



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

Port Authority Trans-Hudson Corporation

Disadvantaged Business Enterprise (DBE) Program
Compliance Review

Final Report

June 2017



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

This report details the findings of a Compliance Review of the Port Authority Trans-Hudson Corporation's (PATH's) Disadvantaged Business Enterprise (DBE) program implementation. The Compliance Review examined the PATH DBE program, as well as Port Authority of New York and New Jersey (Port Authority) and PATH procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA), Port Authority and PATH. In addition, the following entities were interviewed as part of this review: Port Authority and PATH officials, Asian Women in Business, Professional Women in Construction, Regional Alliance for Small Contractors, prime contractors, and subcontractors. The three-day review included interviews, assessments of data collection systems, and review of program and contract documents.

PATH's DBE program includes the following positive program elements –

Positive Program Elements

- PATH has implemented policies and procedures to effectively monitor DBE participation and contract compliance.
- PATH is utilizing a minority bank to finance its payroll operations.
- PATH is implementing a Mentor Protégé Program in partnership with construction prime contractors for training and development of MWSDBE firms.
- PATH has established an on-going working relationship with numerous small, minority, women, and disadvantaged business advocacy groups.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- PATH's DBE Uniform Reports contained incorrect information or were missing information.
- PATH has submitted inadequate DBE shortfall analysis and corrective action plans.
- PATH has not encouraged prime contractors to use identified minority financial institutions.
- PATH does not maintain a bidders list in accordance with §26.11(c).
- PATH is not currently listed as signatory to the New York State Unified Certification Program (UCP) Memorandum of Understanding.

The Program has the following substantive deficiencies –

Substantive Deficiencies

- Some of PATH's prime contracts and subcontracts did not contain all required federal DBE clauses.
- PATH has not met its DBE goal over the past three years, and has not implemented effective race-neutral measures to meet goals.

PATH does not have FTA DBE goal setting history prior to FFY 2014 – 2016. PATH's reported DBE participation data for FFY 2014 – 2016 reflects goal attainments of 14.36%, 5.22%, and 11.29%, respectively. PATH's overall goal attainment for the triennial period is 8.57% (as shown in table below), representing a shortfall of 6.43% below its established 15% DBE goal.

PATH's Goal Attainment Summary

DBE Goal: 15%	FY 2014	FY 2015	FY 2016	Three-Year Totals
Total DBE Dollars	\$ 845,644	\$ 2,187,008	\$ 4,397,154	\$ 7,429,806
Total Prime Contract Dollars	\$ 5,888,231	\$ 41,863,134	\$ 38,937,653	\$ 86,689,018
DBE Goal Attainment	14.36%	5.22%	11.29%	8.57%

According to PATH and Port Authority management, a number of factors contribute to the low DBE participation, including the number of construction projects awarded during the triennial period was less than anticipated and awards and commitments for FFY 2014 – 2016 included mostly procurement of equipment, materials/ supplies and services where DBE opportunities were limited.

It should also be noted that PATH is working with FTA to address FTA's comments to its FFY 2017-2019 overall goal. Those comments and comments from the onsite review are included in this report; however, no deficiencies are made, as PATH is currently being responsive to FTA in that goal review process. Notwithstanding, this report highlights several actions to help ensure the DBE program is implemented in good faith.

1. General Information

This chapter provides basic information concerning this Compliance Review of the Port Authority Trans-Hudson Corporation (PATH). Information on PATH, Port Authority, the review team, and the dates of the review are presented below.

Grant Recipient:	Port Authority Trans-Hudson Corporation (PATH)
City/State:	Jersey City, NJ
Grantee Number:	1925
Executive Official:	Patrick J. Foye, Executive Director Port Authority of New York and New Jersey
Executive Official:	Michael P. Marino, Director, General Manager PATH
On-site Liaison:	Jacqueline Carroll, Compliance Manager Port Authority of New York and New Jersey, Office of Business Diversity and Civil Rights (OBDCR)
Report Prepared By:	Milligan & Company, LLC
Dates of On-site Visit:	February 7 – 9, 2017
Compliance Review Team Members:	Lillie Claitt, Lead Reviewer Denise Bailey Habibatu Atta John Clare

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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. (23), October 1, 2016, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

PATH awards contracts that exceed \$250,000 in FTA funds annually, hence it is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in PATH's DBE Program Plan and were the basis for this Compliance Review.

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3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a Compliance Review of the PATH's DBE program is necessary.

The primary purpose of the Compliance Review is to determine the extent PATH has implemented 49 CFR Part 26, as represented in its DBE Program Plan. This Compliance Review is intended to be a fact-finding process to: (1) assess PATH's DBE 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 solely designed to investigate discrimination against individual DBE firms or complainants; or to adjudicate these issues on behalf of any party.

3.2 Objectives

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

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that PATH's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of federally-assisted contracts and procurement activities conducted by recipients.
- Assist with 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 PATH is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of PATH's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies; and document the compliance status of each component.
- Gather information and data regarding the operation of PATH's DBE Program Plan from a variety of sources, including Port Authority and PATH management personnel, DBEs, prime contractors, DBE subcontractors, and other stakeholders.

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4. Background Information

The purpose of this section is to provide an understanding of PATH's operations and scale. The section highlights PATH's services, budget, and the history of its DBE program.

4.1 Introduction to PATH and Organizational Structure

The Port Authority of New York & New Jersey (PANYNJ) is a bi-state agency created through a 1921 compact between the States of New York and New Jersey and consented to by the Congress of the United States. PANYNJ provides transportation and facilities of trade and commerce within the Port District, comprising an area of about 1,500 square miles in both States, centered around New York Harbor. PANYNJ operates and maintains many important transportation and trade facilities, including the region's five major commercial airports; marine terminals in both States; The Port Authority Trans-Hudson Corporation (PATH), two interstate tunnels and four interstate bridges; and the George Washington Bridge Bus Station and Port Authority Bus Terminal in Manhattan. PANYNJ also owns and manages the 16-acre World Trade Center site.

The Port Authority is financially self-sustaining and raises the monies necessary to operate its facilities and provide services to the public at large through tolls, fares, rentals and other user charges. Funds needed for capital improvements, construction and acquisition of facilities are raised on the basis of the Port Authority's own credit. The Port Authority cannot pledge the credit of either state or any municipality, nor can it levy taxes or assessments. Within the context of programmatic Agency wide objectives, the Port Authority has established various financial measures designed to ensure that the Agency is able to sustain its projects, plan for the future, and fund debt service. The Port Authority maintains two reserve funds, the General Reserve Fund and the Consolidated Bond Reserve Fund, which were established in accordance with applicable laws, statutes and resolutions. The Agency has set specific targets for the balances of the reserve funds at any given time, as well as other debt related ratios, including the Additional Bonds Test (as defined in the Consolidated Bond Resolution), and debt service coverage.

PATH is an interstate heavy rail rapid transit system that serves as the primary transit link between Manhattan and the neighboring New Jersey urban communities, as well as suburban commuter railroads. It was established in 1962 as a subsidiary of the Port Authority of New York and New Jersey, after assuming control from the Hudson & Manhattan Railroad. As a subsidiary, certain staff functions are provided through Port Authority corporate departments including, but not limited to Procurement, OBDCR, Engineering, Audit and Law. The PATH system connects terminals in Newark, Jersey City, and Hoboken in New Jersey to lower and mid-town Manhattan in New York City. This service is provided via two pairs of tunnels beneath the Hudson River, the uptown Tunnels (A&B) lead from Hoboken to Midtown Manhattan, and the downtown Tunnels (E&F) lead from Exchange Place in Jersey City to the World Trade Center (WTC). The system has four service lines that served approximately 270,000 passengers per day (2012 average weekday pre – Hurricane Sandy ridership was 267,678). The service lines include Newark to WTC, Journal Square to 33rd Street, Hoboken to WTC and Hoboken to 33rd Street. There currently is no redundancy built into this system and the loss of a single tunnel will affect all service on both the uptown and downtown lines.

Hurricane Sandy made landfall on October 29, 2012, and resulted in significant damage to numerous Port Authority facilities, including PATH facilities. Despite the Port Authority's best efforts, PATH suffered significant damage from the historic storm surge and flooding. The storm surge breached all of the underground passenger stations, including Hoboken, Exchange Place, Newport, and Grove Street. The resulting deluge flooded PATH's century old tunnels, including the caissons, which serve as a nerve center for signals and communications, housing electrical control equipment for the entire signal system and rail switch infrastructure interconnecting all four passenger lines. The caissons were developed as safe and dry locations for control, support and deployment of critical communications infrastructure for signal support and wayside equipment. In some areas, flood water reached to the roof of the tunnels, causing salt water damage to the signals, switches, communications, and other wayside equipment, both in the tunnels and in the stations.

The corrosive salt water was particularly damaging to power, signal, and communications systems. These components include cable, cable connections, batteries, relays, circuit breakers and other sensitive equipment located in the tunnels as well as in the signal cases at Caisson 2 lower and the signal system main control room at Caisson 3 lower. In addition, eighty-five rail vehicles (revenue and work trains) stored at the Harrison Car Maintenance Facility were partially submerged and suffered significant damage. Immediate repairs were done to incrementally bring the PATH system back into operation.

4.2 Budget and FTA-Assisted Projects

PATH's Hurricane Sandy Program budget reflects local and federal funds, as well as revenue from fares and other sources. For the cumulative Federal Fiscal Years (FFYs) 2017 – 2026 PATH's budget is as follows:

Funding Source	Funding Amount	
Federal – FTA (Hurricane Sandy Recovery Projects)	Total:	\$ 1,074,630,000
	Planning:	\$ -
	Capital:	\$ 1,074,630,000
	Operating:	\$ -
State:		\$ -
Local: (Port Authority Share)		\$ 146,670,000
	Grand Total:	\$ 1,217,300,000

PATH has several FTA-assisted projects currently in construction related to the Hurricane Sandy repair and rebuild effort, including:

- Installation of Standby Generator Infrastructure – Electrical Power & Lighting Construction
- Replacement of In-Ground Lifts at Harrison Car Maintenance Facility – Buildings & Garages Construction
- Replacement of Hackensack River Bridge Emergency Generator Fuel Tank – Fueling Construction
- Replacement of Hoboken Station Under Platform Fan – HVAC, Plumbing & Sprinklers Construction

- Purchase of Equipment for Recovery Work
- Design and Purchase of Resiliency Equipment
- Rehabilitation of Substations 7, 8, 9 and 14 – Electrical Power & Lighting Construction
- Extension of Rail Yards – Rail Systems Construction

4.3 DBE Program

The Director, Office of Business Diversity and Civil Rights (OBDCR), is the designated DBE Liaison Officer (DBELO) for the Port Authority and PATH. The OBDCR's General Manager assists the DBELO in the agency-wide responsibility for monitoring and enforcing the DBE program to ensure compliance with appropriate federal and state laws and regulations. The DBELO has direct access to the Port Authority of New York and New Jersey's Executive Director.

The DBELO is responsible for developing, implementing, and monitoring the DBE program for the Port Authority and handles these functions on behalf of PATH in collaboration with Engineering, Project Management, Procurement, and other appropriate Port Authority staff. Some of the DBELO's duties and responsibilities include: managing the work of subordinate staff in carrying out DBE program activities, coordinating with other Port Authority departments to determine overall DBE goals, monitoring DBE participation, gathering and reporting statistical data and other information as required by DOT, identifying contracts and procurements so that DBE goals are included in solicitations, reviewing third party contracts for compliance with the program, certifying the eligibility of DBEs and ACDBEs, developing and implementing MWSDBE outreach programs, and advising the Executive Director and the Board of Commissioners of the Port Authority; and Board of Directors of PATH on DBE matters and achievements.

The organizational chart provided at the site visit indicates the OBDCR is comprised of four business units, and has a staff of 19 full-time employees. The administrative and support staff is as follows:

Administrative

Director / DBE Liaison Officer
General Manager
Executive Secretary
Business Manager

Business Initiatives Planning and Analysis – Responsible for policy development and reporting; business services, business recruitment, outreach and promotion

1 – Manager
1 – Business Development Analyst
1 – Policy Analyst
1 – Business Development Representative

Certification Programs – Responsible for federally mandated DBE and ACDBE certification and Supplier Diversity Program MWSBE certification

1 – Manager
4 – Business Development Representatives

Contract Compliance and Major Capital Programs Contract Compliance – Responsible for business utilization, goal setting, contract monitoring, and labor force development

2 – Managers

1 – Policy Analyst

1 – Business Development Representative

Civil Rights/Title VI Programs – Responsible for Civil Rights/Title VI and ADA Program compliance

1 – Manager

1 – Policy Analyst

A summary of OBDCCR staff duties and responsibilities specifically related to PATH's DBE program include: DBE/ACDBE certification (as a member of the New York State and New Jersey State Unified Certification Programs), MWSBE certification, goal setting, pre-award / post-award contract compliance; collection, maintenance and reporting of data on MWSDBE certifications, contract awards and payments; MWSDBE supportive services; and Supplier Diversity and Mentor-Protégé Program management.

PATH was not required to establish its own DBE program until the aftermath of Hurricane Sandy in October 2012 and FTA funding was awarded to bring the PATH rail system back into operation. PATH's race-neutral/race-conscious program was implemented in accordance with the Port Authority's existing program method.

For FFYs 2014 – 2016, PATH did not achieve its 15% DBE goal. PATH's FY 2015 shortfall analysis and correction plan submitted to the FTA was inadequate. As a result, the FTA issued the agency a "Corrective Action Required" letter in March 2016, prescribing specific corrective actions to be completed, and requiring PATH to submit two status reports to the FTA - the first by July 1, 2016 and the second by December 29, 2016.

The Port Authority has established a Mentor Protégé Program that is administered in collaboration with prime contractor leaders in the construction industry. The program's primary focus is to assist MWDBEs gain proficiency in managing construction related projects in areas such as contract law, estimating, financial management, project management, safety, and scheduling.

The Port Authority has been recognized by several organizations for its DBE program efforts, which include:

- The NYS Black, Puerto Rican, Hispanic & Asian Legislative Conference - Outstanding MWDBE Program Achievement Award;
- The Society of Indo American Engineers and Architects;
- The Women's Builders Council; and
- The New York Women's Chamber of Commerce

The Port Authority commissioned a disparity study in 2016, which is ongoing. The Port Authority anticipates the completion of the study by the end of the second quarter of calendar year 2017. The services of Mason Tillman Associates, LTD have been retained to conduct the study.

5. Scope and Methodology

5.1 Scope

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

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to PATH DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE 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]
- Efforts made to use DBE financial institutions, by PATH as well as prime contractors, if such institutions exist [49 CFR 26.27]
- 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]
- Determination that overconcentration does (not) exist and addresses this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- 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 DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]
- A shortfall analysis and corrective action plan when PATH did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufactures (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include PATH seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- A non-discrimination and a prompt payment clause is in all FTA-assisted contracts and a prompt payment verification process [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65 - 26.71]
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86]
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE program must also include monitoring and

enforcement mechanisms 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]

5.2 Methodology

The initial step of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's Transit Award Management System (TrAMS) and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter (Attachment A) to PATH that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed PATH of staff and other parties that would potentially be interviewed.

Before conducting the on-site visit, PATH was asked to provide the following documents:

- Most current DBE Program Plan
- DBE goal methodology submissions
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years
- A Memorandum of Understanding or similar documents indicating PATH's participation in the Unified Certification Program (UCP)
- A list of FTA-assisted contracts awarded during the current and previous fiscal years
- A list of DBE firms that had worked on FTA-assisted projects sponsored by PATH
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by PATH
- Procedures for monitoring all DBE program participants to ensure compliance with the DBE requirements, including but not limited to, a prompt payment verification process, a process for ensuring work committed to DBEs is actually performed by DBEs, and any DBE complaints against the agency or its prime contractors during a specified time period.

An opening conference was conducted at the beginning of the Compliance Review with FTA representatives, Port Authority and PATH staff, and the review team. The following people attended the meeting:

Federal Transit Administration

Janelle Hinton	FTA Equal Opportunity Specialist
Lynn Bailey	FTA Region II / III Civil Rights Officer

Port Authority of NY & NJ and Port Authority Trans-Hudson Corporation (PATH)

Lash Green	Director, Office of Business Diversity and Civil Rights
Ida Perich	General Manager, Office of Business Diversity and Civil Rights
Jacqueline Carroll	Compliance Manager, Office of Business Diversity and Civil Rights
Michael Guthy	Sr. Program Manager, PATH Capital Projects Division
Iran Engel	Assistant Director, Audit
Risa Resnick	Attorney, Law Department

Brett Abramson	Attorney, Law Department
Norby Martins	Contract Specialist, Hirani Group
Joseph Simenic	Program Director, Storm Mitigation & Resilience Office, Office of the Chief Operating Officer
Tina Almeida	Manager, Revenue Audits Division, Audit Department
Marie Doblas	Manager, Contract Compliance, Construction Management Division
Jack Buchsbaum	Deputy Chief Engineer
Jorge Chavez	Senior Engineer of Projects, Engineering Operations / Program Management
Michael Vozza	Manager, Financial Services, PATH
Clarelle DeGraffe	Deputy Director, PATH
Lillian Valenti	Chief Procurement Officer
Joann Spirito	Manager, WTC & Federal Procurement & Compliance, Procurement Department
Frank Gallo	Assistant Director, PATH Capital Project Management Division
Glenessa Gordon	Manager, Business Initiatives and Planning Analysis, Office of Business Diversity and Civil Rights
Elsie Poisson	Senior Program Manager, Office of the Chief Operating Officer
Mike Hudacko	Grant Manager, PATH

Milligan and Company, LLC

Lillie Claitt	Lead Reviewer
Denise Bailey	Reviewer
Habibatu Atta	Reviewer
John Clare	Reviewer

Following the opening conference, the review team reviewed their analysis and understanding of PATH's DBE Program Plan and other documents submitted by the DBE Liaison Officer. The team then conducted interviews with PATH and Port Authority staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from the Port Authority's OBDCR, Procurement, Engineering and Law Departments and PATH's Financial Services and Project Management Divisions. A sample of contracts was then selected and reviewed for their DBE elements. Additional interviews with prime contractors, subcontractors, and interested parties were also conducted.

At the end of the review, FTA representatives, Port Authority and PATH staff, and the review team convened for the final exit conference. At the exit conference, initial findings and corrective actions were discussed with PATH. Attending the conference were:

Federal Transit Administration

Janelle Hinton	FTA Equal Opportunity Specialist
Lynn Bailey	FTA Region II / III Civil Rights Officer
John Susino	Team Lead, New Jersey, Hurricane Sandy Recovery

Port Authority of NY & NJ and Port Authority Trans-Hudson Corporation (PATH)

Michael Marino	Director / General Manager, PATH
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Lash Green	Director, Office of Business Diversity and Civil Rights
Ida Perich	General Manager, Office of Business Diversity and Civil Rights
Jacqueline Carroll	Compliance Manager, Office of Business Diversity and Civil Rights
Iran Engel	Assistant Director, Audit
Risa Resnick	Attorney, Law Department
Brett Abramson	Attorney, Law Department
Tina Almeida	Manager, Revenue Audits Division, Audit Department
Elsie Poisson	Senior Program Manager, Office of the Chief Operating Officer
Marie Doblas	Manager, Contract Compliance, Construction Management Division
Jorge Chavez	Senior Engineer of Projects, Engineering Operations / Program Management
Michael Vozza	Manager, Financial Services, PATH
Lillian Valenti	Chief Procurement Officer
Joann Spirito	Manager, WTC & Federal Procurement & Compliance, Procurement Department
Helen Flaster	Strategic Compliance Advisor, Procurement Department
Luke Bassis	Deputy Director, Procurement Department
Rebecca Cassidy	Interim Manager, Marketing and Customer Relations, PATH

Milligan and Company, LLC

Lillie Claitt	Lead Reviewer
Denise Bailey	Reviewer
Habibatu Atta	Reviewer
John Clare	Reviewer

FTA provided PATH with a draft copy of the report for review and response. A copy of their response to the draft report is included as Attachment B.

5.3 Stakeholder Interviews

This section discusses information gathered during interviews with community representatives, stakeholder groups, and contractors regarding PATH's DBE program.

Prior to the on-site, the review team interviewed two prime contractors, Daidone Electric and Jacobs Civil Consultants, and three DBE subcontractors, 5 Star Contractors, Matrix New World Engineering, and T&D Engineering and Supply. In addition, the review team visited a construction project work-site and interviewed prime contractor - VRH Construction Corporation, and DBE subcontractor - S&J Electrical Contractor. The interview questions included:

- *What is your contracting experience with the organization?*
- *Give a brief description of your current/active contract.*
- *What is the dollar value of your contract?*
- *What are the payment terms?*

- *How much have you been paid to date?*
- *How is your working relationship with the prime or subcontractor?*
- *Have there been any contract issues?*

The prime contractors noted that they have a cooperative working relationship with the Port Authority's OBDCR and were familiar with PATH's DBE program and the program requirements. Each prime contractor provided an overview of how they solicited DBEs for participation on their project. Strategies included attending Port Authority and PATH's outreach and networking events and contacting DBE subcontractors with whom they have a working relationship. The prime contractors stated that there have not been any DBE performance issues or DBE substitutions on their respective contracts. There was a mix of responses with regard to on-site inspections. Some primes and subcontractors noted that the Port Authority's OBDCR staff has made regular visits to their work site, while others stated that they had not seen staff on-site, because the construction phase of their project had not started yet.

In response to the question regarding payment terms, responses varied with prime contractors stating that subcontractors were paid seven to ten days after they receive payment from PATH. In regards to retainage, one prime contractor responded that they are not withholding retainage and the others mentioned that they were withholding retainage, but were unsure of the percentage being withheld. One prime contractor stated that subcontractors are paid retainage once PATH releases their retainage. The prime contractors also indicated that DBEs are considered for change order work.

The DBE subcontractors interviewed were also familiar with PATH's DBE program and had a good working relationship with the Port Authority and PATH. Most of the DBE subcontractors stated that they were solicited for work because of their past working relationship with the prime contractor on other projects. One subcontractor stated that they were contacted for work through a referral from another prime contractor. None of the subcontractors had any disputes regarding work performance or progress payments. Two DBE subcontractors stated that retainage was not being withheld. One stated that 1% was withheld from progress payments and one subcontractor was unsure.

The review team also contacted seven business advocacy organizations regarding their interaction with PATH on DBE program issues. The purpose of this activity was to invite the organizations to participate in interviews to determine their relationship with PATH and to see how PATH presents its DBE program to external stakeholders.

The seven organizations contacted were:

- Asian Women in Business (AWIB)
- National Hispanic Business Group (HNBG)
- New York State Association of Minority Contractors (NYAMC)
- Professional Women in Construction (PWC)
- Regional Alliance for Small Contractors
- Society of Afro-American Engineers and Architects
- Northeast Region – Small Business Resource Transportation Center

Three organizations responded to the request for an interview:

- Asian Women in Business (AWIB): primary mission is to provide support for Asian women entrepreneurs and professionals.
- Professional Women in Construction (PWC): committed to advancing professional, entrepreneurial and managerial opportunities for women and other “non-traditional” populations in construction and related industries.
- Regional Alliance for Small Contractors: resolved to improve the competitiveness of small, minority, and women contractors in the region.

The interview questions presented were:

- *Are you familiar with the agency’s DBE program?*
- *Have you been requested to participate in the development of or comment on the agency’s DBE goal?*
- *Is your organization made aware of contracting/subcontracting opportunities on the agency’s contracts? If so, how?*
- *How often is your organization contacted to provide referrals for the agency’s contracting opportunities?*
- *Do you participate in any outreach efforts organized by the agency?*
- *What is your view of the effectiveness of the agency’s DBE program?*
- *Are you aware of any concerns about the DBE program from members?*
- *Do you have any suggestions for the agency to improve their DBE program?*

The representatives of the three organizations were familiar with PATH’s DBE program. Two representatives felt the program was effective, and one representative was unsure about the program’s effectiveness. All of the representatives spoke very highly about their organization’s relationship with PATH. They were frequently invited to PATH’s outreach events and have participated in the development of PATH’s DBE goal. In addition, PATH has participated in many of the organizations’ membership events and presented information about the DBE program, how to do business with the Port Authority, and upcoming contracting opportunities.

Two organizations stated that some members do not understand the Port Authority’s different certification processes or requirements as it relates to MWBE and DBE. One representative stated that their members were more concerned about the certification requirements for airport concessionaires, specifically the Personal Net Worth threshold.

6. Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to PATH's DBE program is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

6.1 DBE Program Plan

Requirement

(49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE program. 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 compliance review, no deficiencies were found with the requirement for DBE Program Plan.

PATH's DBE Program Plan was submitted on August 2, 2013 and approved on October 1, 2013 (Attachment C). Subsequently, PATH submitted an updated DBE Program Plan for FTA's approval on July 29, 2016. The updated plan is currently listed as "In Review" as of December 1, 2016.

Both plans contain all of the requirements set forth in the DBE regulations. Several corrective actions and recommendations listed in this report will require additional updates to the program plan.

6.2 DBE Policy Statement

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 recipient's organization and to the DBE and non-DBE business communities.

Discussion

During this compliance review, no deficiencies were found with the requirement for DBE Policy Statement.

PATH's DBE Policy Statement is posted as a link on the agency's website, on the "*Business Opportunities – Supplier Diversity*" page. The policy is signed by the Port Authority of New York & New Jersey's Executive Director, Patrick J. Foye, and is dated July 13, 2013.

The Policy Statement outlines the objectives of the DBE program and the responsibilities of the DBE Liaison Officer, and indicates the Port Authority has disseminated the policy statement to the Board of Commissioners and all the components of the organization. The statement also indicates that PATH disseminates the policy to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts through posting on the Office of Business Diversity and Civil Rights webpage at:
<http://www.panynj.gov/business-opportunities/supplier-diversity.html>.

6.3 DBE Liaison Officer

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 compliance review, no deficiencies were found with the requirement for DBE Liaison Officer.

The Director of the Port Authority's Office of Business Diversity and Civil Rights (OBDCR) is the designated DBE Liaison Officer (DBELO). The DBELO is responsible for administering all aspects of the DBE program as it pertains to the Port Authority's four lines of business: PATH (Rail Transit), Aviation, Tunnels, Bridges & Terminals and Port. The DBELO is responsible for developing, implementing, and monitoring the DBE program in coordination with other appropriate Port Authority and PATH officials.

The OBDCR is also assigned a General Manager who reports to the Director/DBELO. The General Manager assists the DBELO in implementing all aspects of the DBE program, manages the day-to-day operations of the office, and coordinates support services provided by other Port

Authority departments (i.e., Procurement, Engineering and Project Management). The organization chart provided indicates the OBDCR has a staff of nineteen professionals. The DBELO has direct and independent access to the Port Authority's Executive Director. The DBELO and the Executive Director meet quarterly to discuss DBE matters, federal funding issues, and the status on special capital projects such as the Hurricane Sandy Recovery Program and the LaGuardia Airport Capital Redevelopment Program.

The summary of the Director, OBDCR's position description provided as part of this compliance review states that the position serves as the Port Authority's Civil Rights Coordinator and DBE/ACDBE Liaison Officer and ensures that the agency complies with Title VI of the Civil Rights Act of 1964 and related regulations and Executive Orders, as well as 49 CFR Parts 23 and 26. There did not appear to be any apparent conflicts of interest for the Director, OBDCR in performing duties as DBELO.

6.4 DBE Financial Institutions

Requirement (49 CFR Part 26.27)

Recipients must investigate the existence of DBE financial institutions and make efforts to use them. Recipients must also encourage prime contractors to use these DBE financial institutions.

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Financial Institutions.

PATH's DBE Program Plan states that it has identified one minority-owned bank, the City National Bank of New Jersey. It was also indicated that PATH's transit system currently utilizes the services of the City National Bank of New Jersey to finance its payroll operations.

Subsequent to the site-visit, the Port Authority's OBDCR provided additional information regarding the investigation of DBE financial institutions indicating that, with the assistance of the Port Authority's Treasury Department, it had identified five minority financial institutions. The complete list of minority banks identified is:

African American Owned Banks

City National Bank of New Jersey (identified in PATH's DBE Program Plan)

Carver Federal Savings Bank

Asian American Owned Banks

Abacus Federal Savings Bank

Chinatown Federal Savings Bank

Hispanic American Owned Bank

Ponce De Leon Federal Bank, Bronx, NY

The DBE Program Plan does not include the names of the four additional minority-owned financial institutions identified by OBDCR, listed above.

The DBE Program Plan states that the Port Authority would make reasonable efforts to encourage prime contractors on DOT-assisted contracts to make use of minority-owned financial institutions. OBDCCR indicated that it has encouraged small businesses to make use of minority-owned financial institutions in the course of conducting business outreach and small business forums; however, PATH has not implemented a mechanism to encourage its prime contractors to do so.

The DBELO indicated that the OBDCCR consults with the Treasury Department every two years to investigate the existence of minority-owned financial institutions. No documented procedure was available regarding PATH's consultation process with the Treasury Department.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA's Office of Civil Rights:

- Evidence that the DBE Program Plan is updated to contain a complete list of identified minority-owned financial institutions;
- Evidence of efforts to encourage all bidders, proposers, and contractors to use minority-owned financial institutions: and
- Evidence that a procedure has been developed and implemented to evaluate the availability of DBE financial institutions on a regular basis and includes information on the use of DBE financial institutions in FTA-assisted solicitation documents. Submit the procedure and sample solicitation language to the FTA's Office of Civil Rights for review.

6.5 DBE Directory

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 compliance review, no deficiencies were found with the requirement for DBE Directory. An advisory comment, however, is made regarding the requirement.

PATH relies upon DBE directories maintained by both the New York State Unified Certification Program (NYC UCP) and the New Jersey Unified Certification Program (NJ UCP). The Port Authority of New York and New Jersey (PANYNJ) is a certifying agency in both states, and certifies on behalf of all DOT recipients in New York and New Jersey. The review of the UCP directory websites indicate that data is maintained in real time as firms are added, updated, and removed from the database. The directories identify all firms eligible to participate as DBEs, include the required vendor information, and are made available to the public electronically. Selected queries can be downloaded in Excel format or printed as a PDF document. Contractors and the public can search the databases for certified DBEs by firm name, NAICS codes, business description, and other criteria.

DBE information included in the NYS UCP DBE Directory is:

- Company name;
- Contact person;
- Business address;
- Telephone and fax number;
- Email address and website;
- Description of work the firm has been certified to perform;
- Applicable NAICS codes; and
- Firm's county and certifying agency

DBE information included in the NJ UCP DBE Directory is:

- Company name;
- Contact person;
- Business Address;
- Telephone and fax number;
- Email address;
- Description of work the firm has been certified to perform;
- Applicable NAICS codes; and
- Firm's certifying agency

The DBE Program Plan states that PATH makes the DBE directories available to the public through the following links:

New York State UCP Directory: <https://nysucp.newnycontracts.com>

New Jersey UCP Directory: <http://www.njucp.net>

The links for the two UCP DBE directories were not found on the agency's Supplier Diversity webpage.

The Supplier Diversity webpage is the location for all information pertaining to the Port Authority's minority-owned, woman-owned, small and disadvantaged business enterprise (MWSDBE) programs. The webpage contains a link to the Port Authority's MWSDBE Directory, and allows the public to search for firms by "certification type", which include:

- Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)
- Disadvantaged Business Enterprise (DBE)
- Minority Business Enterprise (MBE)
- Minority/Women Business Enterprise (MWBE)
- Small Business Enterprise (SBE)
- Women Business Enterprise (WBE)

Advisory Comment

PATH is advised to update its Supplier Diversity webpage to prominently display links to the New York State UCP and New Jersey UCP DBE directories for public accessibility, as indicated in its DBE Program Plan.

6.6 Overconcentration

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 compliance review, no deficiencies were found with the requirement for Overconcentration.

OBDCR has determined for PATH that there is no overconcentration of DBE firms in the type of contracts it has awarded. This determination is based on data collected from past DBE participation plans submitted by prime bidders, and reports generated regarding its DBE goal attainment. It was also indicated that the DBE data is assessed annually by the OBDCR during the process of preparing reports for Board presentations.

6.7 Business Development Programs

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 compliance review, no deficiencies were found with the requirement for Business Development Programs.

PATH's DBE Program Plan states that the Port Authority has a long tradition of supporting DBEs in their growth and development through a broad menu of business services and programs, such as establishing business resource centers; providing on-site technical support, training and consultation; and offering informational seminars, business newsletters and business referrals. The Port Authority's business development program was established in 1993, and is fully implemented.

The DBE Program Plan also states that the Office of Business Diversity and Civil Rights, in cooperation with the Engineering Department, has developed a Mentor-Protégé Program with the primary objective of advancing the management and technical skills of certified DBE firms in specified revenue ranges through a structured relationship with major construction contractors. The Port Authority's program, which complies with Part 26, Appendix D, includes an advisory/steering committee comprised of several unit and department staff responsible for advancing the program. Specifically, the program calls for a three-year structured mentor-protégé relationship with one or two protégés for each mentor firm.

The Port Authority's OBDCR and Engineering staff indicated that since the inception of the Mentor-Protégé Program in 2002, 70 MWDBE firms have successfully participated in the program. Prime contractors currently performing on PATH's projects have also participated as mentors in the program, and include firms such as Skanska USA Building, Inc., VRH Construction Corporation, and Yonkers Contracting Company.

There is no evidence that the Port Authority's Mentor-Protégé Program was formally submitted to the FTA for approval.

6.8 Determining/Meeting Goals

A) Calculation

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 calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

Discussion

During this compliance review and upon FTA's review of the goal-setting submission for FFY 2017 - 2019, the following observations were made with the requirement for overall goal calculation. It should be noted that these items are being addressed with FTA and PATH as part of the goal review process. In response to PATH's initial goal submission, on February 10, 2017 FTA issued a 'Correction Needed' letter to PATH. On March 13, 2017, PATH submitted a letter addressing the issues identified and a revised goal setting methodology.

PATH's overall goal for FFY 2017 - 2019 is 15%; the race-neutral / race-conscious breakdown is 7.8% and 7.2%, respectively. Subsequent to this review, the FTA approved an overall PATH DBE goal of 14%. PATH's goal methodology provides a list of eleven (11) anticipated projects and the projected expenditures for each, but does not identify the specific subcontractable elements related to each project or the relative dollar amount of contracts to allow for 'weighting' of the relative availability in Step One. PATH stated in its March 13, 2017 response that weighting was not practical but did not state why.

PATH's goal methodology lists twelve (12) North American Industry Classification System (NAICS) codes that have been identified as trades "overall" associated with the anticipated Hurricane Sandy Storm Recovery projects.

The trades identified include:

NAICS Codes	Description
236220	Commercial and Industrial Building Construction
237310	Highway Street and Bridge Construction
238110	Poured Concrete Foundation and Structure Contractors
238120	Structural Steel and Precast Concrete Contractors
238140	Masonry Contractors
238160	Roofing Contractors
238210	Electrical Contractors
238910	Site Preparation Contractors
423320	Brick, Stone and Related Construction Material Merchant Wholesalers
541330	Engineering Services
541370	Surveying and Mapping (Except Geophysical Services)

561612	Security Guards and Patrol Services
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The source data used by PATH to establish the Step One base figure for the relative availability of DBEs included the New York State UCP, the New Jersey UCP DBE directories, the local MWBE directory, and the U.S. Census Bureau 2014 County Business Patterns database. The totals resulted in a numerator of 2,962 for MWDBEs, and a denominator of 17,298 for All Firms, for a relative DBE availability of 17.12%, ($2,962 / 17,298 = 17.12\%$ base figure). While USDOT's Tips for Goal Setting states that "if you are using your DBE Directory and census data in goal setting and you are concerned that your DBE Directory does not accurately reflect the number of potential DBEs in your area, you should seriously consider supplementing the number of firms in your DBE Directory for the purposes of goal-setting", in order for FTA to accept the methodology, it has requested that PATH provide information on how many firms in the numerator were from the UCP directories and how many were added from the local MWBE directories.

PATH identified its geographic market area as: the five New York City boroughs of Manhattan, Brooklyn, Queens, Staten Island and the Bronx; the four suburban New York counties of Nassau, Rockland, Suffolk and Westchester; and the eight northern New Jersey counties of Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset and Union. PATH's goal methodology indicates that over the past three years, 100% of the Port Authority's contracting dollars were awarded to contractors located within its identified market area.

The goal methodology includes a Step Two adjustment reducing its base figure from 17.12% to 15%. PATH's explanation for the adjustment was a listing of five (5) future projects that will be "vying for the same pool of DBEs in the region" which include: (1) three federally-funded bridge replacement "mega projects" within a 50 mile radius of the Port District; (2) the PANYNJ's Airport Improvement Program; (3) PANYNJ's LaGuardia Redevelopment Project; (4) FTA-funded Hurricane Sandy Recovery and Resiliency Projects by NJ Transit, MTS and PANYNJ; and (5) the level of bonding and insurance and working capital required for the projects.

The justification did not include sufficient evidence or statistical data to support the Step Two adjustment, nor did PATH consider past DBE Participation data available from FFYs 2014 – 2016 as a contributing factor in determining the Step Two adjustment.

Based upon the observations above, no deficiency is noted for this section as any findings will be addressed during the review of the goal methodology by the FTA.

B) Public Participation

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 notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

Discussion

During this compliance review, deficiencies were found with the requirement for Public Participation.

PATH's DBE Program Plan states that in establishing the overall goal, it will consult with minority, women and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Port Authority's efforts to establish a level playing field for the participation of DBEs.

The goal methodology states that a consultative process was held with minority, women and general contractor groups, but did not include documentation of details as to when or where the consultative meeting was held, and whether comments were received from the participants.

During the site-visit, PATH informed the review team that documentation of the consultative process was available, and provided a copy for examination. A copy of the documentation was also uploaded into TrAMS.

According to TrAMS, PATH's FFY 2017 – 2019 DBE goal was submitted on July 29, 2016. PATH's consultative meeting was held on July 21, 2016. USODT's Official Questions and Answers on the DBE program state that *"Consultation is expected to occur before the proposed goal is established and prior to publication of the proposed overall goal for inspection and comment by the general public."*

The topic of the consultative meeting read as follows:

**"FTA Hurricane Sandy Recovery and Resiliency Program
And
FAA Funded Airport Improvement Program Projects
Projected DBE Goal for FFY 2017 – 2019
Presentation to MWBE Organizations"**

The agenda included two presentations for the FTA-Funded Hurricane Sandy Recovery and Resiliency Program and one presentation for the FAA-Funded Airport Improvement Program Projects. The projected FFY 2017 – 2019 DBE Goal and Methodology was presented from 11:30 am – 11:50 am, with a 10-minute "Goal Methodology Question and Answer" segment at the end, from 11:50 am – 12:00 pm. The documentation did not include information regarding questions or comments received during the meeting that would impact the goal setting process.

PATH stated that seven minority/women business associations were invited to the consultative meeting. Five organizations in attendance were:

- National Hispanic Business Group;
- Regional Alliance for Small Contractors;
- Professional Women in Construction;
- Asian Women in Business; and
- Women Builders Council

The number of businesses invited to the meeting was not indicated. In reviewing the sign-in sheet, it appeared that only two businesses were present. PATH's documentation indicated no comments or feedback was received that would impact the proposed DBE goals.

The DBE goal is currently posted on PATH's Supplier Diversity webpage. A screen-shot from the Port Authority's webpage displaying a link to the Triennial 2017 – 2019 DBE Goals for FAA and FTA.

Additional documentation included:

- Notice of the proposed FFY 2017 – 2019 FAA overall DBE goal (12%)
- Notice of the proposed FFY 2017 – 2019 FTA overall DBE goal (15%)
- Proof of publication in the news media, which included: El Diario NY, Minority Commerce Weekly, The Star Ledger, and the Chinese World Journal.

The publications, dated July 28, 2016, indicated the proposed DBE goal and description of the methodology was available for inspection during normal business hours for 30 days following the date of the notice, and comments would be accepted for 45 days from the date of the notice at the OBDCR in Jersey City, NJ.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA's Office of Civil Rights:

- A process and timeline to ensure that all publications and requests for comments and feedback is completed prior to the August 1st goal submittal deadline; and
- A plan to ensure that the consultative process is adequately documented and included with the goal submission, providing specific details as to when the meeting was held, whether comments were received from the participants, and proof that the goal is posted on the website.

C) Race-Neutral DBE Participation

Requirement (49 CFR Part 26.51)

The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

Discussion

During this compliance review, deficiencies were found with the requirement for Race-Neutral DBE Participation.

PATH's FFY 2014 – 2016 race-neutral DBE goal was set at 8.25%. The overall race-neutral DBE goal attainment for the triennial period was 0.75%.

PATH has adopted the Small Business Enterprise Policy and Program established by the Port Authority of New York & New Jersey (PANY&NJ). The Policy and Program are incorporated in PATH's DBE Program Plan, §26.39 – Fostering Small Business Participation.

PATH's DBE Program Plan states the agency anticipates meeting the maximum feasible portion of its overall goal by using race neutral means to facilitate DBE participation. The DBE Program Plan and goal methodology states the following services will be offered to achieve race-neutral participation:

- Training to assist these firms to fully utilize the latest technology and business applications to create efficiencies and enhance their capabilities i.e., project management, accounting and inventory software
- On-site technical support and consultation, working with organizations such as the Northeast Region Small Business Transportation Resource Center at LaGuardia Community College in Queens, New York and Regional Alliance for Small Contractors
- Informational seminars relating to business growth management and upcoming opportunities
- Targeted e-blasts on our capital projects
- A Mentor-Protégé Program overseen by the Port Authority's Engineering Department and Office of Business Diversity and Civil Rights, established to match M/W/DBE construction firms with major construction companies.

In addition, the OBDCR, in cooperation with the Engineering Department, developed the Mentor-Protégé Program with the primary objective of advancing the management and technical skills of certified DBE firms in a specified revenue range through a structured relationship with major construction contractors.

The PANY&NJ's small business element, upon which PATH relies, features the following programs:

- Supplier Diversity Program - consists of M/W/SBE certification and set MBE and WBE goals of 12% and 5%, respectively
- Janitorial Maintenance SBE Program – certifies and prequalifies SBEs for participation in the program, and provides SBEs the opportunity to compete for janitorial service contracts with companies of similar size and scope
- Set-aside Program - for select construction, supplies, equipment, and operations services
- Vendor Price Preference Program - for selected bid commodity and service contracts
- Subcontracting Program - for certified M/W/DBEs registered in the Port Authority's vendor database

The Port Authority's Supplier Diversity webpage provides detailed information about the programs, and is the primary resource for small minority, women, and DBE firms interested in growing their businesses and participating in PATH's contracting opportunities.

No evidence was provided documenting how race-neutral measures described in the Port Authority's small business program and referenced in PATH's goal methodology have been

implemented effectively to increase PATH's level of race-neutral DBE participation above its achievement of 0.75%.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA's Office of Civil Rights a process to develop and implement race-neutral measures that will facilitate increased DBE participation on its contracts.

D) Race-Conscious DBE Participation

Requirement (49 CFR Part 26.51)

The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

Discussion

During this compliance review, no deficiencies were found with the requirement for Race-Conscious DBE Participation.

PATH's DBE Program Plan states that the agency will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means.

PATH established an overall 15% DBE goal for FFY 2014 – 2016; the race-conscious portion of the goal was set at 6.75%. The DBE goal attainment for the triennial period was 7.82%, exceeding the projected race-conscious DBE participation by 1.07%.

PATH sets race-conscious goals on a contract-by-contract basis. The Construction Management Division initiates the process by:

- 1) Identifying the subcontracting opportunities and the estimated cost for each subcontract opportunity
- 2) Identifying the number of DBE firms, by trade/subcontract opportunity, from the NYS UCP and NJ UCP directories
- 3) Calculating the DBE percentage by dividing the total estimated cost for each subcontract opportunity by the total contract cost (Engineer's Estimate)
- 4) Submitting the proposed goal to OBDCR for review and approval

A summary of contracts that included DBE goals is shown in the following table:

Contract Number	Prime Contractor/Consultant	Contract Name	DBE Goal	Prime Contract Amount	DBE Subcontract Amount	DBE %
PAT 024-113	Skanska USA Civil Northeast	Harrison Car Maintenance Facility - Replacement of In-Ground Rail Car lift	5%	\$9,045,000	\$746,000	8.25%
PAT 131-000	VRH Construction Corporation	Hackensack River Bridge Emergency Generator Fuel Tank	25%	\$4,538,160	\$1,300,000	28.65%
PAT 774-154	Daidone Electric, Inc.	Hoboken Station Replacement of Axial Fan System	12%	\$3,774,000	\$452,880	12.00%
PAT 784-163	Austral Construction, Inc.	Infrastructure for Connection of Standby Generators	7%	\$1,348,800	\$120,000	8.90%
415-13-XXX	Eight (8) On-Call Professional Service Consultants	Indefinite Quality Professional Service Contract (Task Order Agreements)	17%	TBD	TBD	TBD
	AECOM USA, Inc.					
	Gannett Fleming Engineers & Architects, PC					
	HDR Engineering, Inc.					
	HNTB - New York Engineering & Architecture					
	Jacobs Civil Consultant, Inc.					
	Parsons Transportation Group of NY, Inc.					
	STV Incorporated					
	T.Y. Lin International					

PATH currently has one main professional service agreement with an overall goal of 17% for DBE participation. Proposers responding to the initial Request for Proposal (RFP) acknowledge the established goal, and once prequalified as an “on-call” consultant, are required to submit a D-2 DBE Participation Plan and Affirmation Statement for each task order in which it submits a proposal. The D-2 DBE Participation Plan is then reviewed for DBE goal commitment and good faith efforts determination.

Six task orders were randomly selected for the review of DBE participation plans and commitments, and are summarized in the table below.

Prime Consultant	Task Order	DBE %
Parsons Transportation Group of NY, Inc.	#5	6%
	#6	15.6%
	#43	17.2%
Jacobs Civil Consultants, Inc.	#36	17.4%
HTB – New York Engineering & Architecture, PC	#34	17%
	#35	17%

With the exception of two task orders awarded to Parsons Transportation Group of NY, Inc., the consultants submitted sufficient DBE participation to meet the established DBE goal. The DBE commitments and good faith efforts submitted by the Parsons Transportation Group for Task Orders #5 and #6 were jointly reviewed and approved by the Port Authority’s Engineering Operations and OBDCR.

E) Good Faith Efforts

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. Bidders must submit the names and addresses of the DBE firms that will participate on the contract; a description of the work each DBE will perform; the dollar amount of DBE participation; written commitment to use DBEs submitted in response to the contract goal; written confirmation from each DBE listed; or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE Program Plan.

Discussion

During this compliance review, no deficiencies were found with the requirement for Good Faith Efforts.

PATH's DBE Program Plan states that its DBE requirement is a responsiveness issue. During interviews with Port Authority procurement and engineering staff, it was stated that pre-award good faith efforts determinations are performed by OBDCR and post-ward jointly by OBDCR, Engineering and Construction's Resident Engineer. A check list is followed to ensure that all DBE documents required with the bid submission are included.

The DBE Program Plan also states, *"The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or by documenting good faith efforts. The DBE Liaison Officer of the Office of Business Diversity and Civil Rights (OBDCR) is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive."*

When contract goals are established, bidders/proposers are required to submit notarized forms in response to the contract goal stating whether they are committed to meeting the goal or submitting documentation demonstrating good faith efforts. The requirements for demonstration of good faith efforts are outlined in PATH's solicitation and contract documents, in accordance with 49 CFR Part 26, Appendix A.

DBE Documents contained in the solicitation packages for construction and professional service contracts are:

Construction Contracts

- Appendix A1 – DBE Goal Statement: indicates whether the bidder is committed to meeting the DBE goal set forth in the contract, or the bidder is unable to meet the DBE goal, but is committed to a minimum of ____% and submits documentation demonstrating its good faith efforts.
- Appendix A2 – DBE Participation Plan and Affirmation Statement: a dual-purpose form signed by the bidder and each respective subcontractor designated to participate on the

contract. The form identifies the name and address of the DBE firm, description of work, estimated dollar amount, percent of total contract amount, anticipated start and completion dates.

Additional DBE forms included in the solicitation package include:

- Appendix A3 – Modified DBE Participation Plan and Affirmation Statement: used to modify the initial DBE Participation Plan
- Appendix A4 – Information on Solicited Firms: Bidders are required to complete the form for itself and all firms that gave the bidder a quotation for any work planned for subcontracting regardless of whether they are ultimately chosen to participate in the contract. Information requested on the form include: the name and address of the firm, contact person, age of firm, gross revenue range, and whether the firm is a certified DBE (Yes/No).
- Appendix A5 – Pre-Award DBE Trucking Commitment Form
- Appendix A6 – DBE Regular Dealer Verification Form
- Guidance for Counting DBE Suppliers Participation

Professional, Technical and Advisory Services Contracts

- Attachment D1 – DBE Goals Statement: indicates whether the proposer/consultant is committed to meeting the DBE utilization goal set forth in the Agreement or Task Order, or the proposer/consultant is unable to meet the DBE utilization goal set forth in the Agreement or Task Order, but is committed to a minimum of ___% DBE utilization and submits narrative and documentation demonstrating good faith efforts.
- Attachment D2 – DBE Participation Plan and Affirmation Statement: is a dual-purpose form signed by the proposer and each respective DBE subconsultant designated to participate on the contract. The form identifies the name and address of the DBE firm, description of work, estimated dollar amount, percent of total contract amount, anticipated start and completion date.

When responding to a Request for Proposal (RFP) with a DBE goal, proposers are required to acknowledge the established goal. Once prequalified as an “on-call” consultant, the consultant submits a D-2 DBE Participation Plan and Affirmation Statement with each task order in which it submits a proposal. The D-2 DBE Participation Plan is then reviewed for goal commitment and good faith efforts, if applicable.

The DBE Program Plan describes PATH's administrative reconsideration process, and states that, “Within seven days of being informed by the Port Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration.” The bidder is required to make their request in writing to the reconsideration official. The reconsideration official's contact information is identified as:

The Port Authority of New York and New Jersey
Chief Procurement Officer
4 World Trade Center
150 Greenwich Street, 21st Floor
New York, NY 10006

In the review of PATH's solicitation and contract documents, and documents submitted by bidders/proposers in response to contract goals, it appears that PATH is following its good faith efforts procedures. There is no evidence indicating PATH has awarded any contracts in which good faith effort procedures were not applied.

F) Protecting Against Termination for Convenience

Requirement (49 CFR 26.53 and 26.13)

Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontract with its own forces or those of an affiliate, or reducing the scope of DBE contract) without the transit agency's prior written consent. Failure to obtain written consent is a material breach of contract.

Discussion

During this compliance review, deficiencies were found with the requirement for Protecting Against Termination for Convenience.

PATH's DBE Program Plan states:

"The Port Authority will require a contractor to make good faith efforts to replace a DBE that it terminated, or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The substitution is subject to Port Authority approval." And, "Failure to comply with the requirements of 49 CFR Part 26 is a material breach of the contract, which may result in the termination of the contract or such other remedy, as the Authority deems appropriate."

The DBE Program Plan does not include the requirement consistent with §26.53(f) (5), which states:

- *"The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action."*

In the review of PATH's solicitation and contract documents, termination language and procedures delineated at §26.53(f) are not included.

From the interviews conducted on-site with OBD CR, the Contract Compliance Unit, Engineering Operations, and Legal Department staff, it was stated that there have been no DBE terminations on any of PATH's contracts.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights:

- An update to the DBE Program Plan to include language requiring contractors to give DBE subcontractors 5-days to respond to a notice of termination;
- Evidence of updated contract language containing required DBE termination clauses, in compliance with DBE regulation; and
- A process to ensure compliance with the DBE termination requirements.

G) Counting DBE Participation

Requirement (49 CFR Part 26.55)

The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidder is only counting work performed by the DBE's own forces in accordance with the DBE requirements.

Discussion

During this compliance review, deficiencies were found with the requirement for Counting DBE Participation.

PATH has established a process for assessing the accuracy of bidders' response to a contract goal and ensuring that DBE subcontract work is being counted correctly. For example, in construction contracts, DBE documents submitted by bidders are reviewed by the Construction Management Division and submitted to OBDCCR for review and approval. Two submission forms are examined in the process: Appendix A2 – *DBE Participation Plan and Affirmation Statement* is analyzed to verify each DBE firm's status, the type of work the DBE is certified to perform, and to ensure that the participation amount is counted properly; and Appendix A6 – *DBE Regular Dealer Verification Form*, reviewed in conjunction with Appendix A2, and provides additional information regarding a DBE supplier's participation for meeting the DBE goal.

However, in the review of the DBE participation plan for the Hoboken Station Replacement of Axial Fan System contract, a counting discrepancy was found. It was noted that the participation of a DBE subcontractor, certified as a regular dealer, was incorrectly counted at 100% participation credit. There was no evidence provided indicating the DBE was a manufacturer, supplier adding value to the purchased material, or a supplier performing a service to supply and install the purchased material.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights evidence of a process to ensure accurate counting of DBE participation for DBE regular dealers/suppliers consistent with the type of subcontract work to be performed.

H) Quotas

Requirements (49 CFR Part 26.43)

The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

Discussion

During this compliance review, no deficiencies were found with the requirement for Quotas.

PATH's DBE Program Plan states that the Port Authority does not use quotas in the administration of the DBE program. No evidence of the use of quotas by PATH was found during the on-site visit.

6.9 Shortfall Analysis and Corrective Action Plan

Requirement (49 CFR Part 26.47)

The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

Discussion

During this compliance review, deficiencies were found with the requirement for Shortfall Analysis and Corrective Action Plan.

PATH's DBE Program Plan states the following:

"If the Port Authority awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the issues we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;

(3) The Port Authority will submit, within 90 days of the end of the fiscal year, the analysis and actions developed under paragraphs (c) (1) and (2) of this section (§26.47) to the USDOT for approval."

In the review of PATH's Uniform DBE reports, the agency did not achieve its 15% DBE goal for FFY 2014 – 2016. The results are summarized in the tables below:

DBE Goal Attainment Summary

DBE Goal: 15%	Totals	DBE %
FY 2014		
DBE Dollars	\$ 845,644	
Prime Contract Dollars	\$ 5,888,231	14.36%
FY 2015		
DBE Dollars	\$ 2,187,008	
Prime Contract Dollars	\$ 41,863,134	5.22%
FY 2016		
DBE Dollars	\$ 4,397,154	
Prime Contract Dollars	\$ 38,937,653	11.29%

Race-Conscious / Race-Neutral DBE Goal Attainment Summary

	Race Conscious DBE Goal: (6.75%)	Race Neutral DBE Goal: (8.25%)
FY 2014	14.36%	0.00%
FY 2015	5.22%	0.00%
FY 2016	9.62%	1.67%

PATH's DBE goal attainment for FY 2014 was 14.36%, representing a shortfall of 0.64%. A shortfall analysis and corrective action plan was not completed. PATH's DBE goal attainment for FY 2015 was 5.22%, representing a shortfall of 9.78%. The shortfall analysis report submitted to the FTA was disapproved. Detailed reasons for the shortfall and specific corrective actions were omitted from the submission. As a result, the FTA issued the agency a "Corrective Action Required" letter in March 2016, prescribing specific corrective action steps to be implemented, such as: "Provide a detailed overview of the race neutral measures implemented over FY 2015, and an analysis of why each method was ineffective, and a timeline for when they were implemented", and "Consider implementing a small business set-aside program as part of your DBE program". PATH submitted two status reports, due July 1, 2016 and December 29, 2016, providing detailed responses to the FTA's corrective action letter.

PATH's DBE goal attainment for FY 2016 was 11.29%, representing a shortfall of 3.71%. The FY 2016 shortfall analysis and corrective action plan was submitted to the FTA on January 18, 2017.

The two corrective action status reports for FY 2015 and the recent shortfall analysis for FY 2016 submitted by PATH are in FTA review status. In the examination of PATH's FY 2015 submissions, it does not appear that the agency has fully implemented some of the corrective action steps detailed in the FTA's March 2016 letter. For example, a detailed overview of the race neutral measures implemented over FY 2015, and an analysis of why each method was ineffective, and a timeline for when they were implemented was not presented. PATH's

response was “*PATH did not meet its race neutral goal because of ineffective methods; rather awards/commitments for the reporting period ending FY 2015 included mostly procurement of materials/supplies where DBE opportunities were limited.*” Upcoming projects are not identified, and a timeline or milestones for when corrective actions will be implemented is not included. The FY 2016 shortfall analysis does not describe the reason for the shortfall, or provide an illustration of the projected projects and actual projects undertaken that resulted in the shortfall. The list of “on-going” corrective actions pertaining to DBE training and technical support is an excerpt from the DBE Program Plan and does not delineate a specific implementation plan. An explanation of what race-neutral measures has been successful or unsuccessful, and details on dates and topics for FY 2017 outreach efforts are not provided.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA’s Office of Civil Rights a process to ensure that detailed shortfall analysis and corrective action plans are submitted during required fiscal years following FTA’s guidance for Preparing an Adequate Shortfall Analysis and Corrective Action Plan.

6.10 Transit Vehicle Manufacturers (TVMs)

Requirement (49 CFR Part 26.49)

The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

Discussion

During this compliance review, no deficiencies were found with the requirement for Transit Vehicle Manufacturers (TVMs).

PATH’s FTA grants do not include funding for the purchase of any public mass transportation vehicles. Therefore, the requirement for TVM compliance is not currently applicable to PATH for this review.

6.11 Required Contract Provisions and Enforcement

A) Contract Assurance

Requirements (49 CFR Part 26.13)

Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include non-discrimination clauses detailed by the DBE regulations.

Discussion

During this compliance review, deficiencies were found with the requirement for Contract Assurance.

PATH's DBE Program Plan states that all FTA financially assisted contracts will include the following contract assurance language:

"The Port Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of DOT assisted contracts. The Port Authority's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Port Authority of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

The above language included in PATH's DBE Program Plan is incorrect, and applies to a financial assistance agreement signed with a DOT operating administration (or a primary recipient).

In accordance with §26.13(b), each contract PATH signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible."*

The following construction contracts were reviewed:

Contract Number	Prime Contractor	DBE Subcontractor(s)
PAT 024.113	<ul style="list-style-type: none"> Skanska USA Civil Northeast 	<ul style="list-style-type: none"> Coastal Steel Construction of NJ, LLC DJ's Mechanical, Inc. LB Electric Company SJH Engineering, PC* Tricon Enterprises
PAT 131.000	<ul style="list-style-type: none"> VRH Construction Corporation 	<ul style="list-style-type: none"> S&J Electrical Contractor
PAT 774.154	<ul style="list-style-type: none"> Daidone Electric, Inc. 	<ul style="list-style-type: none"> T&D Engineering and Supply
PAT 784.163	<ul style="list-style-type: none"> Austral Construction, Inc. 	<ul style="list-style-type: none"> 5 Star Contractors, LLC
PAT 784.164	<ul style="list-style-type: none"> Pravco, Inc. 	<ul style="list-style-type: none"> DBE Prime Contractor
Indefinite Quantity Professional Service Agreements	<ul style="list-style-type: none"> AECOM USA, Inc. Gannet Fleming Engineers & Architecture, PC HDR Engineering, Inc. HNTB – NY Engineering & Architecture, PC Jacobs Civil Consultants Parsons Transportation Group of NY, Inc. STV Incorporated T.Y. Lin International 	<ul style="list-style-type: none"> DBE subconsultants are identified for each task order award.
*2 nd tier DBE subcontractor under a Skanska subcontract with Parsons Brinkerhoff		

The DBE assurance language in the Austral Construction, Daidone Electric, and Pravco prime contracts states:

“The bidder shall not discriminate on the basis of race, color, national origin, creed/religion, sex, age or handicap/disability in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.”

The contract assurance language stated above is not consistent with the complete language required by §26.13(b).

The Skanska prime contract did not contain the DBE assurance clause, nor did the following eight DBE subcontracts reviewed contain the DBE assurance clause:

- 5 Star Contractors
- Coastal Steel Construction of NJ
- DJ's Mechanical
- LB Electric Company
- S&J Electrical Contractor
- SJH Engineering, PC
- T&D Engineering and Supply
- Tricon Enterprises

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA's Office of Civil Rights:

- An updated DBE Program Plan to include the correct DBE assurance language compliant with the DBE regulation; and
- A process for ensuring that contract assurance language is placed in every federally-funded contract and subcontract.

B) Prompt Payment

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 compliance review, deficiencies were found with the requirement for Prompt Payment.

Prompt Payment

PATH's DBE Program Plan states that it will "include a clause *substantially similar* to the following clause in each DOT-assisted prime contract":

"Within ten (10) days of receipt of any sum attributable to work performed by a subcontractor or material vendor, the contractor shall advance to the subcontractor or material vendor said sum, less such amount, if any, as the contractor is authorized to retain under the subcontract or purchase agreement."

The DBE Program Plan should describe the exact language that will be inserted into contracts and the language should not provide the contractor with the ability to withhold amounts in its subcontracts or purchase agreements that may be in conflict with PATH's retention policy.

In the review of subcontracts for *Coastal Steel Construction of NJ, LLC, DJ's Mechanical, Inc., LB Electric Company, and Tricon Enterprises*, payment terms were not consistent with the terms outlined in the DBE Program Plan. Each of the subcontracts state that the DBE will be paid 30 days from the date of the prime contractor's approved invoice. The subcontractor payment clause is not in compliance with language required by the regulation.

In review of the Pravco, Inc. (DBE) prime contract, the prompt payment clause was found, but inconsistent with the PATH DBE Program Plan and for the 5 Star Contractors, LLC's DBE subcontract, the prompt payment clause was not found.

Retainage

PATH's DBE Program Plan states that the following retainage terms will be included in all federally- assisted prime contracts:

"The prime contractor shall pay amounts retained under the subcontract or purchase agreement to the subcontractor or material vendor within ten (10) days of the satisfactory completion of the subcontractor's or material vendor's work."

The return of retainage terms was not consistent in the following three prime contracts and four DBE subcontracts.

Prime Contractors

- Austral Construction, Inc.
- Daidone Electric, Inc.
- VRH Construction Corporation

DBE Subcontractors

- Coastal Steel Construction of NJ, LLC
- DJ's Mechanical
- LB Electric Company
- Tricon Enterprises

Each of these contracts state that retainage shall be released within thirty (30) days of satisfactory completion of work performed by subcontractors, which is not consistent with PATH's DBE Program Plan.

The retainage clause was found in the prime contract for Pravco, Inc. (DBE), but inconsistent with the PATH DBE Program Plan and not found in the Skanska USA Civil Northeast or the subcontracts for 5 Star Contractors, LLC and S&J Electrical Contractor.

The professional service (Indefinite Quantity Professional Services contracts), did not include a provision for return of retainage. The OBDCR staff informed the reviewers that PATH does not withhold retainage for professional services. It was noted however, that if no retainage is held in professional services, then PATH should determine and notify prime consultants either (1) that primes are prohibited from withholding retainage from subconsultants, or (2) primes can withhold retainage and retainage must be returned to subconsultants within ten (10) days of the subconsultants' satisfactory completion of work, per the terms in PATH's DBE Program Plan.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA Office of Civil Rights:

- An updated DBE Program Plan that includes prompt payment terms in compliance with DBE regulations; and
- A process for ensuring that prompt payment language and return of retainage language placed in every DOT-assisted contract and subcontract is consistent and in compliance with DBE regulations.

C) Legal Remedies

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. Breach of contract remedies should be used as appropriate.

Discussion

During this compliance review, deficiencies were found with the requirement for Legal Remedies.

The DBE Program Plan states the following:

“The Port Authority, a Bi-State agency of the States of New York and New Jersey, is not subject to single state legislation, local statutes or regulations that may govern contract remedies. However, the Port Authority will bring to DOT’s attention any false, fraudulent or dishonest conduct in connection with the program, so that DOT can take the steps provided in 49 CFR Part 26. (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules).

The Port Authority utilizes a contract plate that sets forth the rights and remedies available to the Port Authority if it shall find that a contractor is guilty of a breach of any term whatsoever in the contract.

The Port Authority will insert the following rights and remedies into every DOT-assisted contract to govern non-compliance with the DBE regulations. These contractual rights and remedies will be available to the Port Authority in the event of non-compliance by a participant in the DBE program:

- *The right to take over and complete the work or any part thereof as agent for and at the expense of contractor, either directly or through other contractors*
- *The right to cancel the contract as to any or all of the work yet to be performed*
- *The right to specific performance and injunction or any other appropriate equitable remedy*
- *The right to money damages*

The Port Authority as a body, both corporate and politic (Sec. 6407, NY Unconsol. Laws.) has the right under the laws of the States of New York and New Jersey to pursue such contract rights and remedies in courts of general jurisdiction in those States – New York (New York, Supreme Court, Article 6, Section 7 of the New York State Constitution) and in New Jersey (New Jersey, Superior Court, Article 6, Section 3, paragraph. 2)."

The legal remedies clause contained in the Skanska contract was not consistent with the DBE Program Plan. The contract clause states:

"If the Contractor fails to perform in accordance with the terms of this Contract, the Authority may obtain the goods or services from another Vendor and charge the Contractor the difference in price and a reletting cost, if any, plus any other damages that the Port Authority may deem appropriate."

The following construction subcontracts reviewed also did not contain legal remedies:

- 5 Star Contractors, LLC
- Coastal Steel Construction of NJ, LLC
- DJ's Mechanical, Inc.
- LB Electric Company
- S&J Electrical Contractor
- SJH Engineering, PC
- Tricon Enterprises

The professional services agreements reviewed did not contain the legal remedies as set forth in the DBE Program Plan.

During interviews with OBDCR, Procurement and Port Authority Law Department staff, it was stated that for the contracts that were the subject of this review, no issues have arisen requiring PATH to take legal action.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA's Office of Civil Rights a process for ensuring that legal remedies are placed in every DOT-assisted contract and subcontract, and in compliance with its DBE Program Plan.

6.12 Certification Standards

Requirement (49 CFR Part 26.67- 26.71)

The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

Discussion

During this compliance review, deficiencies were found with the requirement for Certification Standards.

The Port Authority of NY & NJ conducts DBE certifications on behalf of all DOT recipients in the states of New York and New Jersey. In the review of the New York State Unified Certification Program Memorandum of Understanding, dated June 24, 2004, PATH is not a listed signatory in the document or any subsequent document.

Per DBE regulations §26.81(a)(1), all DOT grantees are required to be signatory to its State's UCP agreement, and specifically states:

"You and all DOT recipients in your state must participate in a Unified Certification Program (UCP). Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval."

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA's Office of Civil Rights a description of how it will participate in the UCP, along with a copy of signed documentation evidencing PATH as a participating DOT recipient in the UCP agreement.

6.13 Certification Procedures

A) Onsite Visits and Document Review

Requirement (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

PATH does not conduct DBE certifications; therefore, this section is not applicable.

B) Annual Affidavit

Requirement (49 CFR Part 83)

DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

Discussion

PATH does not conduct DBE certifications; therefore, this section is not applicable.

C) Interstate Certification

Requirement (49 CFR 26.85)

The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR 26.85(c)-(g).

Discussion

PATH does not conduct DBE certifications; therefore, this section is not applicable.

D) Certification Appeals

Requirement (49 CFR 26.86)

The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

Discussion

PATH does not conduct DBE certifications; therefore, this section is not applicable.

6.14 Record Keeping and Enforcements**Requirement (49 CFR Part 26.11 and 26.37)**

The recipient must provide data about its DBE program to FTA on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA electronic grants management system, unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the DOT Office of Civil Rights by January 1st of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close-out reviews for contracts.

Lastly, 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 compliance review, deficiencies were found with the requirement for Record Keeping and Enforcement.

Reporting

The review team examined PATH's semi-annual DBE Uniform Reports submitted for FFY 2014 – 2016. The June 1st Uniform Report submitted for FFY 2016 did not include two prime contracts (*Harrison Car Maintenance Facility Replacement of In Ground Rail Car Lift* and *Hackensack River Bridge Emergency Generator Fuel Tank*) totaling \$12,224,844 awarded during the report period, and the December 1 report contained inaccurate information. The December 1st report over-counted a prime contract awarded to a DBE supplier at 100% DBE credit (\$296,486), instead of 60% DBE credit (\$177,890). The December 1st report also contained incorrect information in Section C - *Payments on Ongoing Contracts*. A total of 120 contracts reported in column 18A for “*Total Number of Contracts*” should have been reported as 22, and a total of 80 contracts reported in Column 18C “*Total Number of Contracts with DBEs*” should have been reported as 22. PATH submitted a revised December 1 report for FFY 2016 on January 18, 2017 to include the two prime contract awards excluded from the June 1 report; however, the revised report contained the incorrect information in Section C discussed above.

The source documentation for the DBE reports is collected collaboratively by the PATH Grants staff and Port Authority Engineering and Procurement departments, and maintained in the SAP

software system (an electronic compliance monitoring database). OBDCR's Compliance Manager is responsible for completing the semi-annual DBE reports, and has access to the database to collect required DBE participation data. The Compliance Manager generates Excel spreadsheets to compile information required for each section of the DBE Uniform Report. A copy of the source documentation for the FFY 2016 June and December reports were discussed with the Compliance Manager, and checked against the submitted DBE Uniform Reports.

Monitoring

PATH has established policies and procedures for monitoring DBE program requirements compliance. The Port Authority Construction Management Division - Contract Compliance Unit performs DBE monitoring and commercially useful function evaluations to determine whether a DBE firm is actually performing, managing, and supervising the subcontracted work. The Construction Inspector monitors and logs the activities of prime and subcontractors on the jobsite on a daily basis. The inspectors check and report any deviation from approved DBE participation plans directly to the Resident Engineers, who in turn communicates with the OBDCR. The documents used to perform this function were examined on-site, and included the following:

- Daily Narrative Reports – signed by the inspector, which identify the prime contractor and subcontractor(s) on-site, the start and end time at jobsite, the day's work performed, the equipment used, and weather condition; and
- Contractor/Subcontractor Daily Sign-In Sheets – signed by each contractor and subcontractor, indicating the worker's name and last four digits of the social security number, work classification, and start time at jobsite.

In addition, OBDCR Compliance Representatives conduct DBE compliance site investigations to verify DBE subcontractor's compliance with the commercially useful function requirement. A *DBE Compliance Site Investigation Form* is completed by the compliance representative and signed by both the compliance representative and the job site-inspector. The form is a check list that verifies the DBE/SBE firm's subcontracting status and type of work performed. The form also contains a section that is used for the inspection of items such as invoices, certified payrolls, lease agreements, and subcontractor agreements.

The Engineering Compliance Manager, within the Construction Management Division – Contract Compliance Unit is responsible for DBE monitoring activities. The Manager was interviewed at the on-site and the reviewer was provided a detailed overview of the contract compliance and DBE monitoring process. A copy of the written monitoring procedures was also provided.

Approved DBE Participation Plans are distributed to all construction inspectors assigned to a project. The plans are reviewed regularly by the Resident Engineer and Compliance Unit staff. A *Monthly Statement of Payments* to subcontractors is submitted by the prime contractor with each progress payment request. The prime and subcontractor payments are recorded and measured against the DBE participation plan and the percentage of contract completion. DBE participation status reports are prepared and submitted to OBDCR. Problematic contracts are highlighted for follow-up.

During project progress meetings, prime contractors are reminded of DBE reporting and prompt payment requirements. Periodic follow-ups are conducted with select subcontractors to verify the status of prompt payment and return of retainage. At the project closeout stage, the amount of DBE participation achieved is measured against the approved DBE participation plan. If there is a deviation from the approved plan, further explanation is requested from the prime contractor for any deviation not previously addressed during performance of the contract. A compliance hold is placed on a project's final payment clearance until the prime contractor has satisfied all outstanding compliance issues. In the event a prime contractor fails to comply with good faith efforts to meet DBE goals, a final administrative warning letter is issued outlining the disparity and imminent legal remedies.

A copy of monitoring documents completed and maintained for the on-going Harrison Car and Maintenance Facility project was examined. The documents included the DBE Participation Plan and OBDCCR approval letter, Daily Narrative Report dated 8/29/16, Contractor/Subcontractor Daily Sign-in Sheet, and DBE Participation Status Report – as of 11/21/16.

Bidders List

PATH's DBE Program Plan states that it will create and maintain a bidders list consisting of information about all DBE and non-DBE firms that quote on DOT-assisted contracts. The DBE Program Plan further states that the bidders list will include the firm's name, address, DBE/non-DBE status, age of firm, and annual gross receipts. The DBE Program Plan further states that the information will be collected from a form included in solicitation packages.

Solicitation documents viewed contained the Appendix 4 - *Information on Solicited Firms* form for completion by bidders with the names of all firms that gave a quotation for work planned to be subcontracted. The form includes the firm's name, address, phone number, contact person, age of firm, annual gross receipts and a question whether the firm is DBE certified or not. Although the form captures information necessary for maintaining a bidders list, there is no evidence that this information is collected for use by PATH.

During interviews with staff on-site, it was stated that PATH relies upon the Port Authority's on-line vendor registration system for firms interested in doing business with the agency. Vendors register in the system with a login and password, establish a vendor profile, and are allowed secure access to add and/or update profile information as required. Once registered, vendors can receive solicitation notices, and can download various forms and documents available on the website.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, PATH must submit to the FTA Office of Civil Rights:

- Evidence that the FFY 2016 Uniform DBE Reports submitted for June 1 and December 1 are revised to contain accurate information for each report period and uploaded in TrAMS;
- A plan to ensure that semi-annual DBE reports are submitted accurately; and
- Evidence that a bidders list is being compiled in accordance with §26.11(c), and is correctly reflected in the DBE Program Plan.

7. Summary Findings

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	ND	-	-
2.	Policy Statement	26.23	ND	-	-
3.	DBE Liaison Officer	26.25	ND	-	-
4.	Financial Institutions	26.27	D	PATH has identified 5 minority financial institutions, but has not encouraged prime contractors to use the institutions. A complete list of the financial institutions is not included in the DBE Program Plan. PATH does not have a procedure for evaluating the availability of minority financial institutions on a regular basis, i.e. annually, biennially.	Within 60 days of the issuance of the final report
5.	DBE Directory	26.31	AC	PATH is advised to prominently display links to the NJS UCP and NJ UCP DBE directories on its website.	
6.	Overconcentration	26.33	ND	-	-
7.	Business Development Programs	26.35	ND	-	-
8. Determining / Meeting Goals	-	-	-	-	-
8.a	Calculation	26.45	ND Note FTA is currently reviewing their goal	-	-

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
8.b	Public Participation	26.45	D	PATH's goal methodology does not include documentation of the consultative process and proof of goal publication on the website.	Within 60 days of the issuance of the final report
8.c	Race-Neutral	26.51	D	PATH has not met its race neutral goal for the past three years, and has not demonstrated the implementation of effective measures to meet its goal.	Within 60 days of the issuance of the final report
8.d	Race-Conscious	26.51	ND	-	-
8.e	Good Faith Efforts	26.53	ND	-	-
8.f	Protecting Against Termination for Convenience	26.53	D	Termination language and procedures at 26.53(f) are not included in solicitation or contracts. The procedure requiring five days' notice to DBEs from prime seeking to terminate/ substitute is not implemented.	Within 60 days of the issuance of the final report
8.g	Counting DBE Participation	26.55	D	PATH has counted incorrectly, DBE suppliers at 100% credit in DBE participation plans, and in its Uniform DBE Report submission.	Within 60 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	D	Shortfall analyses reports submitted for FFY 2015 and 2016 do not adequately address reasons for the shortfall or corrective action plans, and do not discuss whether race neutral measures were successful or unsuccessful.	Within 60 days of the issuance of the final report
10.	TVM	26.49	NA	-	-
11.Required Contract Provisions and Enforcement				-	-
11.a	Contract Assurance	26.13	D	Eight subcontracts did not contain required contract assurance language.	Within 60 days of the issuance of the final report
11.b	Prompt Payment	26.29	D	Prompt payment and return of retainage terms were not consistent in prime or subcontracts. DBE Program Plan states subcontractor invoices should be paid within 10 days of prime's receipt of payment, and retainage released within 10 days of satisfactory completion of work.	Within 60 days of the issuance of the final report
11.c	Legal Remedies	26.37	D	Legal remedies contained in the professional services and construction contracts reviewed were not consistent with the DBE Program Plan.	Within 60 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
12. Certification Standards		26.67-26.71	D	PATH is not a signatory to the NY State UCP Agreement.	Within 60 days of the issuance of the final report
13. Certification Procedures					
13.a	Onsite Visit	26.83	NA	-	-
13.b	Annual Affidavit	26.83	NA	-	-
13.c	Interstate Certification	26.85	NA	-	-
13.d	Certification Appeals	26.86	NA	-	-
14. Record Keeping and Enforcements					
14.a	Bidders List and Reporting DBE Participation	26.11	D	Bidders list is not maintained. FFY 2016 DBE Uniform Reports contain missing and inaccurate information.	Within 60 days of the issuance of the final report
14.b	Monitoring	26.37	ND		

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

Attachment A FTA Notification Letter to the Port Authority



U.S. Department
Of Transportation
Federal Transit
Administration

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, D.C. 20590

October 27, 2016

Michael Marino
Director/General Manager
Port Authority Trans-Hudson Corporation
1 PATH Plaza
Jersey City, NJ 07306

Dear Mr. Marino:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Port Authority Trans-Hudson Corporation (PATH) has been selected for a review of its overall DBE program to take place February 7 – 9, 2017.

The purpose of this review will be to determine whether PATH is honoring its commitment, as represented by certification to FTA, to comply with all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a three-day period. FTA has engaged the services of the Milligan & Company, LLC (Milligan) of Philadelphia, PA to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: Denise Bailey, Sandra Swiacki, Lillie Claitt, John Clare, Habibatu Atta, and Renee Moore. Please do not remove these individuals. FTA will do so at the close of the review. The Milligan team and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled Tuesday, February 7, 2017 at 9:00 a.m. to introduce the Milligan team and FTA representatives to PATH. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of

Trans-Hudson Corporation (PATH)

privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as PATH's liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Electronic copies of the documents are preferred. Please upload them to Milligan's file transfer protocol (FTP) site. Your reviewer will reach out to you concerning the use of the FTP site. Please be prepared to designate a point of contact for your agency, for which user access should be provided. You also have the option of sending the documents to the following contact person:

Sandra Swiacki
Milligan & Company, LLC
105 N. 22nd Street
Philadelphia, PA 19103
Phone: 215-496-9100, ext. 120; Email: sswiacki@milligancpa.com

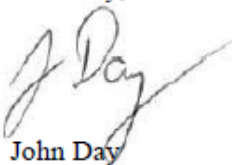
We request the exit conference be scheduled for Thursday, February 9, 2017 at 2:00 p.m., to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to PATH, will be considered public documents subject to release under the Freedom of Information Act, upon request.

PATH representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Britney Berry, Program Manager, for this compliance review, at 202-366-1065 or via email at britney.berry@dot.gov.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day
Program Manager for Policy & Technical Assistance

cc: Henrika Buchanan, FTA Region II Acting Administrator
Lynn Bailey, FTA Region II Civil Rights Officer
Stephen Goodman, FTA Director, Hurricane Sandy Recovery
Lash Green, PATH, Director Business Diversity & Civil Rights
Victoria Ostolozaga, PATH, TrAMS User Manager
Jacqueline Carroll, Port Authority of NY & NJ, Compliance Manager

Port Authority Trans-Hudson Corporation
Disadvantaged Business Enterprise Program Compliance Review

Enclosure 1

You must submit the following information to Milligan within 21 calendar days from the date of this letter.

1. Current DBE Program Plan (which should include PATH'S organization chart).
2. Fiscal years (FYs) 2017 – 2019 goal methodology submission. The reviewers are able to access PATH's FYs 2014 – 2016 goal methodology submission uploaded in FTA's TrAMS system
3. Any Hurricane Sandy Recover quarterly DBE reports for FYs 2014 to present and semi-annual DBE reports for FY 2014. The reviewers are able to access PATH's semi-annual DBE reports for FYs 2015 and 2016 through FTA's TrAMS system.
4. Current Memorandum of Understanding or similar documents for PATH's participation in the Unified Certification Program.
5. Any additional certification criteria/guidelines used by PATH in determining DBE eligibility, if applicable.
6. Provide the number of DBE applications PATH has reviewed, approved, and denied each year from FY2014 through FY2016. Include the number of DBE applications and the names of applicants that are currently pending review.
7. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that area currently working on those contracts, and worksite locations, where applicable.
8. Provide contract records to include:
 - a) the last 15 FTA-assisted contracts awarded by PATH in FYs 2015/2016
 - b) the last 15 FTA-assisted contracts completed by PATH in FYs 2015/2016
 - c) the last 15 FTA-assisted contracts with DBE goals awarded by PATH in FYs 2015/2016
 - d) the last 15 FTA-assisted contracts with DBE goals completed by PATH in FYs 2015/2016
9. The identification of firms, if any, that has worked on PATH's projects and has graduated from PATH's DBE program, i.e., exceeded the threshold dollar amounts and is no longer certified.

Port Authority Trans-Hudson Corporation
Disadvantaged Business Enterprise Program Compliance Review

10. Information identifying FTA-funded contracts awarded during FYs 2014 to present by PATH and its subrecipients. The federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
11. Good Faith Effort criteria established by PATH.
12. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
13. Small Business element as implemented by PATH.
14. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer.
15. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years.
16. List of all bids accepted for the RFPs provided in response to Item 14.
17. Shortfall analysis and corrective action plan for the last three (3) years.
18. List of all subrecipients and the amount of FTA funds allocated to each subrecipient from 2014 through present.
19. Names of interested a party (external organizations) with which PATH has interacted on the DBE program issues.
20. Any complaints received concerning PATH's DBE program over the past five (5) years.
21. The DBELO official position description.
22. Other pertinent information determined by PATH's staff to shed light on its DBE compliance efforts.

Attachment B Port Authority Trans-Hudson Corporation (PATH) Response to the Draft Report

Good morning Mr. Day,

Attached as requested is the PATH DBE Compliance Review draft report containing Port Authority of NY&NJ and PATH's revisions and comments for your review and consideration.

An additional note: On page 32, for the summary of contracts table please insert the following revisions:

- **Contract Number PAT-024.113 – DBE Subcontract Amount is \$746,000 and DBE % is 8.2%**
- **Contract Number PAT-774.154 – DBE Subcontract Amount is \$452,880 and DBE % is 12%**

Please contact me if you have any questions.

Cordially,

***Jacqueline Carroll
Compliance Manager
Office of Business Diversity & Civil Rights
The Port Authority of NY & NJ
2 Montgomery Street, 2nd Floor
Jersey City, NJ 07302
Phone: 201-395-3958
Fax: 201-396-3955***

Attachment C Port Authority Trans-Hudson Corporation (PATH) DBE Program Plan

THE PORT AUTHORITY OF NY & NJ

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM**

**PORT AUTHORITY TRANS-HUDSON
CORPORATION (PATH)**

JULY 2013

Federal Transit Administration
Hurricane Sandy Recovery

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OBJECTIVES / POLICY STATEMENT

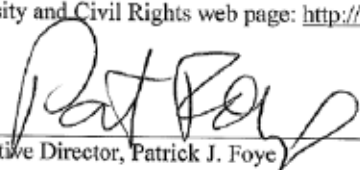
The Port Authority of New York and New Jersey herein referred to as the Port Authority, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, was created by compact between the two states in 1921 with the consent of the Congress of the United States, to plan, develop and operate public transportation, terminal and facilities of commerce within the Port District, an area of about 1,500 square miles in both States, centering about the New York Harbor. The philosophy of the Port Authority is that the continuing growth and health of our society depends, to a large extent, on the opportunity for everyone to share economic progress.

The Port Authority has established a Disadvantaged Business Enterprise (DBE) program in accordance with applicable United States Department Of Transportation regulations in 49 CFR Part 26. The Port Authority has received Federal financial assistance from the Department of Transportation (DOT), and as a condition of receiving this assistance; the Port Authority has signed an assurance that it will comply with these regulations. It is the policy of the Port Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with 49 CFR Part 26;
4. To ensure that only firms that fully meet regulatory eligibility standards as outlined in 49 CFR Part 26 are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and,
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Director of the Office of Business Diversity and Civil Rights has been delegated as the DBE Liaison Officer. In that capacity, the Director of the Office of Business and Civil Rights is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port Authority in its financial assistance agreements with the Department of Transportation.

The Port Authority has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have disseminated this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through posting on the Office of Business Diversity and Civil Rights web page: <http://www.panynj.gov/business-opportunities/supplier-diversity.html>


Executive Director, Patrick J. Foye

7-13-13
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement of the third page of this program.

Section 26.3 Applicability

The Port Authority is the recipient of Federal airport funds authorized by 49 U.S.C. 4701, *et seq.*

Section 26.5 Definition

The terms used in this program have the meanings defined in 49 C.F.R. Part 26.5.

Section 26.7 Non-discrimination Requirements

The Port Authority will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on any basis of race, color, sex or national origin.

In administering its DBE program, the Port Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT (26.11)

The Port Authority will report DBE participation to DOT agencies by required schedule and transmit electronically via preferred format.

Bidders List (26.11 (c))

The Port Authority will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age and annual gross receipts of firms.

We will collect this information in the following ways: We will include a form with all solicitations requiring bidders to list the name, address, phone number and contact person for all firms who provided a bid or a quote regardless of whether these firms were ultimately selected as subcontractors or partners on a given contract. The Port Authority of NY & NJ will then follow up with each firm for which we need to obtain additional required information. All of this data will be maintained in the Authority's Procurement Department's data collection and management system.

Section 26.13 Federal Financial Assistance Agreement Assurance

The Port Authority has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

“The Port Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all-necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of DOT-assisted contracts. The Port Authority’s DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Port Authority of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).”

SUBPART B – ADMINISTRATIVE REQUIREMENTS**Section 26.21 DBE Program Updates**

The Port Authority will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the third page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The Port Authority has designated the following individual as its DBE Liaison Officer: Mr. Lash Green, Director, Office of Business Diversity and Civil Rights, 233 Park Avenue South, 4th Floor, New York, NY 10003, 212-435-7802, lagreen@panynj.gov. Mr. Green is responsible for implementing all aspects of the DBE program and ensuring that the Port Authority complies with all provisions of 49 C.F.R. Part 26. He has direct, independent access to the Executive Director of the Port Authority concerning DBE program matters and he has a staff of four professional staff assigned part time to the DBE program and access to professional personnel from throughout the agency, i.e. Aviation, Engineering, Procurement and Law who devote a portion of their time to the program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate agency officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews internal contracts, purchase requisitions, and third party contracts as needed, for compliance with this program.
3. Works with all departments to set overall goals.

4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Port Authority's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings as necessary.
8. Advises the Executive Director/Board of Commissioners on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in both New York and New Jersey states.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the Port Authority's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the Port Authority to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. As a result of our search effort, we have identified the following MBE financial institution:

City National Bank of New Jersey, 901 Broad Street, Newark, NJ 07102

The Port Authority's PATH transit system currently utilizes the services of the City National Bank of New Jersey for its payroll operations.

Section 26.29 Required Contract Clauses

Contract Assurance

The Port Authority will ensure that the following clause is placed in every DOT-assisted contract and will also assure that the contractor places the following clause in every DOT-assisted subcontract:

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

Prompt Payment

The Port Authority will include the following clause in each DOT-assisted prime contract:

Within ten days of receipt of any sum attributable to work performed by a subcontractor or material person, the contractor shall advance to the subcontractor or material person said sum, less such amount, if any, as the contractor is authorized to retain under the subcontract or purchase agreement. Amounts retained under the subcontract or purchase agreement shall be paid over to the subcontractor or material person within ten days of the satisfactory completion of the subcontractor's or material person's work.

Section 26.31 Directory

The Port Authority through the New York State and New Jersey Uniform Certification Programs (UCP) maintains directories identifying all firms eligible to participate as DBEs. The Directories list a firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Each state UCP revises its Directory periodically. We make the Directories available as follows:

New York State UCP Directory: <http://www.nysucp.net>

New Jersey UCP Directory: <http://www.njucp.net>

Section 26.33 Over-concentration

The Port Authority has not identified particular overconcentration of DBEs in any construction field that non-DBEs are unfairly prevented from competing for contracts. We will continue to address this concern by monitoring future bidding activities to ensure a level playing field for all DBEs and non-DBEs interested in participating in Port Authority businesses.

Section 26.35 Business Development Programs

Historically, the Port Authority has a long tradition of supporting DBEs in their growth and development through a broad menu of business services and programs. Some of them include: business resource centers (on-site technical support, training and consultation), informational seminars, business newsletters and business referrals. The general guidelines covering our business development strategies and programs will be in full compliance with Appendix C to Part 26.

To further advance the growth of certified disadvantage business firms, especially in the construction area, the Office of Business Diversity and Civil Rights, in cooperation with the Engineering

Department, developed a Mentor-Protégé Program with the primary objective of advancing the management and technical skills of certified DBE firms in specified revenue range through a structured relationship with major construction contractors. Our program, which is in full compliance with Appendix D to Part 26, includes an advisory/steering committee comprised of several involved unit and department staff that are responsible for advancing this program. Specifically, the program calls for a three-year structured mentor-protégé relationship with one or two protégés for each mentor firm.

Section 26.37 Monitoring and Enforcement Mechanisms

The Port Authority, a bi-State agency of the States of New York and New Jersey, is not subject to single state legislation or local statutes and regulations which may govern contract remedies. However, the Port Authority will bring to the attention of the Department of Transportation any false, fraudulent or dishonest conduct in connection with the program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Part 26.

1. Article VI of the Compact between the States of New York and New Jersey, which Compact received congressional approval indicating the Port Authority is a "body, both corporate and politic . . ." Article VI, codified at Sec. 6407 NY Unconsolidated Laws.
2. Article 6, Section 7 of the New York State Constitution which provides that the "Supreme Court shall have general original jurisdiction in law and equity . . ."
3. Article 6, Section 3, paragraph 2 of the New Jersey State Constitution which provides that the "Superior Court shall have original general jurisdiction throughout the State in all causes."
4. The Port Authority utilizes a contract plate which sets forth the rights and remedies available to the Port Authority if it shall find that a contractor is guilty of a breach of any term whatsoever in the contract.

To govern non-compliance with the DBE regulations in 49 CFR Part 26 by a participant in Port Authority DBE procurement activities, we will insert the following rights and remedies into every DOT-assisted contract. These contractual rights and remedies will be available to the Port Authority in the event of non-compliance by a participant in the DBE program:

1. The right to take over and complete the work or any part thereof as agent for and at the expense of the contractor, either directly or through other contractors.
2. The right to cancel the contract as to any or all of the work yet to be performed.
3. The right to specific performance, an injunction or any other appropriate equitable remedy.
4. The right to money damages.

The Port Authority as a body, both corporate and politic (Sec. 6407, NY Unconsol. Laws.) has the right under the laws of the States of New York and New Jersey to pursue such contract rights and remedies in courts of general jurisdiction in those States – New York (New York, Supreme Court, Article 6,

Section 7 of the New York State Constitution) and in New Jersey (New Jersey, Superior Court, Article 6, Section 3, para. 2).

Section 26.39 Fostering Small Business Participation

Since the implementation of the Port Authority's SBE policy in July 1990, the agency has established SBE Programs in the areas of janitorial maintenance services, commodities, financial services and construction. This race and gender-neutral program encourages the growth of small businesses by leveling competition and limiting bidding on certain procurements to only those firms certified as SBEs by the agency. Certified small businesses must meet certain criteria: they have to have been in operation for at least three years; have their principal place of business in either New York or New Jersey; and adhere to certain average annual gross revenue limits as set by the U.S. Small Business Administration.

For janitorial firms the average annual gross revenues cannot exceed the limit of \$16.5 million for the past three fiscal years or an aggregate total of \$49.5 million for the same period. Once certified as an SBE, janitorial firms must participate in a prequalification process to determine the firm's eligibility to bid or submit proposals for cleaning contracts at Port Authority facilities.

For commodity firms the average annual gross revenues cannot exceed the limit of \$7 million for the past three fiscal years or an aggregate total of \$21 million for the same period. Once certified SBE, commodity firms are provided a five percent (5%) price preference in designated contracts.

For firms in the financial services industry, the average annual gross revenues cannot exceed the limit of \$7 million for the past three fiscal years or an aggregate total of \$21 million for the same period. Once certified SBE in the financial services category, opportunities will be provided to research financial products and perform advisory and analysis services in connection with the agency's financial activities.

For construction firms the average annual gross revenues cannot exceed the limit of \$14 million for the past three fiscal years or an aggregate total of \$52 million for the same period. Construction firms must also be qualified by the Port Authority's Engineering Department by the submission of acceptable references for completed contracts.

By establishing an SBE program, we provide opportunities to small businesses, many of which are also minority and women-owned firms. This program continues our commitment to increase participation of minority, women-owned and small businesses.

SUBPART C – GOALS, GOOD FAITH EFFORTS AND COUNTING

Section 26.43 Quotas

The Port Authority does not use quotas in any way in the administration of the DBE program. Overall Goals.

Section 26.45 Overall Goals

The Port Authority will establish an overall DBE goal covering a three-year federal fiscal year period, if it anticipates awarding DOT funded prime contracts exceeding \$250,000 annually within one or more of the reporting years within the three year goal period. In accordance with Section 26.45 (f), the Port Authority will submit its overall three-year DBE goal to the required DOT funding agencies. If the Port Authority does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, it will not develop an overall goal; however this DBE Program will remain in effect and the Port Authority will seek to fulfill the objectives outlined in 49 C.F.R. Part 26.1.

The first step to calculating an overall goal is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the Port Authority would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, the Port Authority will consult with minority, women and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Port Authority's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 233 Park Avenue South, 4th Floor, New York, New York for 30 days following the date of the notice, and informing the public that the Port Authority and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focused media and trade publications. Normally, we will issue this notice before the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Our Overall Three-Year DBE Goal submission to USDOT will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Failure to meet overall goals.

The Port Authority will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the Port Authority awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully our goal for the new fiscal year;
- (3) The Port Authority will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the USDOT for approval.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious

The Port Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Port Authority provides the following services to DBEs to increase their participation:

1. Training to assist these firms to fully utilize the latest technology and business applications to create efficiencies and enhance their capabilities i.e., project management, accounting and inventory software.
2. On-site technical support and consultation at business resource centers, e.g., WTC Business Resource Center at 115 Broadway, New York, NY and Northeast Region Small Business Transportation Resource Center at LaGuardia Community College in Queens, New York.
3. Informational seminars relating to business growth management and upcoming opportunities.
4. Quarterly business newsletter published by the Port Authority's Office of Business and Job Opportunity.
5. A Mentor-Protégé Program overseen by the Port Authority's Engineering Department and Office of Business Diversity and Civil Rights, which matches M/W/DBE construction firms with major construction companies.

Section 26.51 (d-g) Contract Goals

The Port Authority will use contract goals to meet any portion of the overall goal the Port Authority does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

Section 26.53 Good Faith Efforts Procedures**Demonstration of Good Faith Efforts**

The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The DBE Liaison Officer of the Office of Business Diversity and Civil Rights is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The Port Authority will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before we commit to the performance of the contract by the bidder.

Information to be Submitted (26.53(b))

The Port Authority treats bidders' compliance with good faith effort requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders to submit the following information prior to contract award:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration (26.53(d))

Within seven days of being informed by the Port Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidder should make this request in writing to the following reconsideration official: Director, Procurement Department. The reconsideration official will not have played any role in the original determination that the bidder did not make sufficient good faith efforts.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder will have the opportunity to meet in person with our reconsideration official to discuss the

issue of whether it met the goal or made adequate good faith efforts to do. The Port Authority will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts When a DBE is Replaced on a Contract (26.53(f))

The Port Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may terminate the contract.

Section 26.55 Counting DBE Participation

The Port Authority will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Port Authority will use the certification standards in Subpart D of Part 26 and the certification procedures in Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decision based on the facts as a whole.

For information about the certification process or to apply for certification, firms can access our web page at: www.panynj.gov/supplierdiversity

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Port Authority is a participant in the New York State and New Jersey Unified Certification Programs (NYSUCP/NJUCP). We will abide by the rules and procedures applicable to participants of these Programs.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83 (a) & (c)

We will ensure the UCPs review the eligibility of DBEs that we certified under former DBE regulations; to make sure that they meet the standards of revised DBE rules. We will complete this review no more frequently than three years from the most recent certification date of each firm. For firms that we have certified or reviewed and found eligible under 49 CFR Part 26, we will again review their eligibility annually.

"No Change" Affidavits and Notices of Change (26.83 (j))

The UCPs require all DBE owners to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the Port Authority's application for certification.

The UCPs also require all DBE owners we have certified to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

"I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership or control requirements of applicable regulations. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the Port Authority under 26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$22.41 million".

The UCPs require DBEs to submit with this affidavit, documentation of the firm's size and gross receipts.

The UCPs will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Interstate Certification

When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures. We will follow the procedures defined in Section 26.85.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until one year has passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87.

A firm that has been notified by a Certifying Partner of the UCP's intent to remove its certification may make an administrative appeal to the UCP. The Notice of Intent to Remove DBE Certification shall set forth the reasons for the firm's DBE certification removal and shall inform the firm of its right to present arguments as to why it should remain certified. The firm has the right to present its arguments in writing, or, to request an informal hearing. If the firm does not request an administrative appeal, the Certifying Partner will notify the firm of its removal within 30 days of the notice of intent to remove DBE certification.

Upon receipt of the request for administrative appeal, the Certifying Partner proposing removal of DBE certification will notify the remaining Certifying Partners, in writing, of the firm's request. A copy of the appeal request and copies of all documents used by the Certifying Partner to reach its decision to remove the firm's DBE certification will be forwarded to the remaining Certifying Partners within 15 days for review. If the firm requests an Informal Hearing, the Certifying Partners, at their discretion, may conduct such hearing in person, or by telephone or video conference. The Certifying Partner responsible for the denial of DBE certification will not participate in the final determination. An appeal determination will be rendered by the Certifying Partners, in writing, 45 days after the hearing.

Any firm not wishing to appeal to the UCP may appeal directly to the United States Department of Transportation (USDOT). Such appeal must be filed within 90 days of the date of the certification removal letter. Upon notification by USDOT of an appeal, the UCP Certifying Partner will forward a copy of the complete administrative record for review. USDOT will make a determination based solely on the entire administrative record. Pending a determination by USDOT, the decision rendered by the Certifying Partner will remain in effect for the UCP. All appeal decisions rendered by USDOT are administratively final and are not subject to petitions for reconsideration.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

The UCPs will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

Confidentiality

The Port Authority will safeguard from disclosure to third parties all records which are rendered confidential or privileged or are exempt from disclosure by Federal or State law or regulations. Notwithstanding any contrary provisions of State or local law and consistent with existing Port Authority Freedom of Information Policy, we will not release to a third party (other than DOT) without the written consent of the submitter.

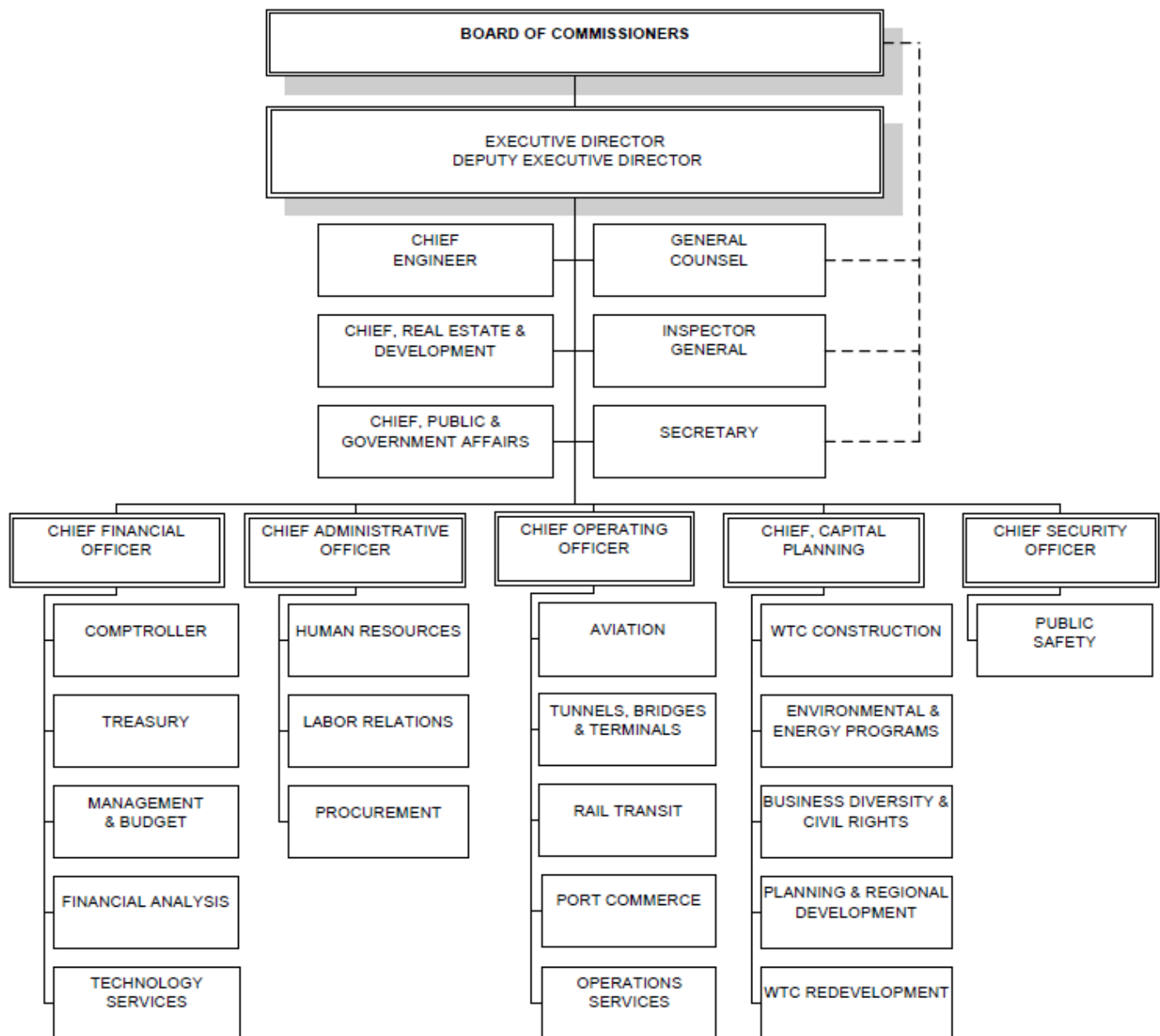
Monitoring Payments to DBEs

The Port Authority will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Port Authority or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The Port Authority will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY Organization Chart



INFORMATION ON SOLICITED FIRMS

The bidder must complete this form for itself and for all firms which gave the bidder a quotation for any work planned to be subcontracted regardless of whether they are ultimately chosen to participate in the Contract. Provide the information required below for every firm that provided a bid or a quote for a subcontract – even if the bid or quote from the firm is not used in the preparation of the final Proposal.

[illegible]

Footnote: Annual Gross Revenue Ranges: Less than \$500,000; \$500,000 - \$1 Million; \$1 - \$2 Million; \$2 - \$5 Million; Over \$5 Million - Select the category that best identifies the annual gross revenue of the solicited firm.

APPENDIX A1**DBE GOALS STATEMENT**

The undersigned Bidder has satisfied the requirements of the Contract in the following manner (Complete the appropriate spaces):

The Bidder is committed to meeting the DBE utilization goal set forth in this Contract.

or

The Bidder is unable to meet the DBE utilization goal set forth in this Contract, but is committed to a minimum of _____% DBE utilization on this Contract and submits the attached narrative and documentation demonstrating good faith efforts consistent with Appendix A of 49 CFR 26 to meet the DBE utilization goal set forth in this Contract. Attach as many pages as necessary to provide a full and complete narrative and supporting documentation of good faith efforts made. This narrative shall be submitted on company letterhead and signed.

It is the present intent of the Bidder to utilize the specific DBE firms identified in Appendix A2 in the performance of the Work of this Contract. If for any reason, one or more of the DBE firms identified in Appendix A2 are unable or unwilling to participate, the Bidder will make good faith efforts to replace the DBE firm with another DBE firm in accordance with the Information For Bidders clause entitled "DBE Program".

Bidder Name: _____

Federal Tax ID No.: _____

By: _____
Signature and Title

APPENDIX A2
THE PORT AUTHORITY OF NY & NJ – OFFICE OF BUSINESS DIVERSITY AND CIVIL RIGHTS
DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT

Instructions: Submit one DBE PARTICIPATION PLAN AND AFFIRMATION STATEMENT form for each DBE firm used on this Contract.

CONTRACT NUMBER AND TITLE: _____

BIDDER:

Name of Firm: _____

Address: _____ Telephone: _____

Email Address: _____

DBE:

Name of Firm: _____

Address: _____ Telephone: _____

Description of work to be performed by DBE: _____

Calculation (supply only): _____

The Bidder is committed to utilizing the above-named DBE for the work described above. The estimated dollar value of this work is \$ _____ or _____ % of the total contract amount of \$ _____. The anticipated start date is _____ and the anticipated completion date is _____.

AFFIRMATION

The above-named DBE affirms that it will perform the portion of the Contract for the estimated dollar value as stated above.

By: _____ Date: _____
 Signature of DBE and Title

If the Bidder does not receive award of the Contract, any and all representations in this DBE Participation Plan and Affirmation Statement shall be null and void.

By: _____ Date: _____
 Signature of Bidder and Title

FOR OBD CR USE ONLY

Contract Goals: ☐ Approved ☐ Rejected ☐ Preliminary Plan Approved

Reviewed By: _____

OBD CR Business Development Representative

Signature: _____ Date: _____

Please Note: Only 60% of the expenditure to a DBE material supplier will be counted toward the DBE goal. Please show calculation above. Example: \$100,000 x 60% = \$60,000 estimated DBE dollar value of work. Plan cannot be accepted without calculation.

CMD-Statement of Payments Form 01/99