- Identify contract reach
- Review UCP list to identify existing DBEs
- Incorporate Bidders List information for non-DBEs
- Develop initial weighted base goal
- Adjust for past participation
- Establish RN/RC split
- Review goal with DBELO
- Adjust goal as necessary
- Prepare draft goal report

FTA Response: FTA agrees with the response to the noted deficiency. Follow-up on this item will be handled via the regional review and approval of WisDOT’s DBE Goal Methodology. WisDOT is reminded that its DBE Goal must be submitted to the Regional Office by August 1, 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.

The goal methodology submitted by WisDOT Bureau of Transit did not discuss public participation. The DBELO advised the review team that the public participation process includes all three modal activities. The public participation process was explained in the FY 2010 Highway goal methodology from September 1, 2009. The narrative in the 2010 Highway goal indicated that the Transportation Advisory Committee (TRANS-AC) conducted an extensive analysis and discussion of the goal. TRANS-AC is a permanent and critical standing committee that advises WisDOT on nearly all aspects of its DBE program. This includes overall annual goals and also includes recommendations for program revisions, processing and tracking good faith waivers, tracking goal achievements, drafting contractor guidance, and developing educational objectives and efforts, as well as other issues of concern to DBE firms, the industry, and other stakeholders.

The goal is recommended by TRANS-AC and reviewed by WisDOT. The highway, transit, and aviation FFY 2010 goals were published on WisDOT's website and in three major print publications. WisDOT also conducted face-to-face public information meetings to the goal-setting process in four cities in the state.

WisDOT's FTA DBE goal for FY 2011–2013 was due on August 1, 2010, and its Federal Highway Administration (FHWA) triennial goal is not due until August 1, 2011. The last goal-related public participation process conducted by WisDOT appeared to be during the FY 2010 highway goal period. There was no information as to a public participation process for the FY 2011–2013 FTA goal setting period. Since Highway and Transit goals will be set on a staggered schedule, WisDOT must determine how the public participation process will be addressed moving forward. WisDOT's revised DBE Program establishes a Goal Submittal Timeline for the Transit Section's DBE Goal Setting process. The timeline includes a May 30 deadline for completing the consultative process and a June 15 deadline for issuing the public notice.

Corrective Action and Schedule: By August 1, 2013, WisDOT must submit documentation that the consultative process has occurred within its FY 2014–2016 goal methodology according to the timeline established in its DBE Program.

Grantee Response: WisDOT provided the following areas as action items as next steps for including public participation throughout its goal setting process:

- Review current DBE Program procedure
- Discuss appropriate forum for development and review of goal with DBELO
- DBE Program assistance for public participation
- Publish draft goal
- Revise goal as necessary
- Finalize goal/goal report
- Submit goal to FTA

FTA Response: FTA disagrees with WisDOT's response to the noted deficiency. The information provided does not express the strategy for public participation in enough detail to ascertain WisDOT's level of compliance. WisDOT must take care to include a consultative process prior to publishing the goal and fully document the comments resulting from those meetings along with any comments received following the publication of notice to inspect and how or if this process has caused WisDOT to make any adjustments to the goal. That being said, follow-up on this item will be handled via the regional review and approval of WisDOT's DBE Goal Methodology, therefore this deficiency is 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, deficiencies were found with the requirement for transit vehicle manufacturers.

The review team requested a recent vehicle procurement to analyze WisDOT's transit vehicle manufacturer procedures and practices. The procurement Bid #265444 for a Medium-Bus-Diesel-Fiberglass-Accessible was reviewed. The Disadvantaged Business Enterprise Certificate indicated that the undersigned certified that the manufacturer of the transit vehicle offered had a DBE program and goal for DBE participation, as required by 49 CFR 23.41(e) and 49 CFR 23.67, which have been approved by FTA. The certificate did not include a signature space for the "unsigned" to certify compliance. The manufacturer was Supreme-Startrans Bus, and the distributor was Atlas Bus Sales. An FTA DBE goal approval letter for Supreme Corporation/Startrans Bus was included as part of the package. WisDOT has included within its updated DBE Program a correct reference to 49 CFR Part 26 in regards to TVM certification.

Corrective Action and Schedule: Within 30 days of the issuance of the final report, WisDOT must:

- submit updated procurement boilerplates that reference 49 CFR Part 26
- add procurement procedures to verify on FTA's website TVM program approval

Grantee Response: WisDOT has identified the following action items in response to the noted deficiency:

- Identify all current references to TVM
- Correct each existing reference (49 CFR Part 26)
- Properly define transit vehicles
- Review and update existing procedures to include: request TVM certificates in procurements, verification of submittal, and final check against FTA website listing
- Educate staff regarding procedure

FTA Response: FTA agrees with WisDOT's response to the noted deficiency. To close this deficiency, within 60 days of the issuance of the final report WisDOT must submit an updated DBE Program and procurement boilerplates reflecting the new policies and procedures.

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, deficiencies were found in the area of race-neutral participation.

The goals methodology indicated that for the past six years goals were achieved through race-neutral means. In reviewing a sample of WisDOT FTA-assisted contracts and proposals over the past years, several included a DBE contract goal. The Milwaukee Intermodal Station from February 2006 had a 30% goal, and the City of Manitowoc Intermodal Transfer Facility from August 2010 had a 5.35% goal. WisDOT indicated that the FY 2011–2013 triennial goal of 5.25% would be achieved race-neutrally. However, one procurement in the first quarter of fiscal year 2011 included a contract goal of 20% on an RFQ for Bad River Transit Administrative and Maintenance Facility issued November 19, 2010.

WisDOT is also advised to review past race-neutral achievements to determine if race-conscious measures are warranted.

Corrective Action and Schedule: By August 1, 2013, WisDOT must submit a projection of the proportion of DBE participation will be expected to be achieved through race-neutral means in comparison to race-conscious measures with the 2014- 2016 DBE goal methodology.

Grantee Response: WisDOT has identified the following steps to undertake in an effort to project the race conscious/race neutral split:

- Review five years of past participation
- Ensure RN/RC data has been collected
- Establish RN/RC split for upcoming 3 year goal

FTA Response: FTA partially agrees with WisDOT's response to the noted deficiency. There are many factors to take into consideration when calculating the race-conscious/race-neutral split aside for past participation. FTA recommends that WisDOT follow the goal setting principles and best practices issued by the Department. <http://osdbu.dot.gov/DBEProgram/tips.cfm>. Follow-up on this item will be handled via the regional review and approval of WisDOT's DBE Goal Methodology, therefore this deficiency is now closed.

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 may be made on an individual basis, depending on conclusions of the studies performed.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for race-conscious participation on overall and contract goals.

The Milwaukee Intermodal Station contract included Section 00930 DBE & EBE (Emerging Business Enterprise) Participation Program. The requirements state that each subcontractor will be required to use DBE- and EBE-managed and controlled firms to a goal of 30% of the total subcontract amount (not including owner direct purchases). Subcontractors substantially exceeding the 30% may be given special consideration in the award of subcontracts.

DBE goals on a DOT-assisted contract should not include a non-DBE certification in the goal percentage. Additionally, each subcontractor had to use 30% of the subcontract amount instead of the prime contractor meeting 30% of the contract amount. Good faith effort information was included in the contract; however, it was not clear how 30% was determined and if there were sufficient contractible opportunities for each subcontractor to meet the goals.

Corrective Action and Schedule: Within 30 days of receipt of the issuance of the final report, submit evidence that contract goal language has been revised to separate state and local goals from federal DBE goals.

Grantee Response: WisDOT has identified the following action items as next steps for improving its process for establishing contract goals:

- Clarify use of RC goals
- Develop *internal* process to include: notification of upcoming projects, project definition (i.e. project name, number, scope, estimated cost, subcontracting opportunities, NAICs codes), draft goal
- Develop *external* goal approval process to include review and approval by DBELO
- Inclusion of contract specific goal in procurement documents
- Monitoring over life of contract
- Update procedure documents

- Educate staff

FTA Response: FTA agrees with WisDOT's response to the noted deficiency. To close this deficiency, within 60 days of the issuance of the final report, WisDOT must submit an updated DBE Program Plan which reflects the proposed procedural changes. Also within 60 days of the issuance of the final report, WisDOT must submit documented implementation of their contract goal setting process including updated procurement boilerplate language and a timeline for conducting training for all staff affected by these changes.

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 with the requirements for good faith efforts.

The WisDOT DBE Program Plan describes the GFE process as being a matter of responsibility. Each solicitation for which a contract goal has been established requires the bidders to submit GFE information within five days of the award of the bid. Within five days of being informed by WisDOT that it is not responsible because it has not documented sufficient good faith efforts, a bidder may request an administrative reconsideration. Bidders are required to make a request to the reconsideration official, Michele Carter. A committee comprising three individuals reviews the reconsideration request.

The Milwaukee Intermodal Station contract included GFE language, and the Bad River Transit Administrative and Maintenance Facility included exhibits of a DBE good faith waiver and an appeal to denial of a GFE waiver.

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. However, an advisory comment was made regarding counting DBE participation.

WisDOT's DBE Program Plan does not go into detail about counting DBE participation. The DBE Office uses a Civil Rights Compliance System (CRCS) for certified payroll, tracking payments to DBE subcontractors and confirming payments made to DBEs and other functions. The CRCS is a multi-purpose, Web-based system developed and procured by WisDOT under contract with a consultant.

The Transit section has a Transit database to capture DBE participation. However, the DBE Office will track participation on FTA-funded construction activities let by WisDOT, as it did with the Milwaukee Intermodal Station.

Advisory Comment: It is advised that WisDOT include information on counting DBE participation in its Program Plan. WisDOT should also consider allowing the Transit section to track non-construction-related activities in the Civil Right Compliance System if non-construction highway activities are also tracked in the system.

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.

The review team analyzed the Milwaukee Intermodal Station for quota elements. Even though there was a 30% goal for each subcontractor, good faith efforts were considered if the goal was not met.

9. Required Contract Provisions

A) Contract Assurance

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

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for Contract Assurances.

The *Transit Oversight Procedure Manual* indicates that the WisDOT Transit section requires sub-recipients to provide as many certification and assurances as needed for all programs for which the sub-recipient intends to seek FTA assistance for the respective federal fiscal year. WisDOT's Bureau of Transit and Local Roads prepared Federal Certifications and Assurances for operating and capital projects. The certifications and assurances are categorized from Q-1 to Q-13, with Q-5 being the DBE Assurance. Attachment Q-5 includes four paragraphs of DBE assurances, none of which includes the language used in the WisDOT DBE Program Plan or in Part 26.13 of the DBE regulations. The agreement with WisDOT and the City of River Falls and the DBE firm, [REDACTED], with City of River Falls both included the Q-5 DBE Assurance.

The certifications and assurances for 5311 projects included an Attachment Q-5(a) DBE Contracting Opportunities which identified the goal for federally funded contractible opportunities. The form indicated that DBE goals and contracting requirements pertained only to procurements over \$250,000. The review team advised WisDOT Transit section that this was an incorrect statement. WisDOT indicated that Attachment A-5(a) would be removed from all documents.

The Bureau of Transit, Local Roads, Rails & Harbors prepared a *Federal Contract Clauses for Third-Party FTA-Funded Projects* manual, last updated April 8, 2011. The DBE clause stated,

“The Recipient and/or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all contracts and sub-agreements supported with federal assistance from the U.S. DOT.”

This language is inconsistent with the language used in the WisDOT DBE Program Plan and the DBE regulations. It appears that this is language from 49 CFR Part 23 minus the reference of “maximizing” and actually citing Part 23. The Milwaukee Intermodal Station included this language in its project requirements.

The Bad River Transit Administrative and Maintenance Facility included the verbatim language of 26.13 and WisDOT DBE program manual.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, WisDOT must submit an update within its DBE program that describes the process used for monitoring and tracking contract assurance language included in all FTA-funded agreements, contracts, purchase orders, and subcontracts, including contracts and subcontracts issued by WisDOT’s sub-recipients

Grantee Response: WisDOT submitted the following action items to address the deficiency finding related to contract and grant assurance:

- Identify proper language
- Identify all instances of contract assurance usage
- Update all documents as needed
- Update procedure documents
- Educate staff

FTA Response: FTA agrees with WisDOT’s response to the noted deficiency. To close this deficiency, within 60 days of the issuance of the final report, WisDOT must submit an updated DBE Program Plan which details the process for monitoring, the mechanism for tracking and the staff responsible for ensuring that the contract assurance clause is included in all contract agreements. Also within 60 days of the issuance of the final report, WisDOT must submit documented evidence that the existing subrecipient agreements have been amended to include the appropriate language from §26.13(a).

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 its

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 Prompt Payment.

Prompt Payment

Prompt Payment is described in WisDOT's DBE Program Plan as follows: Within 10 calendar days of receipt by a contractor of a progress payment for work performed, materials furnished or materials stockpiled by a subcontractor, the contractor shall pay that subcontractor for all work satisfactorily performed and all materials furnished or stockpiled. The plan states that all subcontracting agreements made by a contractor shall include the above provisions and shall be binding on all contractors and subcontractors.

Several proposals and contracts were reviewed for compliance with this part. The Milwaukee Intermodal Station RFQ/P included the 10-day prompt payment clause. However, the contract with the successful proposer, C.G. Schmidt, stated in Section 9.6, Progress Payments, that the contractor shall promptly pay each subcontractor upon receipt of payment from the owner. Prompt was not clearly defined in the agreement. C.G. Schmidt described in Section 01152, "Applications for Payment", that each subcontractor shall pay each of its subcontractors, including material suppliers, for satisfactory performance under its subcontract not later than seven (7) days from receipt of payment.

The City of River Falls RFP and the contract with successful proposer and DBE firm, [REDACTED], did not specify prompt payment guidelines. The contract was to provide share-ride taxi services for the City of River Falls. The DBE representative for [REDACTED] indicated during the interview that the work was self-performed and no work was subcontracted.

The RFPs for Bad River Transit and City of Manitowoc both included prompt payment guidelines of 10 days for payment to subcontractors. However, the A&E contract for the City of Manitowoc with [REDACTED], did not include any references to prompt payment.

Return of Retainage

In June 2003, US DOT 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.

The DBE Program Plan states that the contractor is to release retainage amounts to each subcontractor within 10 calendar days after the subcontractor's work is satisfactorily completed. The contractor is also required to reduce to amount of retainage withheld

from the subcontractor within 10 days of the WisDOT reducing the contractor's retainage.

The retainage language was included in the RFPs for the Milwaukee Intermodal Station, Bad River Transit Maintenance Facility, and City of Manitowoc Intermodal Transfer Facility. However, the number of days to return retainage was 30 days for the Bad River Transit proposal. The actual contracts for C.G. Schmidt on the Milwaukee Station, [REDACTED] on the River Falls, and [REDACTED] on the Manitowoc projects did not include retainage clauses.

WisDOT monitors prompt payment through CRCS for Transit construction projects. A mechanism will need to be included to monitor prompt payment and return of retainage on non-construction and sub-recipient transit projects.

Corrective Action and Schedule: Within 30 days of the issuance of the final report, WisDOT must submit an update within its DBE Program that details the mechanism for tracking prompt payment of sub-contractors and return of retainage.

Grantee Response: WisDOT submitted the following action items in response to the deficiency finding:

- Identify proper language consistent with the DBE Program Plan
- Develop boilerplate language
- Ensure language inclusion in all RC contracts
- Review payment tracking process
- Ensure prompt payment is occurring
- Update procedure documents
- Educate staff

FTA Response: FTA disagrees with WisDOT's response to the noted deficiencies. WisDOT has already determined its prompt payment terms within its original DBE Program Plan a change to those terms does not remedy the lack of enforcement of this provision. Further, prompt payment is a requirement that applies to all subcontractors whether it is a DBE or non-DBE owned firm, and applies with or without the inclusion of contract goals. Based on WisDOT's response, it is clear that WisDOT needs to revisit not only the manner in which it will monitor prompt payment, but also how it will enforce this provision. Within 60 days of the issuance of the final report, WisDOT must submit an updated DBE Program containing the policies and procedures it will put in place to ensure that prompt payment is actively monitored and enforced.

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 three projects reviewed with DBE goals included the Milwaukee Intermodal Station, Bad River Transit, and City of Manitowoc. These projects referenced compliance with program requirements and non-compliance was considered a breach of contract, which could result in termination or such other remedy deemed appropriate.

10. Certification Standards

Basic Requirements (49 CFR Part 26.67): The recipient must have a certification process in place 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 certification representative was interviewed to discuss WisDOT's certification standards and procedures. The Wisconsin UCP was described as a four-certification partner group. These agencies include Milwaukee County, City of Madison, Dane County, and WisDOT. WisDOT certification staff includes one individual with sole certification responsibility and two individuals with collateral duties.

The review team requested certification files to review for compliance with subparts D and E of the DBE regulations. These files included Aamazon Natural Resources (removal), Andrews Services Corp. (new), EMCO of Wisconsin (denial), Four Bears Construction (new), IH Sources (removal), and Jeta Corporation (denial).

The reviewed files did not indicate any issues with meeting the requirements of certification standards. The review team did note that a PNW statement for the owner of EMCO of Wisconsin was significantly incomplete in the certification file.

11. Certification Procedures

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

Discussion: During this DBE Compliance Review, no deficiencies were found for the requirements for Certification Standards.

The CRCS tracks certification status and processes annual updates and "re-certifications." Applicants and DBEs can manage their certification online through this system. WisDOT includes a 54-page *UCP Certification Manual* on its website that explains how to use the system. It also included video tutorials online to assist end-users with using the system.

The review team found no issues with the denial, removal, or the annual update process. Many of the notices are generated electronically, which assists staff with timely notifications of status or other issues in the certification process.

12. 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, deficiencies were found with the requirement for maintaining the bidders list, monitoring, and reporting.

Bidders List

The Bureau of Transit has two divisions, including Policy & Program Development Unit and Administration & Finance Unit. The review team discussed the procurement process with the representative in the Administration & Finance Unit with procurement responsibilities. An internal vendor list is maintained for firms providing transit-related activities. The vendor list included the basic contact information of the firm. WisDOT will need to include DBE status, age of firm, and annual gross receipts to use this list as a bidders list.

Monitoring

The *Transit Oversight Procedure Manual* outlines its monitoring and reporting process. The WisDOT Transit Section uses a form titled DBE Report Form DT1788 to record and monitor DBE contracting opportunities. The Transit section goes on to state in the manual that it recognizes that the DBE Report Form needs to be revised to more accurately capture more meaningful data. Sub-recipients submit the report to WisDOT on a semi-annual basis to coincide with the FTA semi-annual reporting requirement. The data collected are entered on the Transit database and are used to assist in determining DBE achievement levels. The Transit section also has engaged the services of two consulting firms to assist in developing and administering the DBE program for FTA-funded activities.

Transit section representatives indicated that they also use Exhibit Q-6, DBE Participation form, for sub-recipients to complete and send to WisDOT on an annual basis. The grantee is to list the vendor or firm name, location, type of goods or services provided, DBE, WBE, or potential qualifier. The instructions note that all vendors indicated as DBE and/or WBE must be certified. Potential qualifiers are only firms known not to be certified, yet are minority-owned. WisDOT must ensure that only firms certified as DBE are counted and reported on FTA-assisted projects.

The Transit database consists of spreadsheets of sub-recipient activity for each respective program of responsibility (i.e., 5310, 5311, 5304, etc.), maintained by program analysts. These spreadsheets are not connected to the more comprehensive CRCS used by WisDOT on highway projects and some WisDOT-let transit construction projects.

Therefore, no running tally of commitments or attainments is readily-available without extensive collaboration of documents and processing of formulas.

Reporting

The program analysts in the Transit section are responsible for FTA grant-funded programs. They maintain spreadsheets from the semi-annual DBE Reports submitted by the sub-recipients. This information is then submitted to the FTA Compliance representative for inclusion in the FTA semi-annual report. The review team discussed in detail the reporting process with the FTA Compliance representative and the 5311 Program Analyst. The 5311 subrecipient activity was captured on the spreadsheet and then transferred to a separate semi-annual reporting form. This was the process for each funding program with each program analyst. The 5311 activities reviewed indicated that only the federal share was reported on the FTA semi-annual report. The FTA Compliance representative will need to ensure that other program analysts are including only the federal share in its reports.

It was discovered that the 5311 funded awarded activities were divided by two and reported over two semi-annual reporting forms for the fiscal year. The review team advised the Transit representatives that all activity must be reported only for the period specified in the form.

WisDOT also was not including ARRA-funded project awards in the regular semi-annual reports, but it did submit the quarterly ARRA-only reports. The review team also worked with WisDOT's TEAM representative to get her user access to complete the reporting forms in TEAM.

Corrective Action and Schedule: Within 30 days of the issuance of the final report, WisDOT must submit an update within its DBE Program that details how the bidders list will be collected for its FTA-assisted contracting activities and its sub-recipients and procedures for providing written certification of worksite visits where DBEs are performing work as well as monitoring and tracking DBE participation. WisDOT must also submit an update within its DBE program that documents procedures for capturing accurate and complete reporting data for semi-annual reports to FTA using TEAM.

Grantee Response: WisDOT submitted the following action items in order to address the various deficiency findings:

Bidder's List:

- Identify sources of information to include: subrecipients, program managers, purchasing, CRCS
- Ensure complete information is obtained from all sources
- Determine where to house Transit Bidders List
- Determine who will maintain Transit Bidders List
- Update procurement documents
- Educate staff

Monitoring:

- Determine internally what "monitoring" means (i.e. what and when to monitor)

- Determine where monitoring assistance is needed (i.e. which types of contracts)
- Decide where assistance will come from (contractors or DBE Program staff)
- Discuss with DBELO
- Update procedure documents
- Educate staff

Reporting:

- ARRA reporting –corrected since 2011 Review
- Examine methods describe in 2011 and compare it with the current process in place (i.e. use of Database)
- Determine whether tools are suitable
- Determine who will collect the data
- Identify what to report, when to report and how to report
- Modify database as appropriate (screens, functionality)
- Update procedures document
- Educate staff

FTA Response: FTA agrees with WisDOT’s response to the noted deficiency. FTA also acknowledges and approves WisDOT’s request for more time to implement these action items. However, the requirements that WisDOT has failed to implement to this point are long standing provisions of 49 CFR Part 26. That being said, WisDOT must submit an updated timeline for implementation and incremental updates on its progress within 60 days of the issuance of the final report. All submissions should include demonstrate WisDOT’s implementation of the new procedures.

Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date
1. Program Plan	26.21	ND			
2. Policy Statement	26.23	D	Policy Statement unsigned	Have current Secretary sign the policy statement	Closed
3. DBE Liaison Officer	26.25	ND			
4. Financial Institutions	26.27	AC	Identify and list financial institutions		
5. DBE Directory	26.31	ND			
6. Overconcentration	26.33	ND			
7. Business Development Programs	26.35	ND			
8. Determining / Meeting Goals					
A. Calculation	26.45	D	Not including all contract opportunities, incorrect Step 2 adjustment	Include all reasonably anticipated contract opportunities, verify past participation and conduct correct Step 2 analysis, if needed within FY 2014–2016 goal methodology	Closed in lieu of goal submission due: August 1, 2013
B. Public Participation	26.45	D	Unclear if FFY 2011–2013 goal included a public participation process	Provide verification of public participation process conducted within 2014–2016 goal methodology	Closed in lieu of goal submission due: August 1, 2013
C. TVM	26.49	D	Incorrect references made to 49 CFR Part 23	Revise procurement boilerplates to include reference to compliance with 49 CFR Part 26	April 22, 2013
D. Race-Neutral	26.51	D	Using contract goal on procurements in first quarter of fiscal year in a race-neutral program	Review past participation and reports to see if race-conscious measure are warranted to achieve DBE goals	Closed in lieu of goal submission due: August 1, 2013
E. Race-Conscious	26.51	D	Blended contract goals of another program with DBE goals	Submit updated procedures for contract goal setting in the DBE Program, as well as procurement boilerplates	April 22, 2013

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date
F. Good Faith Efforts	26.53	ND			
G. Counting DBE Participation	26.55	AC	Review possibility of tracking participation in the Compliance System		
H. Quotas	26.43	ND			
9. Required Contract Provisions					
A. Contract Assurance	26.13	D	Non-discrimination clause missing or incorrect	Update DBE Program to include procedures for tracking contract assurance language in grant agreements as well as prime and subcontracts. Submit evidence of the implementation of the contract assurance monitoring procedures. Submit evidence that subrecipient agreements have been amended to include correct language.	April 22, 2013
B. Prompt Payment	26.29	D	Prompt payment/return retainage clause missing in some agreements	Update DBE Program to include a mechanism for tracking prompt payment/return of retainage clause compliance. Submit proof of implementation of prompt payment procedures.	April 22, 2013
C. Legal Remedies	26.37	ND			
10. Certification Standards	26.67	AC	Personal Net Worth form was incomplete for EMCO firm		
11. Certification Procedures	26.83	ND			
12. Record Keeping and Enforcements					
A) Bidders List	26.11	D	No bidders list collected	Update DBE Program to include a process for collecting information required in 26.11. Submit timeline to implement	April 22, 2013
B) Monitoring	26.37, 26.55	D	Discuss revising forms and process.	Update the DBE Program to include a mechanism for ensuring that DBE participation is captured, verified, and	April 22, 2013

Requirement of 49 CFR Part 26	Ref.	Site Visit Finding	Description of Deficiencies	Submit Corrective Action Plan and Schedule for the following:	Response Days/Date
C) Reporting	26.11	D	Incorrect reporting, not including ARRA projects	reported effectively. Submit timeline to implement Update DBE Program to include a process for ensuring accurate DBE reporting data in TEAM. Submit timeline to implement. Submit supporting documentation for DBE reports that were reconciled since 2011.	April 22, 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
FTA:				
Ryan Inman	FTA Office of Civil Rights (via teleconference)	DBE Technical Lead	(202) 366-5017	Ryan.inman@dot.gov
WisDOT Members:				
Michael Berg	WisDOT	Deputy Secretary	(608) 266-1114	Michael.berg@dot.wi.gov
Jacob Miller	WisDOT	Program and Planning Analyst	(608) 264-7335	Jacob1.miller@dot.wi.gov
Becky Soderholm	WisDOT	Federal Compliance Manager	(608) 266-1650	Becky.soderholm@dot.wi.gov
Dean Gauger	WisDOT	Transit Program Manager-Procurement	(608) 266-9637	Dean.gauger@dot.wi.gov
Ian Ritz	WisDOT	ARRA Specialist – Program & Policy Analyst	(608) 267-6680	Ian.ritz@dot.wi.gov
John Franklin	WisDOT	Equal Opportunity Specialist	(608) 264-8721	John.franklin@dot.wi.gov
Mary Ebeling	WisDOT	ARRA Specialist – Program & Policy Analyst	(608) 264-8700	Mary.ebeling@dot.wi.gov
Joseph Kapper	WisDOT	Program & Policy Analyst	(608) 264-9532	Joseph.kapper@dot.wi.gov
Deana Merryman	WisDOT	Chief Procurement Officer, Bureau of Fiscal Services	(608) 266-3545	deanam@dot.wi.gov
Michele Carter	WisDOT	Civil Rights and Compliance Section Manager	(608) 266-6961	Michelle.carter@dot.wi.gov
City of River Falls Representative:				
Julie Bergstrom	City of River Falls	Finance Director / Treasurer	(715) 426-3416	Jbergstrom@rfcity.org
DBE Subcontractor Representative				
██████████	██████████	President	██████████	
Interested Parties				
Gary Mejchar	American Indian Chamber of Commerce	Assistant / Program Director	(414) 604-2044	Gary.aiccw@gmail.com
Jeff Johnson	American Indian Construction Trades Association	Member	(608) 807-0135	
Thomas Burse	National Minority Contractors Association	President, Wisconsin Chapter	(414) 271-1090	

Milligan & Co., LLC:				
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