



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

California Department of Transportation
Disadvantaged Business Enterprise (DBE) Program Compliance Review

Final Report
March 2019



U.S. Department of Transportation
Federal Transit Administration

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Table of Contents

Executive Summary	1
1. General Information	3
2. Jurisdiction and Authorities	5
3. Purpose and Objectives	7
3.1 Purpose	7
3.2 Objectives	7
4. Background Information	9
4.1 Introduction to Caltrans and Organizational Structure	9
4.2 Budget and FTA-Assisted Projects	9
4.3 DBE Program	11
5. Scope and Methodology	13
5.1 Scope	13
5.2 Methodology	14
5.3 Stakeholder Interviews	15
6. Findings and Advisory Comments	17
6.1 DBE Program Plan	17
6.2 DBE Policy Statement	19
6.3 DBE Liaison Officer	19
6.4 DBE Financial Institutions	21
6.5 DBE Directory	23
6.6 Overconcentration	24
6.7 Business Development Programs	24
6.8 Determining/Meeting Goals	26
6.9 Shortfall Analysis and Corrective Action Plan	47
6.10 Transit Vehicle Manufacturers (TVMs)	48
6.11 Required Contract Provisions	50
6.12 Certification Standards	54
6.13 Certification Procedures	55
6.14 Record Keeping and Enforcements	58

7. Summary of Findings	61
ATTACHMENT A – FTA NOTIFICATION LETTER TO CALTRANS.....	69
ATTACHMENT B – CALTRANS RESPONSE TO DRAFT REPORT	75

Executive Summary

Objective and Methodology – This report details the findings of a compliance review of the California Department of Transportation’s (Caltrans) Disadvantaged Business Enterprise (DBE) program implementation. The compliance review team (1) examined this agency’s DBE program procedures, management structures, actions, and documentation; (2) collected and analyzed documents and information from the Federal Transit Administration (FTA) and Caltrans; and (3) interviewed Caltrans officials, DBE firm representatives, prime contractor representatives, and community-based organizations that advocate on behalf of minority- and woman-owned businesses. The four-day review included interviews, assessments of data collection systems, and a review of program and contract documents.

Caltrans’ DBE program includes the following positive program elements –

Positive Program Elements

- **Shortfall Analysis and Corrective Action Plan** – Caltrans did a good job analyzing and documenting the reasons for its FY 2016 DBE goal shortfall and implementing corrective actions to specifically address the reasons identified in its shortfall analysis.
- **Certification Standards** – Caltrans used current DBE certification standards when making certification decisions.
- **Certification Procedures** – Caltrans’ DBE certification process was well-documented and complied with all requirements.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- **Contract Assurance** – Caltrans did not include the required nondiscrimination assurance in its entirety in its FTA-assisted contracts and subcontracts, including subrecipient contracts.
- **Transit Vehicle Manufacturers (TVMs)** – Caltrans did not document or adequately implement procedures to confirm TVM eligibility prior to contract award or procedures to report TVM awards to FTA within 30 days after awarding a TVM contract.
- **Protections Against Termination for Convenience** – Caltrans did not ensure all FTA-assisted contracts and subcontracts, including subrecipient contracts, included provisions for protecting against terminating DBEs for convenience.

The Program has the following substantive deficiencies –**Substantive Deficiencies**

- **DBE Program Plan** – Caltrans' DBE Program Plan was out of date.
- **Disadvantaged Business Enterprise Liaison Officer (DBELO)** – Caltrans' DBELO and DBE program support staff were not involved enough in the management and administration of the FTA DBE program.
- **Goal Calculation** – Caltrans did not consider all potential FTA-funded contracting opportunities in its FY 2017–19 goal methodology.
- **Small Business Element** – Caltrans' efforts to foster small business participation on FTA-assisted contracts, in accordance with 49 CFR Part 26.39 requirements, were lacking.
- **Good Faith Efforts** – Caltrans' procedures for documenting and evaluating good faith efforts did not comply with 49 CFR Part 26.53 requirements.
- **Counting DBE Participation** – Caltrans did not adequately document or implement procedures for accurately counting DBE participation on FTA-assisted projects.
- **Record Keeping and Enforcements** – Caltrans did not adequately ensure the accuracy of DBE utilization data used for semi-annual reporting or monitor program compliance. Caltrans did not maintain a bidders list, as required.

Caltrans did not meet its DBE goals in FY 2014, FY 2015, or FY 2016, reporting overall goal attainment of 1.89 percent, 3.71 percent, and 3.66 percent, respectively. Caltrans' achieved its DBE goal in FY 2017, attaining 5 percent DBE participation. Caltrans analysis and corrective actions implemented to achieve future goals significantly improved in FY 2016. To encourage the attainment of future goals and the implementation of Caltrans' DBE program in good faith, this report highlights several steps to help ensure Caltrans' compliance with 49 CFR Part 26 and the overall success of its DBE program.

I. General Information

This chapter provides basic information concerning this compliance review of Caltrans. Information on Caltrans, the review team, and the dates of the on-site portion of the review are in the table below.

Grant Recipient:	California Department of Transportation
City/State:	Sacramento, CA
Grantee Number:	1622
Executive Official:	Laurie Berman
On-site Liaison:	Janice Salais
Dates of On-site Visit:	October 9–12, 2018
Site Visit Location:	1120 N Street Sacramento, CA 95814
Review Team:	The DMP Group, LLC

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2. Jurisdiction and Authorities

The Secretary of Transportation authorized the Federal Transit Administration (FTA) Office of Civil Rights to conduct Civil Rights Compliance Reviews. FTA conducts compliance reviews to ensure compliance of applicants, recipients, and subrecipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

Caltrans is the recipient of one or more federal transit grants, loans, and/or contracts that result in contracting opportunities exceeding \$250,000. Hence, Caltrans 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 Caltrans' DBE program 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 subrecipients 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 Caltrans' DBE program is necessary.

The primary purpose of the compliance review is to determine the extent to which Caltrans has implemented 49 CFR Part 26, as represented in its DBE Program Plan. FTA intends this compliance review to be a fact-finding process to (1) assess Caltrans' 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 to directly 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 the Department narrowly tailors its DBE program in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards 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 Caltrans is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of Caltrans' 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 Caltrans' DBE Program Plan from a variety of sources, including DBE program managers, other Caltrans management personnel, DBEs, prime contractors, and other stakeholders.

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4. Background Information

The purpose of this chapter is to provide an understanding of Caltrans' operations and scale. The subsections below highlight Caltrans' organizational structure and services; its budget, FTA-assisted projects, and open grants; and the history of its DBE program.

4.1 Introduction to Caltrans and Organizational Structure

Caltrans was designated by the Governor of California to administer the FTA-funded Section 5303, 5304, 5310, 5311, and 5339 programs in California. Under the leadership of its Director, Caltrans was organized into 13 Divisions and Offices: Administration, Finance, Information Technology, Maintenance & Operations, Planning & Modal Programs, Project Delivery, External Affairs, Legislative Affairs, Public Affairs, Legal, Federal Liaison, Business & Economic Opportunity, and the Senate Bill 1 (SB1) Program. Caltrans assigned primary responsibility for administering the FTA public transportation programs to the Division of Rail and Mass Transportation (DRMT) and Division of Transportation Planning (DOTP) within the Planning and Modal Program. The majority of the FTA assistance received by Caltrans was administered by DRMT and DOTP.

DRMT was responsible for the administration of the FTA Section 5310, 5311, and 5339 programs for the State. DRMT provided technical and financial assistance to agencies responsible for public transportation services, which included buses, demand-responsive accessible services for the elderly and disabled, rural transit, Tribal transit, commuter and urban rail services, and waterborne ferry operations. Caltrans had 188 FTA Section 5310 subrecipients, 83 FTA Section 5311 subrecipients, and 17 FTA Section 5339 subrecipients.

DOTP was responsible for administering the FTA Section 5303 and 5304 programs for the State. DOTP also conducted long-term planning for California's transportation system and implemented statewide transportation policy through partnerships with State, regional, and local agencies. Caltrans had 25 active subrecipients of Section 5304 funding responsible for 53 planning-related projects.

The Office of Business and Economic Opportunity (OBOE) was primarily responsible for administering and ensuring Caltrans' compliance with U.S. DOT DBE program regulations for all U.S. DOT modal agencies, including FTA. OBOE was assisted in its DBE program administration and compliance responsibilities by DRMT, DOTP, Caltrans' Procurement and Contracts Division within the Administration Division, and Caltrans district transit staff throughout Caltrans' 12 district offices. Caltrans district transit staff assisted with ensuring subrecipient compliance with federal- and state-funded program regulations and provided training and technical assistance to local transit agencies and operators, transportation planning agencies, and other stakeholders.

4.2 Budget and FTA-Assisted Projects

According to the *Fiscal Year 2017–18 California Transportation Financing Package* and the *Fiscal Year 2018–19 California Transportation Financing Package*, Caltrans' Public Transportation Account FTA-related operations and capital plan for FY 2017–18 and FY 2018–19 were as follows:

in

Public Transportation Account	FY 2018–19		FY 2017–18	
Operating Budget	State Funds	Federal Funds	State Funds	Federal Funds
State Operations	\$203,647,000	\$40,077,000	\$199,774,000	\$38,248,000
Local Assistance	\$467,104,000	\$154,473,000	\$14,353,000	\$143,743,000
Subtotal	\$670,751,000	\$194,550,000	\$214,127,000	\$181,991,000
Capital Budget				
Capital Outlay	\$13,002,000	\$78,582,000	\$30,012,000	\$3,600,000
Grand Total	\$683,753,000	\$273,132,000	\$244,139,000	\$185,591,000

Below is a list of Caltrans' open grants at the time of the review.

Grant Number	Grant Amount	Year Executed	Description
CA-2018-048-00	\$1,215,932	2018	CMAQ Capital (Calif ID# 0017000198)
CA-2018-055-01	\$69,299,278	2018	Caltrans Consolidated Planning Grant (CPG) (CA-81-0017)
CA-2018-023-00	\$5,081,616	2018	CA 5339 State Formula Funds (Calif ID #0017000187)
CA-2017-087-01	\$69,100,029	2018	Caltrans Consolidated Planning Grant (CPG) (CA-81-0016)
CA-2018-023-00	\$5,081,616	2018	CA 5339 State Formula Funds (Calif ID #0017000187)
CA-2018-114-00	\$28,564,848	2018	5311 – Buses, PM, Operations – FFY 2018\$ RTAP – FFYs 2016, 2017, 2018\$ – (Calif ID #0019000012)
CA-2018-133-00	\$299,205	2018	5311 CMAQ - Bus Replacements - (Calif ID #0019000013)
CA-2017-169-00	\$48,918,147	2017	CA 5310 Program FFYs 2015/2016/2017 (Calif ID #0017000186)
CA-2017-086-00	\$800,000	2017	Caltrans 5320 Shasta State Historic Park
CA-2017-168-00	\$27,778,865	2017	Section 5311 Grant (Calif ID #0017000259)
CA-2017-171-00	\$150,638	2017	5310 Grant (Calif ID #0018000056) Admin
CA-2017-025-00	\$28,530,018	2017	CA 5311 Regional Grant (Calif ID #0017000158)
CA-16-X065-00	\$23,255,343	2015	LRG UZAs Capital, Operating, Specialized Transit

Grant Number	Grant Amount	Year Executed	Description
CA-16-X064-00	\$13,777,102	2015	Capital Outlay, Operating MM, Specialized Transit
CA-18-X077-00	\$27,888,477	2015	MAP-21, Admin, Capital, Operating, RTAP
CA-34-0038-00	\$2,205,851	2015	5339 Funds
CA-34-0022-00	\$3,324,214	2014	Capital Asset FTA 5339 Bus and Bus Facilities
CA-16-0061-00	\$14,273,447	2014	Capital Outlay Specialized Transit
CA-18-X069-00	\$27,904,532	2014	MAP-21, Admin, Capital, Operating, RTAP
CA-26-0007-03	\$1,520,000	2013	Interactive Transit Station Information
CA-18-X059-00	\$27,308,996	2013	MAP-21 Admin, Capital, Operating, and RTAP
CA-16-0057-00	\$28,559,539	2012	Capital Outlay Specialized Transit
CA-18-X052-00	\$23,030,964	2012	Capital, Operating, and Administration
CA-18-X047-00	\$23,002,617	2011	Operating Assistance projects and RTAP
CA-18-X043-00	\$22,912,229	2010	Capital, Operating, 5311F, and Admin
CA-18-X035-00	\$22,951,751	2010	Capital, Operating, RTAP, and Admin Costs

Note: CMAQ = congestion mitigation and air quality; PM = preventive maintenance; LRG UZA = large urbanized areas; MM = major maintenance; RTAP = Rural Transit Assistance Program; FFY = Federal fiscal year.

4.3 DBE Program

Caltrans receives federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance Caltrans is responsible for complying with the regulations set forth in 49 CFR Part 26. Accordingly, Caltrans developed a DBE Policy Statement that outlined its goals and mission for the program and a DBE Program Plan that described the policies and procedures implemented to comply with the regulations. Caltrans submitted its most recent DBE Program Plan to FTA on April 19, 2018. Because Caltrans received federal assistance from FTA and the Federal Highway Administration (FHWA), the procedures in its DBE Program Plan were subject to both FTA and FHWA review and concurrence. At the time of the site visit, Caltrans' DBE Program Plan had not received FTA concurrence.

Caltrans' Disadvantaged Business Enterprise Liaison Officer (DBELO) was the Assistant Director of the Office of Business and Economic Opportunity (OBEO). The DBELO led an OBEO staff of 45 in carrying out the DBE program along with staff from Caltrans' Division of Rail

and Mass Transportation, Division of Transportation Planning, Division of Procurement and Contracts, Division of Local Assistance, Division of Design, Division of Construction, and Division of Engineering Services.

Caltrans' FY 2014–16 and FY 2017–19 overall DBE goals were 4 percent and 4.8 percent, respectively. Caltrans FY 2014–16 goal was to be attained solely through race-neutral means. In 2014, Caltrans conducted a disparity study, the results of which provided justification (as required by *Western States Paving Company v. Washington State DOT*) for the use of race-conscious means for goal attainment. In FY 2017–19, Caltrans' established a DBE goal of 4.8 percent, 3.7 percent of which was to be attained through race-neutral means and 1.1 percent through race-conscious means. Caltrans did not meet its DBE goals in FY 2014, FY 2015, or FY 2016; however, it did meet its FY 2017 DBE goal, attaining 5 percent DBE participation that year.

Caltrans conducted and developed one shortfall analysis and corrective action plan for its FY 2014 and FY 2015 DBE goal shortfalls. Although this shortfall analysis and corrective action plan did not meet 49 CFR Part 26.47 requirements, Caltrans made significant improvements when conducting its FY 2016 shortfall analysis and corrective action plan.

Caltrans administered the California Unified Certification Program (CUCP) on behalf of the State of California and maintained the DBE Directory for the State. The following agencies assisted Caltrans as certifying partners in the CUCP:

- City of Los Angeles
- Los Angeles County Metropolitan Transportation Authority
- San Francisco Bay Area Rapid Transit District
- San Francisco Municipal Transportation Agency
- San Francisco International Airport
- City of Fresno
- San Diego County Regional Airport Authority
- San Mateo County Transit District / Peninsula Corridor Joint Powers Board
- Santa Clara Valley Transportation Authority

Caltrans' DBE program strengths and areas of needed improvement are discussed in the following sections. Overall, Caltrans' implementation of the DBE requirements for the FTA-assisted portion of its DBE program required improvement. Although not a complete list, particular improvement was needed in the areas of DBE goal setting, monitoring, and accurately counting and reporting DBE participation on FTA-assisted contracts. Subrecipient concerns in these areas present challenges specific to FTA DBE program administration and management. Caltrans' DBELO and OBEO staff were capable of implementing improvements in these areas with greater attention paid to the FTA portions of its DBE program.

5. Scope and Methodology

5.1 Scope

FTA specifies a review of the implementation of the following DBE program components 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 the Caltrans 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 Caltrans as well as by 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 (or does not) exist and efforts to address 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 Caltrans did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include Caltrans seeking FTA approval to establish a project-specific goal for vehicle purchases [49 CFR 26.49].
- A nondiscrimination and a prompt payment clause included 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, and 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, an 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 26.13]. The DBE program must also include monitoring and enforcement

mechanisms to ensure DBEs actually perform the work committed to DBEs at contract award [49 CFR 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11 and 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 to Caltrans that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas to be covered during the on-site visit. The letter also informed Caltrans of staff and other parties whom the review team would interview.

Before conducting the on-site visit, FTA asked Caltrans to provide the following documents:

- Most current DBE Program Plan;
- DBE goal methodology submissions;
- DBE semi-annual reports and/or quarterly reports as required by the American Recovery and Reinvestment Act of 2009 for the past 3 years;
- A Memorandum of Understanding or similar documents indicating Caltrans' participation in the Unified Certification Program;
- A list of FTA-assisted contracts awarded during the current and previous fiscal years;
- A list of DBE firms that have worked on FTA-assisted projects sponsored by Caltrans;
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by Caltrans; and
- 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.

The review team conducted an opening conference at the beginning of the compliance review with FTA representatives and Caltrans staff.

Following the opening conference, the review team examined Caltrans' DBE Program Plan and other documents submitted by Caltrans' DBELO. The team then conducted interviews with the DBELO regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. The review team selected a sample of contracts and reviewed them for their DBE elements. The review team also conducted interviews with interested parties.

At the end of the review, FTA representatives, Caltrans staff, and the review team convened for the exit conference, during which FTA and the review team discussed initial findings and corrective actions with Caltrans.

Participants in the compliance review are listed below.

California Department of Transportation (Caltrans)

Janice Salais, Assistant Director, Office of Business and Economic Opportunity (OBEO)
Dara Wheeler, Division Chief, Division of Rail and Mass Transportation (DRMT)
Ed Philpot, Senior Environmental Planner, Division of Transportation Planning (DOTP)
James Ogbonna, Branch Chief, DRMT
Rosie Flores, Branch Chief, DOTP
Deb Stewart, Branch Chief, OBEO
Marilee Mortenson, Acting Office Chief, DOTP
Lea M. Simpson, Senior Transportation Planner, DRMT
Tracy Harrison, Senior Transportation Planner, DRMT
Michael Lange, Senior Transportation Planner, DRMT
Frank Nevitt, Senior Transportation Planner, DRMT
Sharon Beasley, Senior Transportation Planner, DRMT
Brian Travis, Senior Transportation Planner, DRMT
Mark Barry, Senior Transportation Planner, DRMT
Robert Mitchell, Assistant Transportation Planner, DRMT
Barbara Nolan, Auditor, Audits and Investigations
David Wong, Audit Manager, Audits and Investigations
Mary Lee Miglino, Office Chief, OBEO
Sanjay Singh, Office Chief, Compliance/Title VI/Program Operations, OBEO
Anna Silva, Office Chief, OBEO
Curtis E. Williams, Staff Services Manager I, Certification Branch, OBEO

Federal Transit Administration

John Day, Program Manager, Policy and Technical Assistance
Janelle Hinton, Equal Opportunity Specialist
Marisa Appleton, Civil Rights Officer for Oversight

The DMP Group

Maxine Marshall, Lead Reviewer
Donald Lucas, Reviewer
Gregory Campbell, Reviewer

5.3 Stakeholder Interviews

During this DBE compliance review, the review team attempted to contact nine minority- and/or woman-owned business advocacy organizations (other interested parties) between October 24, 2018, and October 30, 2018. The purpose of the interviews was to get feedback from Caltrans DBE program stakeholders concerning Caltrans' FTA-assisted DBE program, actual experiences, positive program elements, and any issues, concerns, and complaints. The following is a description of the interview questions asked and a summary of the interview results.

Interested Parties

Seven of the nine stakeholder organizations contacted were interviewed to gain insight into how Caltrans works with external organizations and the small minority- and woman-owned business community. The organizations contacted were:

- Women Construction Owners and Executives California Chapter
- Women's Construction Coalition
- Society of Hispanic Professional Engineers, Los Angeles Chapter
- Asian American Architects and Engineers Association
- Women Construction Owners and Executives
- American Indian Chamber of Commerce of California
- Black Business Association
- California Black Chamber of Commerce
- Southern California Black Chamber of Commerce

The interview questions included:

1. *Is your organization familiar with Caltrans' DBE program?*
2. *Have you been requested to participate in the development of, or comment on Caltrans' DBE goal?*
3. *Is your organization made aware of contracting/subcontracting opportunities on Caltrans' contracts? If so, how?*
4. *How often is your organization contacted to provide referrals for Caltrans' contracting opportunities?*
5. *Does your organization participate in any outreach activities organized by Caltrans?*
6. *What is your agency's view of the effectiveness of Caltrans' DBE program?*
7. *Are you aware of any concern(s) about Caltrans' DBE program from members?*
8. *Do you have any suggestions for Caltrans to improve their DBE program?*
9. *Have any members of your organization ever worked on an FTA-assisted project for Caltrans?*

Five stakeholders responded to the interview request. All five agencies were familiar with Caltrans' DBE program; however, only three of the agencies had been requested to participate in the development of or comment on Caltrans' DBE goals. Two of the agencies had concerns about the effectiveness of Caltrans' DBE program. Three agencies reported participating in outreach events hosted by Caltrans, but two of the three noted they only participated because they were on Caltrans' Small Business Council, which meets periodically; they were unaware of much other outreach.

Three agencies reported that Caltrans had provided information about available contracting opportunities. Two of the agencies interviewed reported being asked by Caltrans to provide DBE and small business referrals. All of the agencies interviewed generally felt Caltrans' DBE program could be more effective with more outreach. One agency commented that Caltrans should focus more on emerging and micro businesses, and one agency commented that Caltrans should unbundle some of their bigger contracts to allow small businesses more opportunities.

6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. Included in each area is an overview of the relevant regulations and a discussion of the regulations as they apply to Caltrans' DBE program. Each area also includes corrective actions, if needed, and a timetable to correct deficiencies for each of the requirements and subrequirements.

FTA reports findings 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 are expressed as follows:

- A statement concerning the policy or practice in question at the time of the review,
- A statement concerning the DBE requirements that are unsatisfied or potentially unsatisfied, and
- A statement concerning the required corrective action to resolve the issue.

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

6.1 DBE Program Plan

Basic Requirement (49 CFR Part 26.21)

Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. 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, recipients must submit significant changes in the program for approval.

Discussion

During this compliance review, deficiencies were found with this requirement. U.S. DOT DBE regulations required Caltrans to develop and submit a DBE Program Plan that complies with 49 CFR Part 26 requirements and to update its plan when it made significant changes to its program. Caltrans' DBE Program Plan included DBE program management and administration procedures for the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). Caltrans submitted a version of its DBE Program Plan, dated 2016, to FTA on April 19, 2018. This submittal represented the most recent of several plan revisions submitted by Caltrans between April 21, 2014, and April 19, 2018. Remarks in TrAMS indicated that revisions to the April 21, 2014, plan were required by both FHWA and FTA. The most recent revisions required by FTA were documented in a letter to Caltrans dated April 4, 2016, and identified required DBE program elements missing from Caltrans' DBE program (form issues) and required DBE program elements that were included in Caltrans' DBE Program Plan that did not meet 49 CFR Part 26 requirements (substance issues). In addition, FTA's letter

identified an issue with the scope of Caltrans' DBE Program Plan as described in *Part I Acknowledgements* of the plan, which stated

This Disadvantaged Business Enterprise Program Plan reflects all current Federal Highway Administration (FHWA) reporting, monitoring, contract language, and program-related requirements as it pertains to FHWA recipients, subrecipients, subgrantees, and Caltrans' awarding divisions.

Caltrans omitted reference to its DBE Program Plan's applicability to FTA-funded contracting opportunities in its statement.

Caltrans' most recent DBE Program Plan, submitted to FTA on April 19, 2018, had not received concurrence from FTA at the time of the site visit. The review team reviewed the DBE Program Plan during the site visit and made the following determinations:

- The DBE Program Plan contained an out-of-date organization chart that did not reflect staff currently responsible for DBE program management and administration.
- The DBE Policy Statement included in the DBE Program Plan was not signed by Caltrans' current Director.
- The DBE Program Plan did not address FTA DBE program and reporting requirements related to subrecipients that received both 5311 and 5307 formula funds.
- The DBE Program Plan included (as an attached exhibit) General Terms and Conditions used in FTA-assisted contractor agreements that described "maximum opportunity" as a Caltrans DBE program objective, which contravenes the current FTA DBE program objective of creating a "level playing field."
- The DBE Program Plan did not address FTA's requirement to include a reference to FTA-funded contracting opportunities in *Part I Acknowledgements* of the plan.

Substantive findings related to DBE program requirements described in 49 CFR Part 26 are discussed later in this report by DBE program area.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes the following:

- A detailed description of the current staff dedicated to the management and administration of the DBE program, including current organization chart(s).
- A DBE Policy Statement signed by its current Director.
- A detailed description of the DBE program and reporting requirements for subrecipients that receive both FTA 5311 and 5307 formula program funds.
- Removal of all references to the DBE program creating "maximum opportunity" for DBEs.
- Inclusion of FTA-funded contracting opportunities in all statements describing the scope of the DBE Program Plan.

6.2 DBE Policy Statement

Basic Requirement (49 CFR Part 26.23)

Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. Recipients must circulate this policy throughout the recipients' organization and to the DBE and non-DBE business communities.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. Caltrans' DBE Policy Statement included in its DBE Plan was signed on October 26, 2016, by its former Director. In March 2018, Caltrans hired a new Director. The updated DBE Program Plan Caltrans submitted on April 19, 2018, did not include a DBE Policy Statement signed by its new Director.

Caltrans' DBE Policy Statement stated the following:

Caltrans ensures this policy statement is disseminated to all its division executives and staff, and all subrecipient/subgrantees. This policy statement is accessible to DBE and non-DBE businesses that perform on DOT-assisted contracts. Caltrans uses various networks to distribute this policy such as trade associations, online publications, electronic notification via stakeholder distribution lists, and the OBEO Web portal.

During the compliance review, Caltrans' did not provide documentation confirming it disseminated its DBE Policy Statement as it stated it would.

Advisory Comment

Caltrans was advised to update its DBE Policy Statement to be signed by its current Director and document the dissemination of its Policy Statement to all division executives and staff, all subrecipients/subgrantees, and the DBE and non-DBE communities.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25)

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

Discussion

During this compliance review, deficiencies were found with this requirement. Caltrans' Assistant Director of the Office of Business and Economic Opportunity (OBEO) was the agency's DBELO. Caltrans' organization chart showed that the DBELO reported directly to the Chief Deputy Director and not the Director. Nevertheless, during the site visit, the DBELO confirmed participation in weekly meetings with both the Chief Deputy Director and the Deputy Director to discuss DBE and other civil rights program matters.

The DBELO had 30 years of experience managing DBE and other civil rights programs. At the time of the site visit, the DBELO was supported in the management and administration of FHWA and FTA DBE program responsibilities by an OBEO staff of approximately 45. The DBELO was also supported primarily by Caltrans' Division of Transportation Planning (DOTP) and Division of Rail and Mass Transportation (DRMT), with additional support for the Division of Procurement and Contracts, Compliance Branch, and district staff. Support from DOTP and DRMT was provided by a single staff member from each division, for whom DBE did not represent the majority of their work responsibilities. The review team was advised that in the past DRMT had allocated additional resources toward DBE goal attainment, and included specific tasks related to DBE monitoring and goal attainment in its contract with its Rural Transit Assistance Program (RTAP) contractor. However, these contracted resources were eliminated by previous DRMT management.

The DBELO's responsibilities, as described in the DBE Program Plan, were as follows:

1. *Serves as Caltrans' DBELO also referred to.*
2. *Ensures Caltrans meets its DBE participation goals.*
3. *Advises the Director and governing bodies on DBE Program matters and achievements.*
4. *Develops, implements, updates, and monitors all aspects of the DBE Program and DBE policy.*
5. *Oversees and ensures the gathering and reporting of statistical data and other program-related studies as required by the USDOT.*
6. *Oversees the coordination of Caltrans' statewide DBE outreach activities.*
7. *Coordinates and assists the development of Caltrans ' staff statewide Caltrans staff training related to DBE Program requirements.*
8. *Oversees the DBE Certification Branch and ensures Caltrans representation in the California Unified Certification Program (CUCP).*
10. *Facilitates the assistance for DBEs in obtaining the necessary information to compete fairly by providing guidance and direction, and advising DBEs where to seek management, technical expertise, bonding, financing, and other supportive services.*
9. *Establishes and maintains a good working relationship with local agencies, industry partners, and community-based organizations.*
10. *Chairs and facilitates statewide Small Business Council (SBC) meetings.*
11. *Ensures coordination with Caltrans managers, the Federal Highway Administration (FHWA), and Federal Transit Administration (FTA), local agencies, and the business community.*
12. *Ensures only firms meeting eligibility standards participate as DBEs on USDOT federally-assisted contracts.*

The OBEO ' s staff administers the program in compliance with 49 CFR, Part 26.

Although the DBELO reasonably demonstrated involvement in the management and administration of the DBE program vis-à-vis the responsibilities listed above, the DBELO was primarily involved with DBE program matters related to Caltrans' FHWA-funded contracting

opportunities and program requirements. The DBELO did not demonstrate adequate involvement with the FTA-funded portion of the DBE program. For example, the DBELO was not adequately involved with DBE goal calculation, semi-annual reporting, shortfall analysis and corrective action planning, or monitoring for FTA DBE program purposes.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes detailed procedures describing how the DBELO and the DBE program staff in OBEO fulfill the responsibilities in its DBE Program Plan for the FTA DBE program.

6.4 DBE Financial Institutions

Basic 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 this requirement. In its DBE Program Plan, Caltrans described the following policy:

It is Caltrans' policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions. Caltrans also encourages prime contractors on US DOT-assisted contracts to make use of these institutions when possible.

To date Caltrans has not identified any such institutions within its California Unified Certification [sic] Program database. However, Caltrans has identified 39 minority owned financial institutions with the Federal Reserve, and can be found on the Federal Reserve Web site at: <http://www.federalreserve.gov/releases/mob/current/default.htm>.

Caltrans will monitor, on an annual basis, the CUCP database and compare to what is reported in the Federal Reserve to identify DBE certified financial institutions.

Caltrans had researched the availability of financial institutions owned and controlled by economically and socially disadvantaged individuals and found 39 such institutions. However, Caltrans incorrectly determined that because these institutions were noncertified DBEs, they did not qualify as DBE financial institutions. Accordingly, Caltrans had not made reasonable efforts to use these institutions, nor had it encouraged its prime contractors on U.S. DOT–assisted contracts to make use of these institutions when possible.

U.S. DOT 49 CFR Part 26.27 requires recipients to “thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals.” U.S. DOT 49 CFR Part 26.5 defines socially and economically disadvantaged individuals as follows:

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that accurately describes its efforts to use DBE financial institutions as described in 49 CFR Part 26.27 and 26.5 and describes in detail its procedures for researching the availability of DBE financial institutions. Caltrans must also provide documentation that it has encouraged prime contractors to use such institutions.

6.5 DBE Directory

Basic Requirement (49 CFR Part 26.31)

A DBE directory must be available to interested parties that includes the addresses, phone numbers, and types of work each DBE is certified to perform. The recipient must update the directory at least annually, and it must be available to contractors and the public upon request.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. In the FTA section of its DBE Program Plan (2016, p. 167) Caltrans stated that it maintained the DBE directory identifying all firms eligible to participate as DBEs. At the time of the site visit, Caltrans was the Chair of the California Unified Certification Program (CUCP) Executive Committee. The CUCP was established, pursuant to 49 CFR Part 26, in a Memorandum of Agreement (MOA) effective January 1, 2002. The MOA was approved by the Secretary of the U.S. DOT on March 13, 2002. It was most recently updated on March 21, 2006. During the site visit, it was noted that several elements in the MOA were out of date and not consistent with current practice. These areas included out-of-date certification standards for personal net worth and the identification of certifying members. Caltrans recognized that the MOA was in need of an update. It stated in its DBE Program Plan that the MOA would be updated in 2017. The MOA had not been updated at the time of the site visit.

The DBE directory was readily accessible electronically on Caltrans' web site. It listed DBE firms certified by the CUCP to be counted on U.S. DOT–assisted contracts in the State of California. The list provided the following information for each DBE firm:

- Name
- Contact person
- Address
- Telephone number
- E-mail address
- Where (geographically) the firm was willing to work
- North American Industry Classification System (NAICS) codes, work category codes, and licenses, as applicable

Caltrans made the directory available in print upon request. The print version of the directory was updated annually. The most current directory could be printed from the following link: www.dot.ca.gov/hq/bep/find_certified.htm. Caltrans stated that it verified that no member had a separate UCP directory claiming to reflect all DBE firms in the State.

Advisory Comment

Caltrans was advised to update the UCP MOA to reflect current regulations and current practice.

6.6 Overconcentration

Basic Requirement (49 CFR Part 26.33)

Recipients must determine if overconcentration of DBE firms exists and address the problem, if necessary.

Discussion

During this compliance review, deficiencies were found with this requirement. Caltrans' DBE Program Plan stated the following:

Caltrans has determined there is no evidence of overconcentration of participation with DBEs on Caltrans' contracts. Caltrans in relies, in part on the disparity study, which is conducted every three years. Caltrans determines whether there is an overconcentration of DBE firms in a certain type of work, with its Commitment at Award monthly report, which tracks DBEs listed on contracts toward contract goal, this report can be found at: <http://www.dot.ca.gov/hq/bep/reports.htm> [sic].

Caltrans did not provide documentation confirming its review of disparity studies and *Commitment at Award* reports to analyze whether overconcentration existed. In addition, Caltrans had not defined overconcentration such that it could make determinations about its existence or occurrence. Finally, Caltrans did not describe the steps it would take to address overconcentration should it occur.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes its procedures for analyzing and determining if overconcentration exists, the frequency with which an analysis of overconcentration will be conducted, and the measures taken to address the occurrence of overconcentration should it exist (e.g., use of incentives, technical assistance, business development programs, and mentor-protégé programs).

6.7 Business Development Programs

Basic Requirement (49 CFR Part 26.35)

Recipients 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 this requirement. FTA issued an advisory comment with this requirement. Although 49 CFR Part 26.35 does not require the establishment of a BDP, Caltrans developed a BDP in substantial conformance with the requirements described in 49 CFR Part 26.35 and BDP guidance described in 49 CFR Part 26 Appendix C.

In 2016, Caltrans modified an existing FHWA-funded DBE Supportive Services (DBE/SS) program by entering into incentive-based contracts with universities, colleges, and “bid consultants” (collectively referred to as program providers) throughout the State, the scope of which included the provision of business development services to DBE firms and potential DBE firms to help develop their capabilities and increase their capacity to compete for U.S. DOT and other contracts. Although FHWA provided the funding for the program, and the program’s emphasis was on firms interested in FHWA contracting opportunities, firms interested in FTA-related contracting opportunities could also participate. Caltrans compensated program providers based on participant performance and completion of the following:

- *Phase 1: Enroll DBEs that have never received work on Caltrans’ contracts into the Caltrans Business Development Program (BDP).*
- *Phase 2: Graduate 80% of BDP participants*
- *Phase 3: Assist BDP participants with bid submittals*
- *Phase 4A: Complete four DBE Certification Workshops*
- *Phase 4B: Assist potential DBEs with submission of a completed DBE certification application*
- *Phase 5: If a BDP participant is awarded a contract from the bid submittal in which they received assistance, the consultant will receive a Contract Award Bonus of \$2000*

Under this model, Caltrans provided a BDP framework used by each program provider in the development of participant firms. Caltrans’ BDP framework included the following:

- *Provide one on one coaching and guidance to develop strategies objectives, and goals for firm’s growth in the next two years.*
- *Develop solutions to any financial, managerial, technical, or labor conditions which could impede the DBE from receiving contracts.*
- *Provide business development training equal, but not limited to:*
 - *Bidding and estimating methodologies*
 - *Analyzing solicitation documents*
 - *Labor compliance*
 - *Insurance requirements*
 - *Financial Planning*
- *Businesses participating in the BDP are encouraged and coached on how to effectively bid on any appropriate DOT, FHWA, FTA, or Caltrans contracts.*

To graduate from the BDP, a participant firm had to complete a business plan with program provider assistance. Satisfactory business plans included the following elements:

- *The business’ designation of its primary industry classification.*
- *A transition management plan outlining specific steps to promote a profitable business.*
- *A detailed description of any products currently being produced, and any services currently being performed by the business.*
- *Any future plans to enter into one or more new markets.*
- *An analysis of market potential, competitive environment and other business analyses estimating the program participant’s prospects for profitable operation during the term of program participation and after graduation from the program.*

- *An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.*
- *Specific targets, objectives, and goals for the business development of the participant during the next two years.*
- *Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and*
- *Any additional information as the recipient may require.*

After graduating, participant firms were encouraged to annually review their business plans and make modifications as appropriate to account for any changes in the participant firms' structure and redefined needs.

During the review, Caltrans reported that as of October 18, 2018, program providers assisted participant firms with six contract bids; of those, one was a bid on an FTA-related contract.

Advisory Comment:

Caltrans was advised to encourage and actively monitor participation in the BDP by firms interested in FTA contracting opportunities.

6.8 Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45)

To begin the goal-setting process, recipients must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, recipients must examine all other available evidence to determine whether goals warrant an adjustment. Adjustments are not required, and recipients should not make adjustments without supporting evidence.

Discussion

During this compliance review, deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. Caltrans did not appear to include all FTA-funded contracting opportunities or count all firms in its DBE Directory or the U.S. Census in developing its base figure for relative availability for its *Triennial DBE Goal Setting Methodology for Federal Fiscal Years (FFYs) 2017–2019* (goal methodology document).

U.S. DOT has provided the following guidance on this subject for state DOTs:

Must a primary recipient's DBE program and goals apply to contracts let by subrecipients? (Section 26.45(a), 26.53) (Posted - 9/1/05)

- *The DBE program and overall goal of a primary recipient (e.g., a state DOT) apply to all the Federal funds that will be expended in DOT-assisted contracts.*

- *This includes not only the Federal funds expended in contracts that the primary recipient itself lets, but also the Federal funds that subrecipients let in DOT-assisted contracts.*
- *The primary recipient is responsible for administering its DBE program and is legally accountable for expenditure of DOT financial assistance in accordance with Federal requirements.*
- *Subrecipients do not have to have their own, independent DBE programs or overall goals, since the primary recipient's DBE program and overall goals cover the DOT- assisted contracting activities of the subrecipients.*

In the FTA section of its DBE Program Plan (2016, p. 171), Caltrans stated it would follow the methodology found on the OBEO website at <http://dot.ca.gov/obeo/2016disparitystudy.html>. This methodology and all of the supporting documents described goal setting for the FHWA DBE goal. In its goal methodology document, Caltrans stated it would follow the regulations found in Section 26.45 of the DBE regulations. This document stated that *Caltrans anticipates \$2,700,696 in contracting opportunities for FFYs 2017–2019*. According to the list of projects referenced and included in the goal methodology document, the \$2.7 million was actually the potential DBE opportunities, while the total contract amount was \$3.8 million.

The goal methodology document identified a list of three anticipated Caltrans' direct third-party contracts: Rural Technical Assistance Program services, a Title VI plan, and a disparity study, as well as 30 planning studies anticipated to be managed by 10 metropolitan planning agencies that were subrecipients of FTA and FHWA planning funds (Sections 5303, 5304, and 5305) passed through Caltrans. The DBE goal methodology appeared to consider all contracting opportunities for FTA-funded planning agencies; however, the goal did not consider *any* subcontracting opportunities from its FTA Section 5310 or 5311 subrecipients.

At the time of the site visit, Caltrans had 77 active 5311 subrecipients, many of which used third-party contractors for operations and maintenance. Other 5311 subrecipients hired contractors and vendors for marketing, uniforms, landscaping, fuel, and so forth. Further, the total prospective contracting opportunity of \$3.8 million was significantly below Caltrans' Uniform Report totals of \$36 million for contracts awarded in FY 2015 and the \$116 million for contracts awarded in FY 2016. During the site visit, Caltrans provided documentation that it sent a survey to subrecipients asking them to identify anticipated contracting opportunities but received no responses. It did not appear that Caltrans used available data, such as its ongoing review of all subrecipient contracting opportunities, prior to award, to project future contracting opportunities.

Caltrans also provided documentation during the site visit that it had entered into Memoranda of Understanding (MOUs) with two of its 5311 subrecipients (Kings County Area Public Transit Agency and Victor Valley Transit Authority), which were also direct recipients of urbanized formula funding (FTA Section 5307), to permit those subrecipients to add 5311 contracting opportunities to their 3-year goal setting methodology and to include commitments and awards involving 5311 funds in its Semi-Annual Uniform Reports to FTA. Caltrans did not provide documentation of FTA approval of this approach, as described in the following U.S. DOT guidance (emphasis added):

Section 26.21 Can subrecipients have their own DBE programs and overall goals? If so, who reviews them? (Posted – 6/18/08)

- *In another Question and Answer, “Must a primary recipient’s DBE program and goals apply to contracts let by subrecipients?” the Department describes how subrecipients could administer contract goals on their contracts under the umbrella of their primary recipient’s DBE program and overall goals.*
- *That Q&A notes that subrecipients are not required to have their own, independent DBE programs and overall goals. However, a subrecipient may -- **only if permitted by the DOT operating administration providing its financial assistance and subject to the approval of the concerned primary recipient** -- have its own, independent DBE program and overall goal. Generally, this is an option that would make sense only for larger subrecipients who are receiving considerable amounts of DOT financial assistance.*
- *Following coordination with the primary recipient, the subrecipient would submit its DBE program and overall goals to the appropriate DOT operating administration for review and approval, in the same way that primary recipients submit their program and goals for DOT review and approval. A written agreement between the primary recipient and subrecipient is desirable.*
- *Subrecipients that have their own DBE programs must participate in their state’s unified certification program (UCP).*
- *The amount of DOT financial assistance provided to a subrecipient with its own DBE program via the primary recipient is deleted from the base from which the primary recipient calculates its goals, and the subrecipient’s DBE participation is not counted toward the primary recipient’s DBE participation.*
- *If a subrecipient has its own independent DBE program and overall goals, the subrecipient would submit DBE participation reports to both the primary recipient and the DOT operating administration involved, the frequency and content of which would be determined through the subrecipient’s consultation with the primary recipient and DOT operating administration.*

Neither the DBE Program or the goal methodology document described the use of the MOUs, nor did these documents explain why this approach was used with only two of its subrecipients, when Caltrans had more than a dozen subrecipients that received both Section 5307 and 5311 funding. These omissions could have explained, at least in part, why the contracting opportunities were limited.

In conclusion, the Step 1 calculation for FY 2017–19 did not reflect all available contracting opportunities. It was based on a single NAICS code (54161 for management consultants) and a total contracting opportunity of \$2.7 million over 3 years.

Further, the base figure of total firms and DBE-certified firms in the single NAICS code (54161) could not be verified. During the site visit, the review team did a search of the CUCP DBE Directory for NAICS code 54161 and located 796 records, while the goal methodology document reported 28 DBEs ready, willing, and available. The goal methodology reported that 581 DBE and non-DBE firms were identified as available using 2002 Census Summary

Statistics for the State of California. The review team identified 15,396 firms using 2012 Census Summary Statistics (the most recent data). Using the updated numbers resulted in a base goal of 5.2 percent compared to the 4.8 percent obtained by using Caltrans' numbers. Although the difference is minimal, neither base figure considered all available contracting opportunities for all Caltrans' subrecipients.

The goal methodology document stated Caltrans did not find evidence to warrant making a Step 2 adjustment and accepted its Step 1 base figure as its goal for the next 3 years.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights a revised *Triennial DBE Goal Setting Methodology for Federal Fiscal Years (FFYs) 2017–2019* reflecting the projected volume and type of FTA-funded contracting opportunities for the 3-year period.

Advisory Comment

Caltrans was advised to consider requesting FTA approval to develop written agreements with all of its subrecipients that receive FTA funding directly and have contracting opportunities over \$250,000 (excluding transit vehicles), to include subrecipient funds from Caltrans in their triennial goal methodology calculations and to report to both FTA and Caltrans on DBE awards, commitments, and payments in their semi-annual reports. Caltrans should describe how it has previously excluded these contracting opportunities from its goal methodology.

B) Public Participation

Basic Requirement (49 CFR Part 26.45)

In establishing an overall goal, recipients 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. Recipients must publish a notice announcing the overall goal on the recipients' official websites and may publish the notice in other media outlets with an optional 30-day public comment period.

Discussion

During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan (2016, p. 172), Caltrans noted it would consult with its contracted disparity study consultant to obtain relevant information concerning the current availability of disadvantaged and non-disadvantaged businesses. It would also simultaneously consult with minority, women's and general contractor groups, and community organizations. The DBE Program Plan further stated that following the consultation, Caltrans would publish a notice of the proposed overall goal at Caltrans' principal offices throughout the State and online for 30 days following the date of the notice.

In its goal methodology document, Caltrans reported that its 2014 disparity study relied heavily on a consultative process to gather input from businesses and organizations throughout the State. Five public hearings were held around the State and over 80 personal interviews were conducted. Additionally, the disparity study consultant conducted telephone surveys with more

than 3,400 business establishments. Along with its triennial goal methodology, Caltrans provided documentation of these consultative public participation activities.

Caltrans also posted its proposed goal on its website on June 3, 2016, and the notice remained posted on its website at the time of the site visit (http://www.dot.ca.gov/masstrans/docs/triennial-goals_methodology-publicmeetings.pdf). The notice announced a 30-day comment period and two public meetings. Two DBEs attended the public meeting held in Los Angeles; there were no attendees at the public meeting held in Sacramento.

According to Caltrans, seven comments were received (by telephone and via email) generally focused on how prime contractors seemingly skirt around hiring DBEs and the perceptions that the meetings were similar to a job fair.

Corrective Actions and Schedules

FTA requires no corrective actions for the Public Participation requirement at this time.

C) Race-Neutral DBE Participation

Basic Requirement (49 CFR Part 26.51)

Recipients 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 Part 26.39 is a mandatory race-neutral measure. The regulations provide additional examples of how to reach this goal amount.

Discussion

During this compliance review, a deficiency was found with this requirement. FTA also issued an advisory comment with this requirement. Based on the information provided for this review, the following table represents Caltrans' compliance with 49 CFR Part 26.51 requirements.

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race-Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more	Yes	<p>14. Host construction mandatory pre-bid meeting and A&E pre-bid conferences to encourage all businesses to attend and facilitate networking among potential bidders.</p> <p>15. Maintain weekly "Ads for Bid" on the Internet</p>	<p>Historical and current calendar of events and numerous documents available on Caltrans' website (Division of Procurements and Contracting and OBEO web pages). Some district event attendee sign-in sheets (for A&E pre-bid meetings) captured small business and DBE status and others did not.</p> <p>Several ads were available on Caltrans' website.</p>

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
accessible to small businesses, by means such as those provided under §26.39 of this part.		<i>describing projects advertised for bid.</i> 22. <i>Improve access to bid openings by making them available via teleconference, web-based video, and the Internet. All bidders bid summaries are now provided on the Office Engineer Web site.</i>	Online webcasts were confirmed to be available for electronically bid projects, and bid summaries were available on Caltrans' Office Engineer website. [See Small Business Element (SBE) measures in the table below.]
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).	Yes	19. <i>Provide information on where to obtain assistance with surety bonding and liability insurance.</i>	Beginning in 2009, Caltrans partnered with the Small Business Administration (SBA) to offer a technical assistance surety bond guarantee program to promote increased small business participation in Caltrans, State highway, and transit projects. The Caltrans/SBA Bonding Assistance Initiative was active at the time of the site visit. Information on the initiative was available on Caltrans' website.
3. Providing technical assistance and other services.	Yes	2. <i>Provide technical assistance and training on transportation contracting-related topics through a supportive services contract to assist all small businesses, including DBEs.</i>	Small business technical assistance and training workshops were hosted regularly by Caltrans. Past and future workshops were listed on Caltrans' website by Caltrans district. Workshop descriptions reviewed (10) included training on bidding and estimating, marketing to Caltrans, and DBE certification. Business

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
		<p><i>8. Post "Best Practices" on Caltrans' Web site.</i></p> <p><i>10. Expand technical assistance and supportive services on a statewide level to provide small businesses that meet the requisite size standards, including DBEs, with assistance on bidding and contract administration.</i></p> <p><i>17. Disseminate the brochure, "Caltrans Quick Reference Information for Contractors." The brochure is updated annually or on an "as needed" basis and contains useful Web site addresses and information for contractors, such as where to order bid documents, bidder assistance providers, where to get bid opening results and</i></p>	<p>development training for non-DBE small businesses on business management, record keeping, and financial and accounting capability was not included in the workshop descriptions reviewed. However, training offered to DBEs through Caltrans' DBE/SS program included business development training. The DBE/SS program was available to "potential DBEs" that were also small businesses.</p> <p>Confirmed. Available on Caltrans' website.</p> <p>Confirmed training and technical assistance were offered statewide by the 12 Caltrans districts. Documentation was available on Caltrans' website.</p> <p>Confirmed the brochure was available on Caltrans' website.</p>

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
		<p><i>contractor's license information.</i></p> <p><i>18. Disseminate the "How to do Business with Caltrans," brochure which provides information on procurement topics, especially to contractors/vendors new to doing business with the State of California. The booklet includes helpful tips on how to market their commodities or services to Caltrans, as well as how to market their commodities or services to other State Departments and Agencies, through the California State Department of General Services.</i></p> <p><i>25. Administer Prime Contractor trainings in all 12 Caltrans districts, concentrating on the award and reporting requirements throughout the life of a project. At which time Caltrans' Training and Outreach Branch encourages the participation of DBE and non-DBE small business on its contracts.</i></p>	<p>Confirmed information was available on Caltrans' website.</p> <p>Confirmed training times and information were available on Caltrans' website.</p>
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing	Yes	<p><i>1. Host bi-monthly statewide Small Business Council and committee meetings.</i></p> <p><i>3. Conduct business communication and outreach activities to increase small business participation.</i></p>	<p>Confirmed. Past and future Small Business Council meetings and minutes (as applicable) were available on Caltrans' website.</p> <p>Confirmed extensive and ongoing small business outreach and engagement opportunities. Examples included pre-bid meetings, contracting information sessions, small business</p>

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
<p>lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).</p>		<p><i>4. Provide access the CUCP Directory via the Internet.</i></p> <p><i>5. Market the CUCP database of certified DBEs that are also small businesses that meet the requisite federal size standards and emphasize the user-friendly format.</i></p> <p><i>6. In a timely and relevant manner, update the OBEO Web site information on small business activities so that anyone interested may obtain practical advice on how to market their business, find contracting opportunities with Caltrans and other state agencies, and other useful information.</i></p> <p><i>8. Post "Best Practices" on Caltrans' Web site.</i></p> <p><i>16. Promote the "Opt-In" feature on the Caltrans OE Web site for construction projects. Allowing all interested subcontractors, suppliers, and truckers to advertise</i></p>	<p>workshops, and prime-sub networking opportunities.</p> <p>Caltrans' DBE directory was available online and could be exported to MS Excel and printed.</p> <p>Caltrans conducted prime-contractor training (training presentation reviewed compliance review) that included information on DBE subcontracting requirements and information on available DBEs listed in the CUCP that were also small businesses.</p> <p>Caltrans provided contracting opportunities on its Division of Procurement and Contracting website. In addition, Caltrans' Small Business Council posted contracts currently out for bid on its OBEO website, as well as newly advertised projects, on a weekly basis. The site included a "Look Ahead Report" designed to give small businesses early notice of upcoming contracting opportunities, but the "Look Ahead Report" had not been updated since 2014.</p> <p>Confirmed.</p> <p>"Opt-In" feature confirmed on Caltrans' Office Engineer website.</p>

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
		<p><i>services/capabilities directly to bidding prime contractors.</i></p> <p><i>17. Disseminate the brochure, "Caltrans Quick Reference Information for Contractors." The brochure is updated annually or on an "as needed" basis and contains useful Web site addresses and information for contractors, such as where to order bid documents, bidder assistance providers, where to get bid opening results and contractor's license information.</i></p> <p><i>18. Disseminate the "How to do Business with Caltrans," brochure which provides information on procurement topics, especially to contractors/vendors new to doing business with the State of California. The booklet includes helpful tips on how to market their commodities or services to Caltrans, as well as how to market their commodities or services to other State Departments and Agencies, through the California State Department of General Services.</i></p> <p><i>19. Provide information on where to obtain assistance with surety bonding and liability insurance.</i></p> <p><i>24. Host District Procurement Fairs and increase the</i></p>	<p>See comments to item (17) above.</p> <p>See comments to item (18) above.</p> <p>See comments to item (19) above.</p> <p>Examples of recent procurement fairs advertised online: <i>Caltrans 14th Annual Procurement and Resource Fair (District 11), Caltrans</i></p>

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
		<i>number of Districts in which the fairs are held.</i>	<i>District 4 Small Business Procurement Fair (District 4), Meet the Buyers 2018: Caltrans Procurement Fair (District 7)</i>
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.	Yes	<p><i>2. Provide technical assistance and training on transportation contracting related topics through a Supportive Services contract to assist all small businesses, including DBEs.</i></p> <p><i>10. Expand technical assistance and supportive services on a statewide level to provide small businesses that meet the requisite size standards, including DBEs, with assistance on bidding and contract administration.</i></p>	<p>See comments to item (2) above.</p> <p>See comments to item (10) above.</p>
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.	Yes	<i>2. Provide technical assistance and training on transportation contracting related topics through a Supportive Services contract to assist all small businesses, including DBEs.</i>	See comments to item (2) above.
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.	No		

49 CFR Part 26.51 Race-Neutral Measures	Caltrans Race- Neutral Measure?	Race-Neutral Measure Text from Caltrans DBE Program Plan	Documentation and Observations Confirming Caltrans' Implementation
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.	Yes	<i>4. Provide access the CUCP Directory via the Internet.</i>	See comments to item (4) above.
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.	No		

Note: A&E = architectural and engineering.

In addition to the race-neutral measures described in the table above, Caltrans included the following race-neutral measures in its DBE Program Plan:

1. *Partner with other Divisions to generate ideas for enhancing the overall success of small businesses, including DBEs that meet the requisite size standards and reach out to local agencies for ideas that can be tailored to their jurisdictions.*
2. *Work with organizations such as the Associated General Contractors (AGC) and the Consulting Engineers and Land Surveyors of California (CELSOC), to identify ways to assist small businesses that meet the requisite size standards, including DBEs, to increase their opportunities to participate as contractors or subcontractors on Department projects.*
3. *Partner with the Small Business Administration, Small Business Development Centers, and other government agencies.*
4. *Ensure compliance to prompt payment specifications, which helps all contractors and subcontractors.*
5. *Track all DBE participation on federally-assisted contracts, including monitoring the Commercially Useful Function of DBEs.*
6. *Implement, maintain, and promote the Mentor Protégé and Cal Mentor Programs throughout the State.*
7. *Encourage each District or Region to establish a District Small Business Council.*
8. *Unbundle large A&E contracts into smaller contracts.*

During the site visit, Caltrans provided documentation confirming implementation of the race-neutral measures listed above.

U.S. DOT 49 CFR Part 26.51 additionally identifies making contracts more accessible to small businesses by means such as those described in 49 CFR Part 26.39 *Fostering Small Business Participation* as a required race-neutral SBE in a recipient's DBE program. Caltrans' SBE was approved by FHWA on September 19, 2012 and included in its most recent DBE Program Plan. Based on the information provided for this review, the following table represents Caltrans' implementation of measures to foster small business participation recommended in 49 CFR Part 26.39.

49 CFR Part 26.39 Fostering Small Business Participation	Included as Caltrans SBE Measure?	Caltrans SBE Measure Text	Documentation and Observations Confirming Caltrans Implementation
1. To facilitate competition by small business concerns, take all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contracts.	Yes	<i>Caltrans proposes to unbundle large Federal-aid contracts to promote the use and provide more subcontracting opportunities to smaller industry firms. Unbundling could be done for those contracts that meet a specific size standard, provide an extensive amount of subcontracting opportunities, and the design sequence being broken up into different contracts would not have negative fiscal impact on the Department.</i>	None provided for FTA-assisted contracting opportunities.
2. Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million)	No		
3. In multiyear design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.	No		

49 CFR Part 26.39 Fostering Small Business Participation	Included as Caltrans SBE Measure?	Caltrans SBE Measure Text	Documentation and Observations Confirming Caltrans Implementation
4. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.	No		
5. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.	No		
6. To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.	No		

In addition to the SBE measures described in the table above, Caltrans described other measures in its DBE Program Plan implemented to foster small business participation, all of which were race- and gender-neutral; however, none of these measures addressed the requirement in 49 CFR Part 26.39 to “structure contracting requirements to facilitate competition by small business concerns.”

Caltrans did not provide examples of unbundling large FTA-assisted contracts as the majority of its recent FTA-assisted projects were either too small to unbundle, involved the purchase of transit vehicles, or were managed by subrecipients for operations, capital, and administration purposes. Although the majority of Caltrans’ FTA-assisted contracting opportunities did not lend themselves to unbundling, Caltrans was the recipient of at least two recent consolidated planning grants, CA-2017-087-01 and CA-2018-055-01, each valued at approximately \$70 million. Similar to the formula program funds passed through to eligible 5310 and 5311 subrecipients, these grants provided planning funds that Caltrans passed through to regional transportation planning agencies and metropolitan planning organizations. Caltrans did not demonstrate that it worked with or otherwise encouraged subrecipients of FTA funds to unbundle or in some way structure planning-related contracts to facilitate competition by small businesses.

It was noted during the compliance review that pursuant to Executive Order S-02-06 issued by the Governor of the State of California on March 29, 2006, small business participation in State procurements was required, as follows:

Each agency secretary, department director, and executive officer shall ensure that the State's procurement and contracting processes are administered in order to meet or exceed the 25 percent small business participation goal, and identify a Small Business Advocate at the agency, department, board, or commission level, encouraging them to develop and share innovative procurement and contracting practices from the public and private sectors to increase opportunities for small businesses.

To the extent Caltrans' statewide efforts to structure contracting requirements to facilitate competition by small businesses are appropriate for and applicable to FTA-assisted contracting opportunities, Caltrans is encouraged to include such efforts in its SBE pursuant to 49 CFR Part 26.39 requirements.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes a detailed description of how it encourages and/or works with subrecipients of FTA funds to structure contracting requirements to facilitate competition by small business concerns, per 49 CFR Part 26.39. Caltrans' procedures must include a description of how it monitors and documents subrecipient compliance with this Part.

Advisory Comment

Caltrans was advised to include statewide efforts to foster small business participation in its FTA Small Business Element pursuant to 49 CFR Part 26.39 requirements. Caltrans should consider unbundling large FTA-assisted contracts, as available and as appropriate.

D) Race-Conscious DBE Participation

Basic 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 this requirement. As previously stated, prior to FY 2017, Caltrans did not use race-conscious contract goals to meet any portion of its FTA DBE goal. Caltrans did not use contract goals because, prior to 2014, it did not have a recent disparity study to provide statistical evidence of discrimination, as mandated by the Ninth Circuit panel in its decision in the *Western States Paving Company v. Washington State DOT* case. Caltrans did not meet its FTA DBE goal in FY 2014 or FY 2015.

In December 2014, Caltrans completed an availability and disparity study that concluded there was significant disparity in four of the six groups presumed to be socially and economically disadvantaged: Native American, Black American, Asian-Pacific American, and non-Hispanic White woman-owned businesses. Hispanic American– and subcontinent Asian American–

owned businesses were above parity. It should be noted that the 2014 disparity study primarily focused on highway projects. Caltrans plans to complete a disparity study for FTA-funded projects in the near future.

In its FY 2017–19 goal methodology document, Caltrans submitted a goal of 4.8 percent, with a split of 3.7 percent race neutral and 1.1 percent race conscious. Caltrans based this split on the fact that Caltrans had achieved a race-neutral attainment of 3.71 percent for the previous 3 years. It determined that a race-conscious percentage would facilitate their goal attainment. In accordance with U.S. DOT DBE guidance found at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/western-states-paving-company-case-q-and-a>, Caltrans requested a waiver to exclude subcontinent Asian American-owned businesses and Hispanic American-owned businesses from the race-conscious component of the goal. Contract awards and payments for these businesses would still be counted in the race-neutral component.

In implementing the race-conscious contract goal, Caltrans provided training to subrecipients on how to set DBE contract goals for FTA-funded contracts. The training video was also available on Caltrans website, which directed viewers to this link: <https://attendee.gototraining.com/8h152/recording/8810736702969316866>.

Corrective Actions and Schedules

FTA requires no corrective actions for the Race-Conscious DBE Participation requirement at this time.

E) Good Faith Efforts

Basic Requirement (49 CFR Part 26.53)

Recipients may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFEs) 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 the DBE(s) submitted in response to the contract goal, written confirmation from each DBE listed, or GFEs 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 five days after bid opening—as a matter of responsibility. The recipient must review bids by using either the responsiveness or responsibility approach and document which approach it uses in its DBE Program Plan.

Discussion

During this compliance review, deficiencies were found with this requirement. FTA also issued advisory comments regarding this requirement. In its DBE Program Plan, Caltrans described two processes for demonstrating GFEs on FTA-assisted contracts with contract goals. Neither of the two processes met all the requirements for GFEs described in 49 CFR Part 26.53(a)(2)(i-vi). For non-design-build contracts, Caltrans' Contract Evaluation Branch within OBEO reviewed all DBE commitment information, as follows:

When reviewing a good faith effort submission, CEB reviews several factors in determining whether a bidder has demonstrated adequate good faith efforts to meet the contract goal, including:

- The bidders' overall DBE commitment,*
- The total of goods and services made available to DBE firms,*
- The quantity of DBE solicitations made,*
- Reason(s) for rejecting DBE quotes,*
- The relative DBE commitments and Good Faith Efforts made by other bidders.*

For design-build contracts, Caltrans required the submission of a DBE Performance Plan, which included the following:

- 1. An estimated dollar amount to be awarded to DBE firms.*
- 2. Identification of the areas of work to be subcontracted to DBE firms, specifying the areas DBE firms have been selected and the areas DBE firms are anticipated to be used. It is the proposer's responsibility to demonstrate sufficient work to facilitate DBE participation was made or will be made available to DBE firms.*
- 3. A description of the good faith efforts the proposer has made as of the date of the proposal and good faith efforts the proposer will make in the future to meet the DBE goals.*

With respect to the requirements described in 49 CFR Part 26.53(a)(2)(i-vi), Caltrans' procedures, as described in its DBE Program Plan, did not require the submission of the following:

- (i) The names and addresses of DBE firms that will participate in the contract;*
- (iii) The dollar amount of the participation of each DBE firm participating;*
- (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and*
- (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.*

Although the Agency Monitoring Checklist Caltrans used to conduct subrecipient oversight included a question on GFE compliance, Caltrans did not appear to review subrecipient procurement files for GFE documentation as part of its oversight. In addition, the question on GFE compliance contained a reference to providing "maximum opportunity" for DBEs, which is no longer the standard. The question was as follows:

If requested, can documentation ("good faith efforts") be presented that DBE's have had the maximum opportunity to compete for and perform contracts and subcontracts financed in whole or in part with FTA funds?

Caltrans' DBE Program Plan contained satisfactory procedures for administrative reconsideration, administrative remedies for noncompliance, and DBE substitution and replacement. However, Caltrans did not have procedures for confirming subrecipient compliance with any of these measures.

Lastly, in its DBE Program Plan, Caltrans did not clearly state whether GFEs were required as a matter of responsiveness or responsibility for non-design-build contracts. For design-build contracts, Caltrans stated in its DBE Program Plan that “proposers submit good faith efforts documentation demonstrating their efforts to achieve the DBE goal up to the proposal due date.” During the site visit, Caltrans confirmed GFEs were required as a matter of responsiveness.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for good faith efforts on contracts with contract goals that meet all the requirements described in 49 CFR Part 26.53(a)(2)(i-vi) for all contract types. The updated DBE Program Plan must also include a detailed description of how Caltrans ensures subrecipient compliance with 49 CFR Part 26.53(a)(2)(i-vi).

Advisory Comments

Caltrans should review its DBE Program Plan to confirm it correctly describes its policy for submitting GFEs as a matter of responsiveness. Caltrans should reference its *Schedule of DBE Participation* form and *Letter of Intent to Perform as a Subcontractor/Joint Venture* when describing its GFE requirements in its DBE Program Plan. Caltrans was advised to remove “maximum opportunity” as a DBE program objective from all DBE program materials and replace it with “level playing field.”

F) Protecting Against Termination for Convenience

Basic Requirements (49 CFR Parts 26.53 and 26.13)

Recipients must implement appropriate mechanisms to ensure prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontractor 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, a deficiency was found with this requirement. In the Good Faith Efforts section of its DBE Program Plan, Caltrans stated:

The contractor is required to obtain prior approval of the substitute DBE from the contract manager. Should the contractor be unsuccessful in replacing the committed DBE with another DBE, then it is the responsibility of the contract manager to ensure the contractor has submitted sufficient documentation of good faith efforts. If the contractor is able to replace the committed DBE with another DBE, the contract manager must collect copies of the new or amended subcontracts.

If the Department authorizes the termination or substitution of a listed DBE, the prime contractor must make good faith efforts to find another DBE. The substitute DBE must (1) perform at least the same dollar amount of work as the original DBE under the

contract to the extent needed to meet the DBE goal and (2) be certified as a DBE with the work code applicable to the type of work the DBE will perform on the contract at the time of the request for substitution. Documentation of good faith efforts must be submitted within 7 days of the request for authorization of the substitution. The Department may authorize a 7-day extension of this submittal period by request.

Unless the Department authorizes a request to terminate or substitute a listed DBE, the Department does not pay for work unless it is performed or supplied by the DBE listed on The DBE Commitment form. Other sanctions may be levied under 49 CFR 26. It is the responsibility of Caltrans' contract manager to either approve or deny any Good Faith Efforts submitted in an attempt to substitute a DBE on a contract. A copy of the GFE and all relevant documentation, including the approval or denial of the GFE are to be kept in the contract file and reported to the Policy and Reports Branch for tracking.

In addition, Caltrans' General Terms and Conditions included the following provision in all subrecipient agreements:

In accordance with 49 CFR Part 26.53(f)(1)(i), the CONTRACTOR shall not terminate a DBE subcontractor without prior written approval of the STATE. A CONTRACTOR that terminates a DBE subcontractor must make a good faith effort to find a replacement DBE subcontractor to perform at least the same amount of work under the contract to meet the contract goal established for the work. The good faith effort should be documented and submitted to the STATE within a reasonable time after obtaining approval by the STATE to terminate an existing DBE as required by 49 CFR Part 26.53(g).

Although Caltrans described its protections against termination for convenience in its DBE Program Plan and included a DBE termination provision in its General Terms and Conditions, not all agreements between subrecipients and their prime contractors contained the required provision. During the site visit, agreements between subrecipients Kings County Area Public Transit Agency, Redwood Coast Transit, and City of Solvang and operations and maintenance prime contractors were reviewed. Only one of the agreements reviewed (City of Solvang) contained the required provision protecting against termination for convenience.

Corrective Actions and Schedules

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

- Documentation confirming it has reviewed all FTA-assisted Caltrans and Caltrans subrecipient contracts for the required protections against termination for convenience and updated all contracts that do not contain the required provision, as necessary, and notified its FTA subrecipients that DBE subcontractors working on FTA-assisted projects with contract goals cannot be terminated for convenience without Caltrans' prior written consent.
- Documentation that it has notified all prime contractors that they must ensure all existing and future DBE subcontract agreements do not conflict with the requirements found at 49 CFR Part 26.53(f)(1)(i).

- An updated DBE Program Plan that includes procedures for monitoring all subrecipient agreements to ensure they contain the required protections against termination for convenience.

G) Counting DBE Participation

Basic Requirement (49 CFR Part 26.55)

Recipients 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. Recipients must review a bidder's submission to ensure the type and amount of participation are 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 this requirement. Caltrans' DBE Program Plan contained procedures for counting DBE participation that essentially included recitation of the standards and rules for counting the various DBE participation scenarios described in 49 CFR Part 26.55 (i.e., commercially useful function considerations, DBE materials and supplies provisions, DBE manufacturer vs. DBE regular dealer considerations, DBE trucking contract considerations, and joint venture rules). Caltrans' procedures also included some description of the divisions involved with and responsible for ensuring DBE participation on FTA-assisted projects is accurately counted. However, Caltrans could not demonstrate that it consistently applied and implemented the standards, rules, and procedures described in its DBE Program Plan for all FTA-assisted projects managed by at least two divisions across 12 districts statewide, especially subrecipient projects. The following examples are provided:

- Caltrans' Division of Transportation Planning (DOTP), Division of Rail and Mass Transportation (DRMT), Division of Contracts and Procurement, OBEO (Contract Evaluation Branch), and district program managers all had some responsibility for ensuring the DBE participation counting rules and standards were applied and DBE participation was accurately counted. This decentralized approach lacked coordination and effective monitoring, which contributed to Caltrans' inability to accurately count DBE participation. Accordingly, the review team had concerns about and lacked confidence in the accuracy of Semi-Annual Uniform Reports submitted by the agency.
- In response to a request for information and documents describing Caltrans' DBE participation counting procedures, Caltrans DOTP stated it did "not have established procedures to monitor work that has be[en] committed to DBE[s]. This is a contract management issue that is handled by contract managers, typically by district staff." After the site visit, Caltrans corrected this statement confirming that OBEO headquarters staff performed this function for DOTP and program managers in the 12 districts were primarily responsible for this function for DRMT. Nevertheless, during the review, neither DRMT program management nor OBEO headquarters staff described the process for confirming and accurately counting DBE participation on FTA-assisted projects or, in the case of DRMT, confirm that all districts followed the same process. Caltrans' district staff were unavailable to describe their DBE participation counting procedures. Caltrans' DBE

Program Plan did not include a description of the districts' involvement in counting DBE participation on FTA-assisted projects.

- Caltrans required contractors and subrecipients to use one of two forms to report DBE participation [ADM-3069 Disadvantaged Business Enterprise Utilization Report and ADM-0227F Disadvantaged Business Enterprise (DBE) Information / Underutilized (UDBE) Participation Report]. DRMT stated that subrecipients often did not submit either of the required reports to program managers in the districts, making monitoring and accurately counting DBE participation difficult, if not impossible.
- DRMT provided a subrecipient monitoring checklist used during subrecipient site visits that included a DBE section. The checklist contained a question that asked if the subrecipients were completing and submitting a "Semi-Annual Uniform Report of DBE Commitments/Awards and Payments." This checklist did not inquire about forms ADM-3069 or ADM-0227F described above. Moreover, Caltrans did not confirm it reviewed and confirmed completed semi-annual reports for accuracy and timely submission to the district transit program representative, as required per the checklist. The one completed checklist provided by Caltrans did not contain answers to the questions in the DBE section, and Caltrans did not provide other examples of completed checklists during the review.
- The organizational unit most knowledgeable about counting DBE participation, OBEO, appeared to not be involved with ensuring the accurate counting of DBE participation on FTA-assisted projects. In its DBE Program Plan, Caltrans described a process in which the Contract Evaluation Branch with OBEO reviewed final DBE utilization reports submitted by subrecipients at the end of a project. During the site visit, Caltrans did not provide documentation confirming the submission and review of final DBE utilization reports, as describe in Caltrans' plan.

Corrective Actions and Schedules

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

- Detail supporting its FY 2017 and FY 2018 Semi-Annual Uniform Reports, along with revised FY 2017 and FY 2018 reports, as necessary.
- A detailed process for ensuring that DBE participation on FTA-assisted projects is accurately counted. Before implementation the process must be approved by FTA. The procedures must include the active involvement of the Caltrans DBELO and the OBEO Contract Evaluation Branch. The procedures must describe how Caltrans will collect and report accurate information on race-neutral and race-conscious DBE participation. The procedures must include a detailed description of how contractor and subrecipient reports will be verified for accuracy by Caltrans. The DBELO must certify that the information in all Semi-Annual Uniform Reports is provided in accordance with the procedures approved by FTA.
- An updated DBE Program Plan that includes Caltrans' newly developed and approved procedures for counting DBE participation on FTA-assisted projects.

H) Quotas

Basic Requirements (49 CFR Part 26.43)

Recipients cannot use quotas. Recipients may not use set-aside contracts unless they do not reasonably expect other methods to redress egregious instances of discrimination.

Discussion

During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, Caltrans stated it does not use quotas in any way in the administration of its DBE program. A review of several recent contracts, along with interviews with Caltrans staff, confirmed that Caltrans did not use quotas in its contracting practices related to FTA-funded projects.

Corrective Actions and Schedules

FTA requires no corrective actions for the Quotas requirement at this time.

6.9 Shortfall Analysis and Corrective Action Plan

Basic Requirement (49 CFR Part 26.47)

Recipients must conduct a shortfall analysis and implement a corrective action plan in any fiscal year they do not meet their overall DBE goal.

Discussion

During this compliance review, no deficiencies were found with this requirement. Caltrans included procedures for conducting DBE goal shortfalls in its DBE Program Plan that were consistent with 49 CFR Part 26.47 requirements. Shortfalls between FY 2016 and FY 2018 were reviewed during this compliance review, which revealed that Caltrans experienced one DBE goal shortfall in FY 2016. Caltrans' overall DBE goal in FY 2016 was 4 percent, to be obtained solely through race-neutral means. In that same year, Caltrans reported a DBE goal attainment of 3.66 percent, resulting in a 0.34 percent FY 2016 shortfall. (Concurrent to the development of its FY 2016 shortfall analysis and corrective action plan, Caltrans sought an adjustment to its FY 2014–16 overall DBE goal from 4 percent to 4.8 percent, based on the results of a 2014 disparity study that provided justification for the use of race-conscious means for DBE goal attainment. Rather than adjust the FY 2014–16 goal at the end of the FY 2014–16 triennial goal period, Caltrans, with concurrence from FTA, established an overall DBE goal of 4.8 percent for the FY 2017–19 triennial goal period. As a result, Caltrans' shortfall for FY 2016 remained at 0.34 percent.)

Caltrans' shortfall analysis included a summary of the shortfall and an analysis of the circumstances that caused the shortfall. Caltrans attributed the shortfall to the following:

There was only one consultant contract (executed in September 2016) where awards/commitments were made during the FFY 2016 report period. Of the \$1.8 million contract, a total of 7 DBEs received a commitment totaling \$433,935.

There were no FTA Section 5310 dollars used for subcontracting. Consequently, there were no DBE awards/commitments made by Section 5310 subrecipients.

For the Section 5311, subrecipients made awards/commitments to 4 subrecipients for a total of \$256,368. The total 5311 FTA dollars for subcontracting were \$13,238,286.

The Section 5303/04 Programs grantees made awards/commitments totaling \$478,574 to 19 DBEs. The total 5303/04 FTA dollars used for subcontracting were \$1,587,767.

The primary reason that Caltrans did not meet its goal is due to not enough 5311 subrecipients using DBEs in their subcontracting process. This issue will be addressed by the proposed new FTA DBE Goal Methodology.

Caltrans' corrective action plan included ongoing implementation of the several race-neutral measures discussed in section 6.8(C) Race-Neutral DBE Participation of this report and an additional measure requiring all 5311 subrecipients to sign a DBE Implementation Plan (DIP) developed by Caltrans. The purpose of the DIP was to communicate the requirements of 49 CFR Part 26 to Caltrans' 5311 subrecipients and to provide guidance and expectations for subrecipient compliance. Included in the DIP was a description of the requirements Caltrans' placed on its 5311 subrecipients to assist in Caltrans' overall DBE goal attainment, including guidance on setting DBE goals and tracking and reporting DBE goal attainment through both race-neutral and race-conscious means. This corrective action was directly responsive to the primary reason identified by Caltrans for its FY 2016 DBE goal shortfall.

Although signed DIPs were not provided during the compliance review and Caltrans had not analyzed the effect this corrective action had on subsequent DBE goal attainment, Caltrans exceeded its overall DBE goal of 4.8 percent in FY 2017, with an actual FY 2017 goal attainment of 5 percent.

Corrective Actions and Schedules

FTA requires no corrective actions for the Shortfall Analysis and Corrective Action Plan requirement at this time.

6.10 Transit Vehicle Manufacturers (TVMs)

Basic Requirement (49 CFR Part 26.49)

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

Discussion

During this compliance review, deficiencies were found with this requirement. Caltrans' DBE Program Plan did not address the requirements found at 49 CFR Part 26.49(a)(1) and 26.49(a)(4), as follows:

- (1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.*
- (4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement*

Caltrans did not include the required procedures for pre-award TVM verification and post-award TVM reporting in its DBE Program Plan.

In 2015, DGS awarded contracts to several bus manufacturers enabling them to participate as transit vehicle suppliers on Caltrans' State purchasing contract. Prior to award, Caltrans verified the TVMs were approved by FTA for participation in FTA-assisted bus procurements. Caltrans' 2015 TVM verification documentation included a "print screen" of FTA's approved TVM vendor list with notes confirming the inclusion of TVMs selected for award. During the site visit, Caltrans explained that most of its 5310 subrecipients purchased vehicles off the State contract. Caltrans further confirmed that since 2015, several 5311 and 5339 subrecipients purchased transit vehicles from sources other than the State contract and acknowledged that pre-award TVM verification was not occurring in those instances. Caltrans also acknowledged that neither it nor its 5310, 5311, and 5339 subrecipients reported TVM awards within 30 days of contract award, as required by 49 CFR Part 26.49(a)(4).

During the site visit, the review team provided technical assistance to Caltrans on how to check FTA's certified list of TVMs posted on the FTA website at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers> to confirm TVMs are certified prior to award and advised Caltrans to do a "print screen" of the certified TVM list and keep a copy of the list in the procurement file to meet the requirement. The review team also provided technical assistance on how to submit the required post-award TVM report online at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

Corrective Actions and Schedules

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

- An updated DBE Program Plan that includes procedures for confirming TVM eligibility prior to awarding contracts for transit vehicle purchases. Caltrans must also include procedures for notifying FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49(a)(4). Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting Form at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>. Caltrans must include procedures for ensuring that its 5310, 5311, and 5339 subrecipients implement the required TVM verification and reporting procedures.
- Documentation confirming all FTA-assisted transit vehicle contracts since FY 2014 were awarded to FTA-approved TVMs.

- Documentation confirming all FTA-assisted transit vehicle contract awards since FY 2014 have been reported to FTA using the online Transit Vehicle Award Reporting Form at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

6.1.1 Required Contract Provisions

A) Contract Assurance

Basic Requirement (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 nondiscrimination clauses detailed by the DBE regulations.

Discussion

During this compliance review, deficiencies were found with this requirement. Although the entire nondiscrimination assurance, including the four remedies, was included in Caltrans' DBE Program Plan, the four remedies were not included in Caltrans' Standard Agreement or any of the subrecipient and third-party agreements reviewed during the site visit (Kings County Area Public Transit Agency, Redwood Coast Transit, and City of Solvang).

The required contract assurance in 49 CFR Part 26.13 is as follows:

Each contract you sign 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.*

Caltrans' DBE Program Plan stated the following in response to this requirement:

G. Federal Financial Agreement and Assurances §26.13(a)(b)

Caltrans signed the following assurance, which applies to the administration of US DOT federally-assisted contracts and their administration:

Federal Contract Assurances and Sanctions: §26.13(b)

Caltrans ensures contract language for all federal-aid projects include the following assurance:

"The contractor, subrecipient, 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 USDOT federally-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 the 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*
- (4) Disqualifying the contractor from future bidding as non-responsible"*

The contract language also states, "Each subcontract signed by the bidder must include this assurance." This language can be found in the following areas:

- *Division of Design (Design-Build Contracts): Boiler Plate section 7.1.1 Equal Employment Opportunity Policy. (See Attachment F.)*
- *Division of Engineering Services (Construction Contracts): Standard Specifications Section 2-1.12, page 20. http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/2015 StdSpecs/2015 StdSpecs.pdf*
- *Division of Construction: 2015 Standard Specifications - Section 2-1.12, page 20. http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/2015 StdSpecs/2015 StdSpecs.pdf*
- *Division of Procurement and Contracts (Non-A&E Contracts): Boiler Plate section (See Attachment G.)*
- *Division of Procurement and Contracts (Architectural and Engineering Contracts): Boiler Plate section (See Attachment H.)*
- *Division of Local Assistance: Local Agency Procedures Manual, Exhibit B: Nondiscrimination Assurances. <http://www.dot.ca.gov/hq/localPrograms/llam/fonns/chapter4/4c.pdf>*
- *Division of Rail and Mass Transportation - The Disadvantaged Business Enterprise Combination Race-Neutral/Race-Conscious Implementation Agreement for Federal Transit Administration Subrecipients. (See Attachment I.)*
- *Division of Transportation Planning: 2015 Regional Planning Handbook http://www.dot.ca.gov/hq/tp/offices/orip/owplindex_files/RPH_Final_May-2015.pdf*

However, as noted above, none of the Caltrans' contracts reviewed contained the complete assurance described in its DBE Program Plan and required by 49 CFR Part 26.13.

Corrective Actions and Schedules

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

- Documentation that it has reviewed all active FTA-assisted contracts for the required contract assurance and updated those contracts that do not contain the assurance with the required assurance described in 49 CFR Part 26.13.
- An updated DBE Program Plan with procedures for ensuring that all future FTA-assisted contracts, including prime contractor and subcontractor agreements, include the complete nondiscrimination contract assurance. In addition, Caltrans should update its Standard Agreement used for all contracts to include the appropriate language as required.

B) Prompt Payment

Basic Requirement (49 CFR Part 26.29)

Recipients 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 subcontractor's work is satisfactorily completed.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued advisory comments with this requirement. Caltrans' DBE Program Plan stated the following regarding prompt payment:

E. Prompt Payment §26.29

All federal-aid and US DOT federally-assisted projects include a specification that directs bidders' attention to California Public Contract Code (CPCC) Sections 10262 and 10262.5. These CPCC sections direct prime contractors to pay all subcontractors for work within seven days of the prime contractor's receipt of progress payment for the subcontractor's work. This clause applies to both DBE and non-DBE subcontracts.

Caltrans reserves the right to withhold progress payments from the prime contractor in the event prompt payment is not adhered to.

Caltrans' prompt payment provision described in its DBE Program Plan met the 49 CFR Part 26.29 requirement. Caltrans had adopted a 7-day policy well within the 30-day requirement in 49 CFR Part 26.39. Caltrans also included the 7-day prompt payment provision in its Standard Agreement used in all FTA-assisted contracts between Caltrans and prime contractors and subrecipients. However, a review of three subrecipient contracts (Kings County Area public Transit Agency, Redwood Coast Transit, and City of Solvang) revealed that payment was required within 30 days, which is not in compliance with Caltrans stated 7-day policy.

During the site visit, Caltrans confirmed that all prime contractors were paid on a reimbursement basis in the State of California. Therefore, Caltrans regularly met its 7-day prompt payment requirement as all subcontractors were already paid for work performed when the prime contractor invoiced Caltrans for the same work.

Advisory Comment

Caltrans was advised to update its DBE Program Plan to add a description of the State's policy on paying prime contractors on a reimbursement basis only after they have paid subcontractors for work performed. Caltrans was advised to ensure that all FTA-assisted contracts include the 7-day prompt payment provision specified in its DBE Program Plan and in its Standard Agreement. Caltrans was advised to implement a process to periodically confirm with DBE subcontractors that they are receiving payment from prime contractors in accordance with Caltrans' prompt payment policy and require subrecipients to implement similar procedures.

C) Legal Remedies

Basic Requirements (49 CFR Part 26.37)

Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Recipients should use breach of contract remedies as appropriate.

Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. In addition to legal remedies provided by 49 CFR Part 31 Program Fraud and Civil Remedies, 2 CFR Part 1200, and 2 CFR Part 180 Debarment and Suspension remedies, Caltrans included the following enforcement mechanisms in its DBE Program Plan, its Standard Agreement, and in three subrecipient contracts reviewed during the site visit:

Enforcement/Remedies for Non-Compliance. If a CONTRACTOR materially fails to comply with any term of this Agreement, or fails to refund any moneys due STATE, the STATE may take one or more of the following actions:

- A. Disallow or temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR.*
- B. Wholly or partially suspend or terminate the current award for the CONTRACTOR's PROJECT.*
- C. Withhold future awards to the CONTRACTOR for the program.*
- D. Withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from remaining grant balance and/or future apportionments, or any other funds due CONTRACTOR from the Federal Trust Fund or any other sources of funds.*
- E. Take any other remedies that may be legally available.*

Regarding unauthorized substitution of a DBE subcontractor, Caltrans additionally provided for the following:

If the substitution is found to be in violation of the Fair Practices Act, the contract manager may assess the prime contractor a penalty of up to 10 percent of the subcontract amount. Any temporary withholds become permanent when a violation is confirmed.

Advisory Comment:

Caltrans was advised to ensure that subrecipients included Caltrans' legal remedies in all FTA-funded prime contracts and subcontracts.

6.12 Certification Standards

Basic Requirements (49 CFR Parts 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, no deficiencies were found with this requirement. In its DBE Program Plan (2016, p. 241), Caltrans noted it used the certification standards of 49 CFR Part 26 Subpart D. This section of the DBE Program Plan also described that it followed the certification procedures of 49 CFR Part 26 Subpart E. The certification procedures are discussed in the next section of this report.

In both its DBE Program Plan and on its website, Caltrans described the following certification standards, consistent with the regulations:

- Burdens of Proof
- Group Membership
- Business Size Determinations
- Determining Social and Economic Disadvantage
- Ownership Determinations
- Determining Control of the Business
- Other Rules

Caltrans' DBE applications guidelines direct potential applicants to select all conditions that apply from the list below to determine if the business is likely to meet DBE certifications standards:

- Business must be at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals.
- The business must be an existing for-profit small business whose 3-year annual gross receipts (including affiliates) did not exceed \$23.98 million.

- The personal net worth of the business owner(s) must not exceed \$1.32 million.
- The business owner(s) is a U.S. citizen or lawfully admitted resident.
- The business must be independent.

The Certification Branch within OBEO was responsible for ensuring these standards were met. Caltrans also provided training to new staff of the CUCP certifying members to ensure they adhered to the certification standards.

Corrective Actions and Schedules

FTA requires no corrective actions for the Certification Standards requirement at this time.

6.13 Certification Procedures

Basic Requirements (49 CFR Parts 26.83–26.86)

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. 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. 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 Parts 26.85(c)-(g). 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

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement. Caltrans was the lead of 10 certifying partners in the California Unified Certification Program (CUCP). At the time of the site visit, the Caltrans DBELO was the chair of the CUCP Executive Committee. The CUCP appeared to be very active, with monthly teleconferences to discuss certification issues. Each year, the CUCP conducted mandatory annual training for all certifying agencies throughout California.

As noted above, the Certification Branch of Caltrans' Office of Business and Economic Opportunity (OBEO) was responsible for conducting Caltrans' DBE certifications. For the past three calendar years, the Certification Branch has accomplished the following in relation to certifying DBEs:

	1/1/15 - 12/31/15	1/1/16 - 12/31/16	1/1/17 - 12/31/17
New DBE Apps Received	340	397	332
New DBE Apps Certified	247	183	265
New DBE Apps Denied	41	41	64
On-site Visits Conducted	246	251	206
AUAs Processed	1,723	1,747	1,576
5th-Year AUAs Processed	286	198	169

AUA = annual update affidavit.

Caltrans also reported that as of June 27, 2018, it had 103 applications pending a certification decision. All of those applications appeared to have exceeded the 90-day required period for processing. Caltrans explained that the date received shown was the initial date of receipt and did not account for subsequent requests for additional documents. Caltrans had also experienced vacancies in the Certification Branch in the recent past. As of November 16, 2018, Caltrans reported 79 pending applications, showing that approximately 70 percent had been received within the past 90 days. In follow-up discussions, Caltrans confirmed that certifications decisions were made in a timely manner, within 90 days of receipt of all information, and that when needed, Caltrans notified applicants of the need for a one-time 60-day extension, in accordance with the regulations.

As described in its DBE Program Plan, Caltrans certifies firms statewide, and the other CUCP members certify geographically by region. Caltrans offers considerable information on its website, including a training video on how to apply for DBE certification. The Certification Branch first confirms if the majority owner(s) is a member of one of the presumptive groups of socially and economically disadvantaged individuals, as defined in 49 CFR Part 26. It relies on documentation such as the applicant's, parent's, or grandparent's birth certificates, naturalization papers, passports, tribal enrollment verification, or any other relevant documentation. If an applicant is not a member of a presumptive group, the applicant must provide a written justification and supporting documents to prove his or her social and economic disadvantage.

Next, the Certification Branch evaluates tax returns, contracts, and other agreements to determine if the firm is under the business size threshold and is eligible to be certified as a DBE. Caltrans also evaluates a personal net worth statement for each of the owners who make up 51 percent ownership of the applicant firm, as well as their adjusted gross income on their Federal 1040 income taxes. Ownership determinations are made by examining stock ownership, in the case of corporations; for a sole proprietor, this information should be shown on Schedule C of the firm's Federal income tax return.

The next step involves determining that the business is controlled by the socially and economically disadvantaged owner(s). Caltrans' follows California law defining a Responsible Managing Officer (RMO). An RMO must be a bona fide officer of the firm and actively engaged in conducting the firm's work, including meeting any requirements to possess a license or other credentials. This determination is made by reviewing documents submitted by the applicant and by confirmation during the site visit. Using all of this information, the CUCP identifies the most specific available NAICS code and specific Work Category Codes for the type of work a firm can perform. Once all of the documents are reviewed by the Certification Branch, an on-site visit is made to the firm's business location and to a job site, if applicable. All Caltrans' staff complete a

standard Site Visit Questionnaire to obtain facts supporting or rebutting a firm's eligibility for DBE certification. Following all of these steps, the Certification Branch submits a recommendation to the Branch Manager and the Office Chief for final approval and signature.

Caltrans' DBE Program Plan also describes procedures for suspending or removing a firm's DBE certification, obtaining and reviewing annual update affidavits of "no change," processing requests for interstate certification, and handling denials and complaints. While not described in its DBE Program Plan, in addition to the annual "no-change" review, Caltrans processes a more in-depth review for every DBE certified firm every 5 years.

During the site visit, the following application files were reviewed for content and completeness. Caltrans' applicant files were well-organized and followed the process described in its DBE Program Plan:

File Type	Firm Name	U.S. DOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Certification Decision	Denial Letter	Appeal Letter
Initial Certification or Denial	California Building Evaluation & Construction, Inc. 30026	Y	Y	Y	N/A	Y	Y	Y	N/A
Submission 12/7/16 Decision 7/31/17		90-Day Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N	Y	Y	N/A	N/A	N/A
File Type	Firm Name	U.S. DOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Certification Decision	Denial Letter	Appeal Letter
Initial Certification or Denial	Allerion Consulting Group, Inc. DBE Ace Quality Control 43420	Y	Y	Y	N/A	Y	Y	Y	Y
Submission 4/11/16 Decision 4/18/18 Appeal 7/4/18		90-Day Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N	Y	Y	N/A	N/A	N/A
File Type	Firm Name	U.S. DOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Certification Decision	Denial Letter	Appeal Letter
Initial Certification or Denial	5 C Holdings, Inc. 43060	Y	Y	Y	Y	Y	Y	Y	N/A
Submission 9/11/15 Decision 7/20/16		90-Day Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	N	Y	Y	N/A	N/A	N/A
File Type	Firm Name	U.S. DOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Certification Decision	Denial Letter	Appeal Letter

						Tax			
Interstate Certification	Vector Transportation Group, Inc. 41890	Y	Y	Y	Y	Y	Y	N/A	N/A
Submission 3/8/17 Decision 10/23/17		90-Day Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		Y	Y	Y	Y	Y	N/A	N/A	N/A
File Type	Firm Name	U.S. DOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Certification Decision	Denial Letter	Appeal Letter
Interstate Certification	PMG Software Professionals, Inc. 44348	Y	Y	Y	Y	Y	Y	N/A	N/A
Submission 4/14/17 Decision 1/10/18		90-Day Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	Y	Y	Y	N/A	N/A	N/A
File Type	Firm Name	U.S. DOT Form	Site Visit	PNW	No Change	Personal/Business Tax	Certification Decision	Denial Letter	Appeal Letter
Interstate Certification	Schaich Consulting 44114	Y	Y	Y	Y	Y	Y	N/A	N/A
App 2/13/17 Dec 7/31/17		90-Day Decision	SBA Size	Inter. Cert.	Control Review	Ownership Review	Removal Process Followed	Notice of Hearing	Notice of Decision
		N	Y	Y	Y	Y	N/A	N/A	N/A

PNW = personal net worth; Inter. Cert. = interstate certification.

Advisory Comment

Caltrans was advised to include a description of its fifth-year update process when it updates its DBE Program Plan.

6.14 Record Keeping and Enforcements

Basic Requirements (49 CFR Parts 26.11 and 26.37)

Recipients must provide data about their DBE program to FTA on a regular basis. Recipients must submit Semi-Annual Uniform Reports on June 1 and December 1 of each fiscal year by 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, nonminority women, and minority men to the DOT Office of Civil Rights by January 1 of each year.) In addition, recipients must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. Recipients must conduct enforcement measures in conjunction with monitoring contract performance for purposes such as closeout reviews for contracts.

Lastly, recipients 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 this requirement. Although there were concerns regarding the accuracy of Caltrans' Semi-Annual Uniform Reports, as reported in section 6.8(G) Counting DBE Participation, a review of Caltrans' DBE semi-annual reports in TrAMS from 2016 through 2018 showed that Caltrans submitted its Semi-Annual Uniform Reports on time and with increasing completeness. Caltrans' 2016 State Management Review included a deficiency regarding the incompleteness of Caltrans' Semi-Annual Uniform Reports submitted in 2014 and 2015. According to TrAMS status logs, the issue of incomplete reports appeared to continue into 2016. For example, FTA returned Caltrans' June 2016 Semi-Annual Uniform Report three times for incompleteness and returned its December 2016 report once for the same reason. In 2017 and 2018, there were no instances of incomplete reports registered by FTA in TrAMS.

Caltrans addressed the requirement to submit a report on the percentage of DBE minority women, nonminority women, and minority men (MAP-21 Report) in its DBE Program Plan. Caltrans submitted its most recent MAP-21 Report, due on January 1, 2018, to the DOT Office of Civil Rights on December 29, 2017. Caltrans' MAP-21 Report was posted on its OBEO website.

In its DBE Program Plan, Caltrans described the involvement of the Compliance/Title VI Branch within OBEO, Division of Procurement and Contracts, and Policy and Reports Branch in the monitoring of DBE program compliance. In short, the Compliance/Title VI Branch conducted reviews and investigations (e.g., commercially useful function evaluations, independence issues, and DBEs acting as an extra participant) as result of risk-based assessments conducted by other functional units within Caltrans. The Division of Procurement and Contracts monitored invoices and DBE utilization reports for completeness. The Policy and Reports Branch was responsible for collecting DBE utilization reports from the Division of Procurement and Contracts and ensuring the accuracy of the data before including the information in Semi-Annual Uniform Reports.

During the compliance review, Caltrans did not demonstrate if and how the Compliance/Title VI Branch conducted DBE program compliance reviews and investigations for its FTA DBE program. Likewise, Caltrans did not demonstrate how its Policy and Reports Branch ensured the accuracy of the data included in its Semi-Annual Uniform Reports. For example, there was no description in Caltrans' DBE Program Plan of how the Policy and Reports Branch monitored DBE participation data submitted by Caltrans' FTA 5304/5, 5310, 5311, and 5339 subrecipients. During the site visit, DOTP and DRMT staff stated district transit representatives monitored FTA subrecipient DBE program compliance, including the accuracy of DBE utilization reporting. This same staff did not describe the involvement of the OBEO Compliance/Title VI Branch or Policy and Reports Branch in this process.

DRMT had developed an Agency Monitoring Checklist used by district staff during subrecipient site visits to document subrecipient DBE program compliance. In addition, DRMT created and required subrecipients to sign a Caltrans DBE Implementation Plan. Neither the Agency Monitoring Checklist nor the DBE Implementation Plan were described in Caltrans' DBE Program Plan. Caltrans' did not provide a schedule of subrecipient site visits or Agency Monitoring Checklists that included subrecipient DBE responses to the DBE questions in the checklist. The DBE Implementation Plan did not include monitoring and enforcement requirements and guidance for subrecipients to reference when monitoring prime contractor and

DBE contractor program compliance. Of greatest concern, DRMT staff stated during the review that subrecipients did not regularly submit DBE utilization reports to Caltrans. In addition, OBEO was responsible for monitoring DOTP subrecipients, however, it did not have monitoring tools similar to those developed by DRMT and could not describe in sufficient detail how it monitored and enforced DBE compliance on FTA-assisted DOTP projects.

Caltrans enforcement mechanisms were as follows:

- *Caltrans will bring to the attention of the USDOT any instances of fraud or dishonest participation within the program. USDOT may then take the necessary steps provided in §26.109;*
- *Caltrans will consider similar actions utilizing its own legal authorities;*
- *Caltrans' OBEO Contractor Compliance Branch will investigate substantiated claims; and*
- *Caltrans will also provide a monitoring and enforcement mechanism to verify payment to subcontractors on subrecipient contracts.*
- *Disallow or temporarily withhold cash payments pending correction of the deficiency by the CONTRACTOR.*
- *Wholly or partially suspend or terminate the current award for the CONTRACTOR's PROJECT.*
- *Withhold future awards to the CONTRACTOR for the program.*
- *Withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from remaining grant balance and/or future apportionments, or any other funds due CONTRACTOR from the Federal Trust Fund or any other sources of funds.*
- *Take any other remedies that may be legally available.*

Caltrans' enforcement mechanisms provided sufficient remedy for DBE program noncompliance.

Caltrans addressed the requirement to maintain a bidders list in its DBE Program Plan, stating that Caltrans, its subrecipients, and local agencies collect information on "all DBE and non-DBE firms that bid or quote on USDOT federally-assisted contracts." During the site visit it was determined that Caltrans had not maintained a bidders list as it said it did in its plan.

Corrective Actions and Schedules

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

- An updated DBE Program Plan that includes detailed procedures for monitoring subrecipient DBE compliance and ensuring DBE participation data for all FTA-assisted projects are accurately reported on Semi-Annual Uniform Reports. Caltrans must review FTA's DBE reporting webinar on FTA's website at <https://connectdot.connectsolutions.com/pvb27d7bmf0l/> (if prompted to login to the webinar, select "cancel" and the webinar will begin without authentication).
- A bidders list that meets the requirements of 49 CFR Part 26.11(c).

7. Summary of Findings

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
1.	DBE Program Plan	26.21	D	<p>Findings: Caltrans' DBE Program Plan was out of date.</p> <p>Corrective Actions: Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes the following:</p> <ul style="list-style-type: none"> • A detailed description of the current staff dedicated to the management and administration of the DBE program, including current organization chart(s). • A DBE Policy Statement signed by its current Director. • A detailed description of the DBE program and reporting requirements for subrecipients that receive both FTA 5311 and 5307 formula program funds. • Removal of all references to the DBE program creating "maximum opportunity" for DBEs. • Inclusion of FTA-funded contracting opportunities in all statements describing the scope of the DBE Program Plan. 	60 Days
2.	DBE Policy Statement	26.23	AC	<p>Advisory Comment: Caltrans was advised to update its DBE Policy Statement to be signed by its current Director and document the dissemination of its Policy Statement to all division executives and staff, all subrecipients/subgrantees, and the DBE and non-DBE communities.</p>	
3.	DBE Liaison Officer	26.25	D	<p>Findings: Caltrans' DBELO and DBE program staff lacked sufficient involvement in the management of the FTA DBE program.</p> <p>Corrective Actions: Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes detailed procedures describing how the DBELO and the DBE program staff in OBELO fulfill the responsibilities in its DBE Program Plan for the FTA DBE program.</p>	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
4.	DBE Financial Institutions	26.27	D	<p>Findings: Caltrans did not identify and consider or encourage the use of minority-owned financial institutions, as required by 49 CFR Part 26.27.</p> <p>Corrective Actions: Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that accurately describes its efforts to use DBE financial institutions as described in 49 CFR Part 26.27 and 26.5 and describes in detail its procedures for researching the availability of DBE financial institutions. Caltrans must also provide documentation that it has encouraged prime contractors to use such institutions.</p>	60 Days
5.	DBE Directory	26.31	AC	<p>Advisory Comment: Caltrans was advised to update the UCP MOA to reflect current regulations and current practice.</p>	
6.	Overconcentration	26.33	D	<p>Findings: Caltrans' description of its procedures for evaluating overconcentration in its DBE Program Plan lacked sufficient detail with respect to how it defined overconcentration, the frequency with which it would evaluate overconcentration, and the measures it would take to address overconcentration should it occur.</p> <p>Corrective Actions: Caltrans must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes its procedures for analyzing and determining if overconcentration exists, the frequency with which an analysis of overconcentration will be conducted, and the measures taken to address the occurrence of overconcentration should it exist (e.g., use of incentives, technical assistance, business development programs, and mentor-protégé programs).</p>	60 Days
7.	Business Development Programs	26.35	AC	<p>Advisory Comment: Caltrans was advised to encourage and actively monitor participation in the BDP by firms interested in FTA contracting opportunities.</p>	
8.	Determining/Meeting Goals				
8.a	Calculation	26.45	D	<p>Findings:</p>	60 Days

63

64

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				<p>goals cannot be terminated for convenience without Caltrans' prior written consent.</p> <ul style="list-style-type: none"> Documentation that it has notified all prime contractors that they must ensure all existing and future DBE subcontract agreements do not conflict with the requirements found at 49 CFR Part 26.53(f)(1)(i). An updated DBE Program Plan that includes procedures for monitoring all subrecipient agreements to ensure they contain the required protections against termination for convenience. 	
8.g	Counting DBE Participation	26.55	D	<p>Findings: Caltrans did not implement procedures to ensure the accurate counting of DBE participation on FTA-assisted projects.</p> <p>Corrective Actions: Caltrans must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> Analyses of DBE participation on all FTA-assisted contracts (including subrecipient contracts) for FY 2017 and FY 2018. If previously submitted Semi-Annual Uniform Reports require updates based on the results of the analyses, Caltrans must submit updated reports to FTA. A detailed process for ensuring that DBE participation on FTA-assisted projects is accurately counted. Before implementation the process must be approved by FTA. The procedures must include the active involvement of the Caltrans DBELO and the OBEO Contract Evaluation Branch. The procedures must describe how Caltrans will collect and report accurate information on race-neutral and race-conscious DBE participation. The procedures must include a detailed description of how contractor and subrecipient reports will be verified for accuracy by Caltrans. The DBELO must certify that the information in all Semi-Annual Uniform Reports is provided in accordance with the procedures approved by FTA. 	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				<ul style="list-style-type: none"> An updated DBE Program Plan that includes Caltrans' newly developed and approved procedures for counting DBE participation on FTA-assisted projects. 	
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	ND		
10.	Transit Vehicle Manufacturers (TVMs)	26.49	D	<p>Findings: Caltrans did not document required TVM award procedures in its DBE Program Plan. Caltrans did not document that it confirmed it awarded transit vehicle contracts to FTA-approved TVMs. Caltrans did not submit post-award TVM reports to FTA, as required.</p> <p>Corrective Actions: Caltrans must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> An updated DBE Program Plan that includes procedures for confirming TVM eligibility prior to awarding contracts for transit vehicle purchases. Caltrans must also include procedures for notifying FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49(a)(4). Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting Form at https://www.surveymonkey.com/r/vehicleawardreportsurvey. Caltrans must include procedures for ensuring that its 5310, 5311, and 5339 subrecipients implement the required TVM verification and reporting procedures. Documentation confirming all FTA-assisted transit vehicle contracts since FY 2014 were awarded to FTA-approved TVMs. Documentation confirming all FTA-assisted transit vehicle contract awards since FY 2014 have been reported to FTA using the online Transit Vehicle Award Reporting Form at https://www.surveymonkey.com/r/vehicleawardreportsurvey. 	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
11.	Required Contract Provisions				
11.a	Contract Assurance	26.13	D	<p>Findings: The required nondiscrimination assurance was not included in subrecipients' prime contractor and subcontractor agreements.</p> <p>Corrective Actions: Caltrans must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • Documentation that it has reviewed all active FTA-assisted contracts for the required contract assurance and updated those contracts that do not contain the assurance with the required assurance described in 49 CFR Part 26.13. • An updated DBE Program Plan with procedures for ensuring that all future FTA-assisted contracts, including prime contractor and subcontractor agreements, include the complete nondiscrimination contract assurance. In addition, Caltrans should update its Standard Agreement used for all contracts to include the appropriate language as required. 	60 Days
11.b	Prompt Payment	26.29	AC	<p>Advisory Comment: Caltrans was advised to update its DBE Program Plan to add a description of the State's policy on paying prime contractors on a reimbursement basis only after paying subcontractors for work performed. Caltrans was advised to ensure that all FTA-assisted contracts include the 7-day prompt payment provision specified in its DBE Program Plan and in its Standard Agreement. Caltrans was advised to implement a process to periodically confirm with DBE subcontractors that they are receiving payment from prime contractors in accordance with Caltrans' prompt payment policy and require subrecipients to implement similar procedures.</p>	
11.c	Legal Remedies	26.37	AC	<p>Advisory Comment: Caltrans was advised to ensure that subrecipients included Caltrans' legal remedies in all FTA-funded prime contracts and subcontracts.</p>	
12.	Certification Standards	26.67-26.71	ND		

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
13.	Certification Procedures	26.83-26.86	AC	Advisory Comment: Caltrans was advised to include a description of its fifth-year update process when it updates its DBE Program Plan.	
14.	Record Keeping and Enforcements	26.11 and 26.37	D	Findings: Semi-annual reports were not submitted on time. Prime contractor and DBE subcontractor monitoring was lacking. The bidders list was not in compliance with 49 CFR Part 26.11(c). Corrective Actions: Caltrans must submit the following to the FTA Office of Civil Rights: <ul style="list-style-type: none"> An updated DBE Program Plan that includes detailed procedures for monitoring subrecipient DBE compliance and ensuring DBE participation data for all FTA-assisted projects are accurately reported on Semi-Annual Uniform Reports. Caltrans must review FTA's DBE reporting webinar on FTA's website at https://connectdot.connectsolutions.com/pvb27d7bmf0/ (if prompted to login to the webinar, select "cancel" and the webinar will begin without authentication). A bidders list that meets the requirements of 49 CFR Part 26.11(c). 	60 Days

Findings at the time of the site visit: ND = no deficiencies found; D = deficiency; AC = advisory comment.

ATTACHMENT A – FTA NOTIFICATION LETTER TO CALTRANS



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

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

June 28, 2018

Laurie Berman
Director
California Department of Transportation
1823 14th Street
Sacramento, California 95811

Dear Ms. Berman:

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 California Department of Transportation (Caltrans) has been selected for a review of its overall DBE program to take place October 9-12, 2018.

The purpose of this review is to determine whether Caltrans is honoring its commitment, as represented by certification to FTA, to comply with the 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 four-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. The DMP 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 for Tuesday, October 9, 2018 at 9:00 a.m. Pacific Standard Time, to introduce the DMP team and FTA representatives to Caltrans. 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 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 Caltrans' liaison with

the review team and to 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. Please forward electronic (soft copy) versions of these materials to the following contact person, who is available to discuss material transmission options with you:

Donald G. Lucas
The DMP Group, LLC
2233 Wisconsin Avenue NW, Suite 228
(202) 726-2630
donald.lucas@thedmpgroup.com


We request the exit conference be scheduled for Friday, October 12, 2018 at 11:00 a.m. Pacific Standard Time, 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 Caltrans, will be considered public documents subject to release under the Freedom of Information Act, upon request.

Caltrans 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 me at 202-366-1671, or via e-mail at *john.day@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
and Technical Assistance

Enclosure

cc: Edward Carranza, Jr., Acting Regional Administrator, FTA Region 9
Lynette Little, Regional Civil Rights Officer, FTA Region 9
Anita Heard, Equal Opportunity Specialist, FTA Headquarters
Janelle Hinton, Equal Opportunity Specialist, FTA Headquarters
Janice Salais, Assistant Director, Caltrans Office of Business and Economic Opportunity
John Potts, Lead Reviewer, The DMP Group, LLC

California Department of Transportation
Disadvantaged Business Enterprise Program Compliance Review

Enclosure 1

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

1. Current DBE Program Plan (which should include Caltrans' organization chart).
2. A narrative that describes the Caltrans individuals and resources dedicated to implementing the DBE program requirements, handling DBE program inquiries, and educating Caltrans staff on DBE program requirements. The narrative should include an organization chart showing Caltrans' DBE staff and a budget showing funds allocated to the DBE program.
3. FY 2017 – FY 2019 DBE goal setting methodology submission and semiannual reports of DBE attainment (fiscal years 2015, 2016, 2017, and 2018), and/or quarterly reports of ARRA DBE attainment, if applicable.
4. DBE goal shortfall analyses and corrective action plans for the most recent three Federal fiscal years (FY 2015- FY 2017) in which Caltrans did not meet its DBE goal.
5. Current Memorandum of Understanding or similar documents for Caltrans' participation in the California Unified Certification Program.
6. Any additional certification criteria/guidelines used by Caltrans in determining DBE eligibility, if applicable.
7. Provide the number of DBE applications Caltrans has reviewed, approved, and denied each year from FY2015 through FY2018 to date. Include the number of DBE applications and the names of applicants that are currently pending review.
8. Provide a list (preferably in an Excel spreadsheet) of ongoing FTA-assisted **Caltrans** contracts. The list should identify the award date, total contract amount, DBE contract goal (where applicable), prime contractor name, DBE participant names (where applicable), the scope of work, the amounts awarded and actually paid to each DBE (where applicable), and worksite locations (where applicable).
9. Provide a list (preferably in an Excel spreadsheet) of ongoing FTA-assisted **subrecipient** contracts (organized by subrecipient). The list should identify the award date, total contract amount, DBE contract goal (where applicable), prime contractor name, DBE participant names (where applicable), the scope of work, the amounts awarded and actually paid to each DBE (where applicable), and worksite locations (where applicable).

California Department of Transportation
Disadvantaged Business Enterprise Program Compliance Review

10. Provide a list (preferably in an Excel spreadsheet) of FTA-assisted contracts with DBE goals completed by Caltrans from FY 2017 – current.
11. Provide a list (preferably in an Excel spreadsheet) of FTA-assisted contracts with DBE goals completed by subrecipients (organized by subrecipient) from FY 2017 – current.
12. The identification of firms, if any, that have worked on Caltrans' projects and have graduated from Caltrans' DBE program in the last three years, i.e., exceeded the threshold dollar amounts and are no longer certified.
13. Good Faith Effort criteria established by Caltrans.
14. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
15. Caltrans' DBE Program small business element developed in response to 49 CFR part 26.39 and referenced in its DBE Program Plan as Attachment K, and examples of Caltrans' implementation of its small business element.
16. List of FTA-assisted Caltrans and subrecipient (organized by subrecipient) transit vehicle procurements/contracts for the last five (5) years.
17. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years, developed by Caltrans and subrecipients.
18. List of all bids accepted for the RFPs provided in response to Item 16.
19. Names of interested parties (external organizations) with which Caltrans has interacted on the DBE program issues.
20. Any complaints or lawsuits received concerning Caltrans' DBE program or its prime contractors over the past three (3) years.
21. The DBELO official position description and position descriptions for other Caltrans staff or contractors responsible for implementing the DBE Program.
22. Current DBE staff positions filled and vacant.
23. Total number of staff dedicated to administering Caltrans' entire FTA program.
24. Prompt payment verification process.
25. Other pertinent information determined by Caltrans' staff to further demonstrate Caltrans' DBE compliance efforts.

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ATTACHMENT B – CALTRANS RESPONSE TO DRAFT REPORT

FTA – DBE Compliance Review – Draft Report

Factual Errors submitted by DRMT and DOTP

Page 9, Section 4.1 (first paragraph):

Division of Rail and Mass Transportation (DRMT) and Division of Transportation Planning (DOTP) within the ~~Program Delivery Division~~ Planning and Modal Program.

Page 9, Section 4.1 (second paragraph):

What was the source of the number of subrecipients? We submit NTD reporting for 83 subrecipients, so why are we reporting 77? Also, 163 subrecipients / 5310 seems a bit low.

Page 27 (second full paragraph on page):

The goal methodology document identified a list of three anticipated Caltrans' direct third-party contracts: Rural Technical Assistance program services, a Title VI plan, and a ~~diversity~~ disparity study, ...

Page 49 (second paragraph)

In 2015, ~~Caltrans~~ DGS awarded contracts to several bus manufacturers ...

Page 59 (third full paragraph):

During the site visit, DOTP and DRMT staff stated district ~~program managers~~ transit representatives monitored FTA subrecipient DBE program compliance, ...

Pages 60-69 missing

Two minor points that were spotted for Planning.

- ✓ Page 45 - "During the site visit, Caltrans DOTP and DRMT further confirmed program managers in the 12 districts were primarily involved with ensuring the accurate counting of DBE participation on FTA-assisted projects; ..."
- ✓ Page 59 - "DOTP did not have similar monitoring tools and appeared to not know how district staff monitored DOTP subrecipients for DBE compliance."

Response to both:

The DBE activity is handled here in HQ for the most part,

and Mass Transportation, Division of Transportation Planning, Division of Procurement and Contracts, Division of Local Assistance, Division of Design, Division of Construction, and Division of Engineering Services.

Caltrans' FY 2014–16 and FY 2017–19 overall DBE goals were 4 percent and 4.8 percent, respectively. Caltrans FY 2014–16 goal was to be attained solely through race-neutral means. In 2014, Caltrans conducted a disparity study, the results of which provided justification (as required by *Western States Paving Company v. Washington State DOT*) for the use of race-conscious means for goal attainment. In FY 2017–19, Caltrans' established a DBE goal of 4.8 percent, 3.7 percent of which was to be attained through race-neutral means and 1.1 percent through race-conscious means. Caltrans did not meet its DBE goals in FY 2014, FY 2015, or FY 2016; however, it did meet its FY 2017 DBE goal, attaining 5 percent DBE participation that year.

Caltrans conducted and developed one shortfall analysis and corrective action plan for its FY 2014 and FY 2015 DBE goal shortfalls. Although this shortfall analysis and corrective action plan did not meet 49 CFR Part 26.47 requirements, Caltrans made significant improvements when conducting its FY 2016 shortfall analysis and corrective action plan.

Caltrans administered the California Unified Certification Program (CUCP) on behalf of the State of California and maintained the DBE Directory for the State. The following agencies assisted Caltrans as certifying partners in the CUCP:

- City of Los Angeles
- Los Angeles County Metropolitan Transportation Authority
- San Francisco Bay Area Rapid Transit District
- San Francisco Municipal Transportation Agency
- San Francisco International Airport
- City of Fresno
- San Diego County Regional Airport Authority
- San Mateo County Transit District / Peninsula Corridor Joint Powers Board
- Santa Clara Valley Transportation Authority

Caltrans' DBE program strengths and areas of needed improvement are discussed in the following sections. Overall, Caltrans' implementation of the DBE requirements for the FTA-assisted portion of its DBE program required improvement. Although not a complete list, particular improvement was needed in the areas of DBE goal setting, monitoring, and accurately counting and reporting DBE participation on FTA-assisted contracts. Subrecipient concerns in these areas present challenges specific to FTA DBE program administration and management. Caltrans' DBELO and OBEO staff were capable of implementing improvements in these areas with greater attention paid to the FTA portions of its DBE program.