

FTA

FEDERAL TRANSIT ADMINISTRATION

Champaign-Urbana Mass Transit District Disadvantaged Business Enterprise (DBE) Program Compliance Review

Final Report
June 2019



U.S. Department of Transportation
Federal Transit Administration

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EXECUTIVE SUMMARY

Objective and Methodology – This report details the findings of a Compliance Review of Champaign-Urbana Mass Transit District's (MTD) Disadvantaged Business Enterprise (DBE) program implementation. The Compliance Review examined this agency's DBE program procedures, management structures, actions, and documentation. Documents and information were collected from the Federal Transit Administration (FTA) and MTD. In addition, the following entities were interviewed as part of this review: MTD officials, prime and subcontractors, and other stakeholders. The three-day review included interviews, assessments of data collection systems, and review of program and contract documents.

MTD's DBE Program includes the following positive program elements –

Positive Program Elements

- **Implementation and Improvement** – MTD received findings in the 2018 Triennial Review. The review team noted evidence of implemented corrective actions during the site visit.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- **Policy Statement** – MTD's Policy Statement does not include all the objectives listed in 49 CFR Part 26.1. There is no documentation that the Policy Statement was circulated throughout MTD and to the DBE and non-DBE communities, as required by 49 CFR Part 26.23.
- **DBELO** – The 2018 DBE Program Plan does not accurately reflect the roles of the DBELO and support staff. The responsibilities of those involved in the DBE program are not clearly defined and are not correctly outlined in staff job descriptions. The DBELO's reporting relationship with the Managing Director is not properly designated in the organizational chart as required by 49 CFR Part 26.25.
- **Financial Institutions** – MTD focused on identifying minority-owned financial institutions and encouraged prime contractors to use DBE banks, rather than promoting use of all economically and socially disadvantaged financial institutions as required by 49 CFR Part 26.27.
- **Overconcentration** – MTD has not determined if overconcentration of DBE firms exists, as required by 49 CFR Part 26.33.
- **TVM** – MTD did not submit information to FTA about vehicle procurements within 30 days of award, as required by 49 CFR Part 26.49 (a)(4).
- **Legal Remedies** – MTD did not implement appropriate legal remedies to ensure compliance by all program participants, as required by 49 CFR Part 26.37.

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

- **DBE Program Plan** – MTD did not adequately address the requirements of 49 CFR Part 26 in its Program Plan, or the Plan did not reflect actual practice.
- **Goal Calculation** – MTD did not justify the use of a project goal for the Hydrogen Fuel Cell Buses and Infrastructure project and did not submit a three-year DBE goal per 49 CFR Part 26.45. MTD was late in submitting an updated goal methodology to FTA. The goal methodology included inconsistencies with data included in attachments, and no documentation justifying the chosen geographic market area was provided. MTD did not review all potential data sources to determine if a step 2 adjustment was required.
- **Public Participation** – MTD did not complete the consultative process required by 49 CFR Part 26.45(g) for its project goal submission.
- **Race-neutral DBE Participation** – MTD's DBE Program Plan does not describe race-neutral means of facilitating DBE participation as required by 49 CFR Part 26.51(a-b) and its small business element required by 49 CFR Part 26.39 lacks detail. MTD does not have documentation of implementing its small business element and race-neutral measures.
- **Race-conscious DBE Participation** – MTD did not include a justification for a 100 percent race-conscious goal in the 2019 DBE project goal submission. MTD did not have an implemented approach for determining when to use race-conscious goals on procurements, as required by 49 CFR Part 26.51(e).
- **Good Faith Efforts** – In one procurement, no evidence was found that MTD reviewed good faith efforts as required by 49 CFR Part 26.53(c).
- **Termination for Convenience** – MTD did not implement the process described in 49 CFR Part 26.53(f-g) to protect against improper termination for convenience.
- **Shortfall Analysis** – MTD shortfall analyses and corrective action plans lacked detail and specific steps and milestones for correction required by 49 CFR Part 26.47.
- **Contract Assurance** – MTD did not include the full non-discrimination clause specified in 49 CFR Part 26.13(b) in its prime contracts. MTD does not have procedures for validating subcontracts are established or for reviewing subcontracts to ensure all the required DBE clauses are included.
- **Prompt Payment** – MTD did not include prompt payment and retainage clauses in all the prime contracts or verify inclusion in subcontracts. The retainage clause in MTD's DBE Program Plan does not comply with 49 CFR Part 26.29(b). MTD does not have an implemented prompt payment and retainage verification process, as required by 49 CFR Part 26.29.
- **Record Keeping and Enforcements** – MTD does not maintain a bidders list as required by 49 CFR Part 26.11(c). Accurate information on DBE goal achievement has not been reported to FTA, as required by 49 CFR Part 26.11. The recipient did not have an implemented monitoring process that included written certification that contract records were reviewed and work sites monitored, as required by 49 CFR Part 26.37.

MTD's submitted Uniform Reports indicate that MTD achieved its 4.63 percent DBE goal in FFY 2015 but did not achieve any DBE participation in FFY 2016 or FFY 2017, as there were no FTA-funded procurements other than vehicle purchases. MTD informed FTA that a DBE goal was not applicable for FFY 2018. According to MTD's management, a number of factors contribute to its history of low DBE participation. In FFY 2015, MTD had an FTA-funded construction project to expand and renovate a maintenance facility. MTD does not receive operating assistance and has used other capital funds to purchase vehicles. Notwithstanding, this report highlights several steps to help ensure the DBE program is implemented in good faith. During the site visit, MTD staff in attendance were engaged and interested in implementing the review team's recommendations. A new construction project is planned for FFY 2019 providing an opportunity to update the DBE program and implement changes.

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1. GENERAL INFORMATION

This chapter provides basic information concerning this Compliance Review of MTD. Information on MTD, the review team, and the dates of the review are presented below.

Grant Recipient:	Champaign-Urbana Mass Transit District (MTD)
City/State:	Urbana, IL
Grantee Number:	1188
Executive Official:	Karl Gnadt, Managing Director
On-site Liaison:	Brenda Eilbracht, Chief Administrative Officer Jane Sullivan, Grants and Governmental Affairs Director
Report Prepared By:	Calyptus Consulting Group, Inc.
Dates of On-site Visit:	March 12-14, 2019
Compliance Review Team Members:	George Harris, Philippa Drew, Francisco Morales

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2. JURISDICTION AND AUTHORITIES

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights Compliance Reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (25), October 1, 2018, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

MTD is the recipient of one or more federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, MTD 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 MTD's 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 MTD's DBE Program is necessary.

The primary purpose of the Compliance Review is to determine the extent MTD has implemented 49 CFR Part 26, as represented in its DBE Program Plan. This Compliance Review is intended to be a fact-finding process to: (1) assess MTD's DBE Program Plan and its implementation; (2) make recommendations regarding corrective actions deemed necessary and appropriate; and (3) provide technical assistance.

This Compliance Review is not solely designed to investigate discrimination against individual DBE firms or complainants; or to adjudicate these issues on behalf of any party.

3.2 Objectives

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

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE Program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of federally-assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE Program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this Compliance Review are to:

- Determine whether MTD is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of MTD's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies; and document the compliance status of each component.

- Gather information and data regarding the operation of MTD's DBE Program Plan from a variety of sources, including DBE program managers, other MTD management personnel, DBEs, prime contractors, and other stakeholders.

4. BACKGROUND INFORMATION

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

4.1 Introduction to MTD and Organizational Structure

MTD provides transit service in the cities of Champaign, Urbana, and Savoy in Illinois. MTD was established in 1971 as a special purpose district under Illinois statutes to serve the public transit needs of the community. MTD operates fixed-route service and some paratransit service in-house and contracts with the University of Illinois and the Developmental Services Center, a local non-profit, for supplemental paratransit services. The population of its service area is approximately 136,830.

MTD is governed by a Board of Trustees made up of seven members selected by the Champaign County Board from submitted applications. MTD Board of Trustee Meetings are held monthly and are publicly televised. The Managing Director of MTD reports to the Board of Trustees. At the time of the review, the MTD organizational structure included an administrative branch, managed by the Chief Administrative Officer (CAO), who is also the DBELO. The administrative branch includes finance, grant management, and training functions, as well as responsibility for the Illinois Terminal. In addition, there is a service delivery branch that is managed by the Chief Operating Officer, including maintenance, facilities, communications, customer service, and operations functions.

MTD operates a network of 31 fixed routes utilizing a fleet of 78 federally funded and 32 locally funded buses. Service is provided 24 hours each day, seven days a week when the University of Illinois is in session; otherwise, service is provided weekdays from 5:51 a.m. to 3:00 a.m., Saturdays from 6:03 a.m. to 5:12 a.m., and Sundays from 8:34 a.m. to 3:10 a.m. Americans with Disabilities (ADA) complementary paratransit service operates during the same days and hours of service as the fixed routes utilizing three federally funded vehicles and 38 vehicles funded locally or provided by the operator.

The basic adult fare for fixed-route service is \$1.00. MTD offers a DASH Pass that allows seniors, individuals with disabilities, and Medicare cardholders to ride free of charge during all hours. DASH Pass applicants must provide proof of age, documentation of disability, or a Medicare card to receive the pass. The DASH Pass is valid for three years before it must be renewed. Seniors, individuals with disabilities, and Medicare cardholders not wishing to apply for the DASH Pass can ride MTD for a reduced fare of \$0.50 during all hours. Through an agreement with the University of Illinois, all University students, faculty, and staff ride free at all times. The fare for ADA complementary paratransit service is \$2.00.

MTD operates from a maintenance and administration complex consisting of three buildings on East University Avenue in Urbana. Its service is oriented around a transit center at the Illinois Terminal in downtown Champaign.

MTD had one FTA-funded subrecipient, the Champaign County Regional Planning Commission. The subrecipient project included compliance upgrades at bus stops and included one procurement. The subrecipient agreement was signed in March 2014. The final drawdowns were made in February 2018 and the subaward was closed shortly thereafter.

4.2 Budget and FTA-Assisted Projects

MTD's budget comprises local, state, and federal funds, as well as revenue from fares and other sources. MTD does not receive FTA funds for operating costs. The FFY 2019 budget relating to FTA funded projects is as noted below:

118-2018-2 Hydrogen Fuel Cell Buses & Infrastructure (Low-No) – in progress

Funding Source	Funding Amount	
Federal – FTA (Non-ARRA)	Total:	\$3,583,686
	Planning:	\$0
	Capital:	\$3,583,686
	Operating:	\$0
	State:	\$6,882,916
	Local:	\$960,225
	Total:	\$11,199,327

IL-2118-007 Three hybrid bus procurement – complete

Funding Source	Funding Amount	
Federal – FTA (Non-ARRA)	Total:	\$1,821,059.22
	Planning:	\$0
	Capital:	\$1,814,882.00
	Operating:	\$0
	State:	\$362,976.29 (*TDCs)
	Local:	\$6,177.74
	Total:	\$1,821,059.22

*Transportation Development Credits (TDCs) are used in lieu of local match.

In the past few years, MTD has completed the following noteworthy projects:

- Expansion of the maintenance facility
- Purchase of four replacement 40-foot diesel-electric hybrid buses
- ADA compliance upgrades at bus stops (subrecipient project)

MTD is currently implementing the following noteworthy projects:

- Purchase of three replacement 40-foot diesel-electric hybrid buses
- Purchase of two replacement 60-foot hydrogen fuel cell buses and associated infrastructure

MTD plans to pursue the following noteworthy projects in the next three to five years:

- Expansion of Champaign downtown intermodal center through joint development
- Purchase of seven replacement 40-foot diesel-electric hybrid buses
- Purchase of ten replacement 60-foot diesel-electric hybrid buses

4.3 DBE Program

MTD's CAO is the DBELO and is responsible for monitoring and enforcing the DBE program to ensure compliance with appropriate federal and state laws and regulations. The CAO reports directly to the MTD Managing Director. The Grants and Government Affairs Director undertakes most of the DBE program activity, including reviewing procurements for compliance, monitoring payments and goal achievement, developing Uniform Reports, and drafting the DBE goal methodology. In November 2018, MTD contracted with a consultant to support its DBE program, with a focus on delivering outreach, training, and review of good faith effort documentation.

MTD has implemented an entirely race-conscious program. Staff indicated that this approach was chosen due to the limited number of FTA-funded non-vehicle procurements awarded, all of which are construction projects with subcontracting potential. MTD had a 4.63 percent race-conscious DBE goal during FFY 2015-2017. In August 2017, MTD submitted a DBE Threshold Questionnaire to confirm that MTD did not exceed \$250,000 in FTA contracting opportunities and thus did not need to develop a FFY 2018-2020 DBE goal. MTD submitted a 2.31 percent race-conscious project goal to FTA in September 2018 relating to its future Hydrogen Fuel Cell Buses and Infrastructure project. In response to FTA feedback a revised project goal was submitted on February 28, 2019. FTA provided feedback on March 7, 2019, including a determination that the recipient should submit a triennial goal covering FFY 2019-2021, provide documentation of outreach, and include a justification for the completely race-conscious goal proposed. MTD did not perform a disparity study or reference any other disparity studies conducted. Staff lacked understanding of some requirements around DBE goal setting.

MTD achieved its DBE goal in FFY 2015 through award of DBE subcontracts under the MTD Maintenance Facility Renovation/Expansion project. In FFY 2016 and FFY 2017 MTD submitted Uniform Reports that showed that MTD had a shortfall due to no procurement activity. These reports did not include change orders awarded during this period.

The recipient received three DBE findings in the 2018 Triennial Review in the following areas:

- DBE goal achievement analysis and corrective action plan not completed
- Unreported transit vehicle purchases
- Insufficient documentation of written certifications of DBE monitoring

Corrective actions were submitted to the FTA Regional Civil Rights Officer (RCRO) on January 3, 2019. These corrective actions remained open at the time of the compliance review site visit. Guidance was provided throughout the review to help MTD better understand 49 CFR Part 26 requirements and the requirements for the corrective actions.

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5. SCOPE AND METHODOLOGY

5.1 Scope

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

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to MTD's 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 financial institutions by socially and economically disadvantaged financial institutions by MTD as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed, made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (not) exist and 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 MTD does 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 MTD seeking FTA approval to establish a project specific goal for vehicle purchases [49 CFR 26.49]
- A non-discrimination and a prompt payment clause is 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, along with the proper supporting documentation [49 CFR 26.65 -26.71]
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86]
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies.

[49 CFR Part 13]. The DBE program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55]

5.2 Methodology

The initial step of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's TrAMS System 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 MTD that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed MTD of staff and other parties that would potentially be interviewed (See **Attachment A**).

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

- Most current DBE Program Plan
- Current organizational chart showing DBE staffing allocations and reporting structure.
Current DBE staff positions filled and vacant
- Most recent DBE goal methodology submissions
- Any ARRA reports
- Current Memorandum of Understanding or similar documents indicating MTD's participation in the Unified Certification Program (UCP)
- Any additional certification criteria/guidelines used by MTD in determining DBE eligibility, if applicable
- DBELO official position description
- Current MTD Directory
- The number of DBE applications MTD has reviewed, approved, and denied each year from the last three fiscal years
- A list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts and worksite locations, where applicable
- Contract records to include the last 15 FTA-assisted contracts awarded and completed in the last fiscal year and the last 15 FTA-assisted contracts with DBE goals awarded within the recent fiscal year
- Description of outreach to DBE community, including a list of specific outreach efforts in the past three years
- The identification of firms, if any, that have worked on MTD's projects and have graduated from MTD's DBE program
- Information identifying FTA-funded contracts awarded during the current and at least two preceding Federal Fiscal Years by MTD and its subrecipients
- Documentation showing/establishing the "Good Faith Efforts" criteria established by MTD, including verification that firms named on projects sponsored by the recipient are

certified by the Unified Certification Program. A list of bids accepted for Request for Proposals (RFPs) including a review of Good Faith Efforts

- Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment verification procedures and monitoring and enforcement mechanisms)
- Small business element as implemented by MTD
- FTA-assisted transit vehicle procurements/contracts for the last five years
- FTA-assisted transit vehicle RFPs for the last five years
- Shortfall analysis and corrective action plan for the last three years.
- List of all subrecipients and the amount of FTA funds allocated to each subrecipient in the last three years
- Names of interested parties (external organizations) with which MTD has interacted on the DBE program issues
- Any current or outstanding complaints received concerning MTD's DBE program over the past five years.
- Other pertinent information determined by MTD's staff to shed light on its DBE compliance efforts.

The on-site review of MTD's DBE program took place from March 12-14, 2019. The review began with an opening conference, held at 9 a.m. on Tuesday, March 12, 2019 at MTD's offices at 1101 East University Avenue, Urbana, IL 61802.

Following the opening conference, the review team examined MTD's DBE Program Plan and other documents submitted by the DBELO. The team then conducted interviews with MTD regarding DBE program administration, DBELO responsibilities, DBE goal development and implementation, procurement compliance, record keeping, monitoring, and enforcement. These interviews included staff from its administrative offices. Contracts and subcontracts were reviewed for their DBE elements.

The exit conference took place at 11:00 a.m. on March 14, 2019 at MTD's office during which FTA and the review team discussed initial observations from the review.

Participants in the compliance review are listed below:

MTD

- Karl Gnad, Managing Director
- Brenda Eilbracht, Chief Administrative Officer
- Jane Sullivan, Grants and Governmental Affairs Director
- Kirk Kirkland, Facilities Director

Federal Transit Administration, Office of Civil Rights

- John Day, Program Manager, Policy & Technical Assistance
- Janelle Hinton, Equal Opportunity Specialist
- Marjorie Hughes, Regional Civil Rights Officer Region V

- Marisa Appleton, Civil Rights Officer for Oversight

Review Team – Calyptus Consulting Group, Inc.

- George Harris, Review Team Leader
- Philippa Drew, Reviewer
- Francisco Morales, Reviewer

MTD was provided with a draft copy of the report for review and response. No comments were received from MTD.

5.3 Stakeholder Interviews

The Calyptus review team conducted a series of interviews with stakeholders of MTD's DBE and small business program. This included interviews with one prime contractor and four DBE subcontractors. Calyptus also interviewed seven local stakeholder groups.

A. Prime Contractors

The review team interviewed one prime contractor. River City Construction, LLC (River City) replaced an older building and completed additions to a second building as part of the MTD Maintenance Facility Renovation/Expansion project started in FFY 2015.

The interviews included questions on the solicitation of DBE work, performance issues, substitution, lending and leasing of equipment, on-site monitoring, prompt payment, retainage, and joint payments.

Solicitation

River City goes out for bid for DBE and small business participation on their contracts. Two DBE subcontractors were proposed by River City to meet the contract goal of 4.63 percent.

Performance Issues and Substitution

River City noted that there were performance issues with one DBE subcontractor, Green Trac LLC. River City indicated that the subcontractor missed some deadlines and the contract was ultimately terminated. Green Trac was substituted with the DBE, JP Excavating & Trucking, Inc. (JP Excavating), on a time and material basis without a supporting subcontract. JP Excavating completed the balance of the work.

Lending or Leasing of Equipment

River City did not lend or lease equipment to any of the subcontractors on the project.

On-Site Monitoring

MTD staff periodically met with the project staff to gain project status but the Prime Contractor did not recall any specific monitoring, with the exception of the progress of the excavating work.

Prompt Payment and Retainage

River City's standard subcontract language includes a seven-day prompt payment clause and indicates that the subcontractor could stop work upon giving an additional seven days written notice to the contractor. The subcontracts note that the retainage final payment to the subcontractor will be "made upon acceptance of the subcontractors work without delay." The prime contractor indicated that they withheld retainage until MTD released the retainage associated with the activities of the subcontractors.

B. Subcontractors

The review team conducted interviews with four subcontractors that performed work as part of River City's contract for the MTD Maintenance Facility Renovation/Expansion project. Miller Building Group, Varsity Striping & Construction Co., and Green Trac, LLC were DBE subcontractors. Best Electric Co. also subcontracted with a DBE equipment supplier. Green Trac, LLC was replaced part way through the contract for performance issues.

The interviews included questions on the work performed, how the subcontractor was solicited for the work, if the subcontractor owned or leased equipment from the prime contractor, subcontracted work, prompt payment, retainage, change orders, and experience on other MTD or FTA-assisted contracts.

Solicitation

Green Trac is on River City's bid list and has worked on several projects with the prime contractor. The two other DBE subcontractors indicated that they had worked with River City before. Varsity Striping is local to the Champaign-Urbana area.

Equipment

The Miller Building Group rented a lift and noted that the prime provided the dumpster used. None of the other subcontractors reported leasing or borrowing equipment from the prime contractor on the project.

Subcontracted Work

Best Electric subcontracted work to DBE firm Electrical Resource Management. Green Trac subcontracted some work to another DBE firm, JP Excavating. The other two subcontractors interviewed did not utilize a subcontractor to perform any of their work.

Payment

Three of the subcontractors reported no issues surrounding the promptness of their payment, indicating that they received payment within 30 days.

Retainage

There was no retainage withheld from Varsity Striping as they only received two payments. The remaining three subcontractors interviewed stated that they were paid when River City received the retainage from MTD.

Change Orders

There were change orders relating to the Maintenance Facility Renovation/Expansion project. In addition, the Green Trac contract was terminated. The termination was documented through emails.

Complaints/Other Issues

Three of the subcontractors had no complaints to report. During the interview, Green Trac claimed the termination on this project was unfairly made and payments were slow. During the review MTD stated that no formal complaints had been received from this subcontractor. Green Trac have since completed two additional projects for the prime contractor River City.

Other Work with MTD

None of the subcontractors had previously worked on projects for this recipient. Varsity Striping worked on similar projects for local paving prime contractors. The Miller Building Group worked with Metro in St. Louis; this is their only previous experience with an FTA-assisted project.

c. Community Organizations

The review team conducted seven interviews with community organizations in the Champaign-Urbana area, which included questions on the organization's familiarity with MTD's DBE and small business program, level of participation during the development of MTD's DBE goal, communication with MTD regarding contracting opportunities, outreach efforts conducted by MTD, suggestions for improving MTD's DBE and small business utilization, and any resources or services available to MTD for the improvement of its DBE and small business program.

The individuals interviewed were representatives of the following organizations: City of Urbana-Economic Development, Procurement Technical Assistance Center (PTAC) at Bradley University, City of Champaign Office of Equity Community and Human Rights, Urbana Business Association, Champaign County Regional Planning Commission, Chicago Minority Supplier Development Council, and Champaign County Government.

Familiarity with MTD's DBE Program

None of the stakeholders indicated awareness of MTD's DBE program and small business activity. The Chicago Minority Supplier Development Council noted that they have worked with other transit agencies to develop DBE programs.

Participation During the Development of MTD's DBE Goal

None of the organizations interviewed reported having participated in the development of MTD's DBE goal.

Communication with MTD Regarding Contracting Opportunities

None of the organizations reported being in communication with MTD regarding contracting opportunities for DBEs or small businesses.

Outreach Efforts Conducted by MTD

The Champaign County Government has close connections to MTD as it appoints MTD's Board of Trustees, but the interviewee had not specifically participated in DBE program activity or outreach. None of the other organizations reported awareness of any outreach efforts by MTD.

Suggestions for Improving MTD's DBE/Small Business Program

The Champaign County Regional Planning Commission noted that MTD could benefit from working with the University and City of Champaign. Both organizations have programs to encourage access to opportunities for small, minority and women-owned businesses. Several organizations expressed an interest in MTD's DBE program and indicated that they could be involved in outreach or consultation events. The PTAC at Bradley University, Chicago Minority Supplier Development Council and City of Champaign contacts all indicated that there were ways they could support the program and provide assistance to small businesses targeted by MTD.

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6. FINDINGS AND ADVISORY COMMENTS

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

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

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

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

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

6.1 DBE Program Plan

A. Requirement (49 CFR Part 26.21)

Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE program. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

TrAMS notes that MTD submitted its last DBE Program Plan to FTA on July 19, 2012. MTD provided the review team with a DBE Program Plan dated December 19, 2018. This updated 2018 version was not submitted to FTA or attached in TrAMS.

A review of the 2018 DBE Program Plan indicated the following areas were not included:

- Shortfall analysis
- Legal remedies
- TVM reporting to FTA

In other areas, the MTD DBE Program Plan lacked detail or provided an inaccurate description of the implemented program activity in the following areas:

- DBE Policy Statement

- DBELO and staff responsibilities
- Financial institutions
- Overconcentration
- Race-neutral/ race-conscious split
- Race-neutral measures and small business element
- DBE subcontractor termination and replacement
- Contract assurances
- Prompt payment and retainage provisions
- Uniform Reports
- Monitoring and enforcement

Finding: MTD did not adequately address the requirements of 49 CFR Part 26 in its Program Plan, or the Plan did not reflect actual practice. Deficiencies are discussed in more detail throughout this report, by section.

c. Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MTD must update the DBE Program Plan with the required changes, including coverage of shortfall analysis, legal remedies, and TVM reporting to FTA. The DBE Program Plan must be submitted to the FTA's Office of Civil Rights.

6.2 DBE Policy Statement

A. Requirement (49 CFR Part 26.23)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

MTD's DBE Policy Statement was signed by the Managing Director on December 19, 2018 and was submitted to the review team with the 2018 DBE Program Plan. This policy expresses MTD's commitment to its DBE program, states objectives, and outlines responsibilities for implementation.

The 2018 Policy Statement includes six of the eight objectives listed in 49 CFR Part 26.1. The statement does not include the following objectives:

- To promote the use of DBEs in all types of federally-assisted contracts and procurement activities
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The 2018 Policy Statement states:

MTD has disseminated this policy statement to the Board of Trustees and all of the components of our organization. We have distributed this statement to DBE and non-

DBE business communities that perform work for us on DOT-assisted contracts. Distribution of this statement is made via the MTD website.

Staff indicated that the December 2018 version of the policy statement had not been sent to the Board of Trustees or shared with DBE and non-DBE organizations. Staff described informing interested vendors about the DBE policy in pre-bid meetings, but no documentation was provided. MTD contracted with a consultant in November 2018 to help perform outreach for the DBE program and staff indicated that the Policy Statement would be disseminated through this activity. The Policy Statement was not available on the MTD website.

Finding: MTD's Policy Statement does not include all the objectives listed in 49 CFR Part 26.1. There is no documentation that the Policy Statement was circulated throughout MTD and to the DBE and non-DBE communities, as required by 49 CFR Part 26.23.

c. Corrective Actions and Schedules

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

- An updated DBE Policy Statement signed by the Managing Director. The Policy Statement must include the required objectives listed in 49 CFR Part 26.1.
- Documentation confirming it has distributed the Policy Statement throughout the organization and to the DBE and non-DBE business communities.
- An updated DBE Program Plan that includes the updated Policy Statement.

6.3 DBE Liaison Officer

A. 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.

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan lists the CAO as the DBELO. The current CAO came into this role in 2015, but the DBE Program Plan was only updated with the correct contact details in 2018. At the time of the review the CAO had responsibility for the Illinois Terminal, Grant Management/Sustainability, Safety and Training, and Finance and Employee Service functions. There was no actual or apparent conflict of interest for this position to also perform DBELO duties. The CAO has a direct reporting line to the Managing Director. The organization chart included in the DBE Program Plan shows the CAO position, but does not identify the CAO's role as DBELO. The CAO position description references being responsible for the DBE program and designates the CAO as the DBELO, but does not describe the DBELO's responsibilities.

The Program Plan does not reference any other staff involved in the administration of the program; however, the Grants and Governmental Affairs Director provides a substantial amount of assistance. In November 2018, MTD contracted with a consultant to support its DBE Program, including outreach, training, and review of good faith effort documentation. This additional resource is specifically intended to provide support in the development of reasons for shortfalls noted below.

The DBE Program Plan lists the duties and responsibilities of the DBELO, but this is not tailored to the agency. The following responsibilities that are listed in the DBE Program Plan were not implemented at MTD:

- *Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.*
- *Plans and participates in DBE training seminars.*
- *Ensures outreach to DBEs and community organizations to advise them of opportunities.*

The following activities occur, but the Grants and Governmental Affairs Director has responsibility for completion, rather than the DBELO:

- *Reviews third party contracts and purchase requisitions for compliance with this program.*
- *Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.*
- *Analyzes MTD's progress toward attainment and identifies ways to improve progress.*
- *Participates in pre-bid meetings.*
- *Participates with legal counsel and project manager to determine contractor compliance with good faith efforts.*

The DBELO was involved with the following activities noted in the DBE Program Plan, but additional involvement from other staff is not noted in the Plan:

- *Works with all departments to set overall annual goals:* This statement incorrectly states annual rather than triennial goals. The Grants and Governmental Affairs Director prepares the goal. The DBELO reviews and approves the methodology.
- *Gathers and reports statistical data and other information as required by DOT:* The Grants and Governmental Affairs Director prepares the Uniform Reports. The DBELO approves and submits in TrAMS.
- *Refers DBEs to the Uniform Certification Process provided by the Illinois Department of Transportation (IDOT):* Both the DBELO and Grants and Governmental Affairs Director would make referrals and provide information about the UCP when needed.

Finding: The 2018 DBE Program Plan does not accurately reflect the roles of the DBELO and support staff. The responsibilities of those involved in the DBE program are not clearly defined and are not correctly outlined in staff job descriptions. The DBELO's reporting relationship with the Managing Director is not properly designated in the organizational chart as required by 49 CFR Part 26.25.

c. Corrective Actions and Schedules

Within 60 days of the issuance of the final report, MTD must evaluate the roles and responsibilities of the DBELO and submit the following to the FTA Office of Civil Rights:

- Revised relevant staff job descriptions that align with their DBE roles and responsibilities.
- A revised DBE Program Plan that includes an updated organizational chart as required by 49 CFR Part 26.25 and job responsibilities of the DBELO and other staff.

6.4 DBE Financial Institutions

A. Requirement (49 CFR Part 26.27)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The DBE Program indicates that MTD reviews the list of Minority-Owned Depository Institutions compiled by the Federal Reserve Board to identify services offered by economically or socially disadvantaged financial institutions. MTD stated that the DBELO had performed this review when updating the DBE Program Plan in December 2018 and no institutions were identified in Champaign-Urbana.

In one of two prime contracts reviewed, the recipient included the following language “Prime Contractors are encouraged to use the services of DBE banks.” In the other prime contract reviewed there was no documentation encouraging prime contractors to make use of these institutions.

Finding: MTD focused on identifying minority-owned financial institutions and encouraged prime contractors to use DBE banks, rather than promoting use of all economically and socially disadvantaged financial institutions as required by 49 CFR Part 26.27.

C. Corrective Actions and Schedules

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

- An updated DBE Program Plan including procedures for periodically reviewing the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals.
- Documentation of its efforts to evaluate and consider the use of such financial institutions for its own purposes.
- Documentation of its efforts to share information with prime contractors and encourage their use of financial institutions owned and controlled by socially and economically disadvantaged individuals.

6.5 DBE Directory

A. Requirement (49 CFR Part 26.31)

A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

B. Discussion

During this compliance review **no deficiencies** were found with this requirement.

The 2018 MTD Program Plan states that the Illinois Department of Transportation (uniform certification program agency) maintains the directory of eligible DBEs and includes a link to the

UCP website and directory. The directory includes all the data required by 49 CFR Part 26.31. MTD provided a link to the directory in one of two solicitations reviewed.

6.6 Overconcentration

A. Requirement (49 CFR Part 26.33)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The MTD DBE Program Plan states that “MTD has not identified that overconcentration exists in the types of work that DBEs perform.” However, there is no description within the DBE Program Plan of the procedures for reviewing whether overconcentration exists. Staff did not perform an overconcentration analysis prior to developing the 2018 DBE Program Plan, and there is no documentation that such analysis has ever been performed. Technical assistance was provided on-site on the process to be completed.

Finding: MTD has not determined if overconcentration of DBE firms exists, as required by 49 CFR Part 26.33.

C. Corrective Actions and Schedules

Within 60 days of the issuance of the final report, MTD 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, as required by 49 CFR Part 26.33.
- Evidence that MTD has conducted an overconcentration analysis.

6.7 Business Development Programs

A. Requirement (49 CFR Part 26.35)

The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

B. Discussion

During this compliance review **no deficiencies** were found with this requirement.

The 2018 DBE Program Plan states that MTD has not established a BDP. 49 CFR Part 26.35 enables recipients to establish a BDP, but this is not required.

6.8 Determining/Meeting Goals

A) Calculation

A. Requirement (49 CFR Part 26.45)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan provides a brief description of the goal methodology process, but this does not include the sources of data that would be used, or the goal calculation itself. The program does not suggest that future procurement opportunities should be reviewed as part of this methodology.

The following table notes the DBE goal submissions over the last five years:

Period of Goal	Date Submitted to FTA	Goal
FFY 2015 - 2017	December 22, 2014 (after extension request)	4.63% (race-conscious)
FFY 2018	No goal submitted	DBE Threshold Questionnaire submitted stating that a DBE goal was not applicable
Project Goal	September 17, 2018	2.31% (race-conscious)
Revised Project Goal	February 28, 2019	2.31% (race-conscious)

The FTA concurred with MTD's FFY 2015-2017 4.63 percent race-conscious goal in December 2014. This goal was focused on DBE participation opportunities on one FTA-funded project, MTD's Maintenance Facility Renovation/Expansion. MTD did not submit a FFY 2018-2020 goal to FTA. A DBE threshold questionnaire dated August 24, 2017 indicated that MTD did not expect to award any FTA-funded procurements (excluding vehicle purchases) and so did not meet the threshold for DBE goal submission.

MTD identified a new project, the Hydrogen Fuel Cell Buses and Infrastructure project, that included the purchase of vehicles and an upgrade of facility infrastructure to enable the new technology. FTA noted that the recipient began work on the project under pre-award authority without a DBE goal in place. Rather than developing a three-year goal, MTD submitted a 2.31 percent race-conscious project goal to FTA in September 17, 2018. FTA provided comments on this goal on December 17, 2018 and requested submission of an updated goal on or before January 31, 2019. The comments included:

- No justification for use of project goal rather than triennial goal
 - No timeframe for which the project goal covers
 - Step 1 calculation does not include the dollar amounts for each of the scopes of work
 - Methodology lacking explanation of local market area
 - No documented consultation with minority, women's and general contractor groups or description of any changes made to the goal methodology as a result of the consultation
 - Goal not posted on website
 - Submittal lacking data sources, assumptions and calculations used to establish the goal
 - No race/gender-neutral or race/gender-conscious calculation elements included.
- Recipient was advised to consider not using a 100 percent race-conscious goal

The recipient submitted an updated project goal methodology document late on February 28, 2019. Comment on the February 2019 goal submission is provided below.

During 2018, there was some confusion regarding whether a project goal or triennial goal was appropriate for MTD to use. 49 CFR Part 26.45(e)(3) indicates that in appropriate cases FTA may permit use of a project goal; however, this approach is typically used for large multi-year projects. The project goal would be separate from a recipient's annual overall goal for the rest of its FTA-funded contracting activities. The goal methodology submitted by MTD did not include a justification for use of a project goal. After discussion with the FTA Region V RCRO, MTD staff agreed that it would be more appropriate to submit a FFY 2019-2021 triennial goal.

Step 1: Determining the Base Figure

Within the February 2019 goal submission, the recipient identified multiple NAICS codes associated with the facility modifications and equipment included in the Hydrogen Fuel Cell Buses and Infrastructure project. MTD used the Illinois UCP directory to identify available DBE firms and the American Factfinder database to identify total numbers of firms available for each NAICS code. MTD identified the percentage of grant funds expected for each NAICS code to calculate a weighted base figure of 2.31 percent. There was an inconsistency in the data provided in the goal methodology and supporting Excel spreadsheet attachment that showed a 1.99 percent weighted base figure.

MTD defined its geographic market area as counties within a 100 mile radius from the project location. Staff indicated that this was based on a review of geographic areas represented in past bid submittals for similar work, but no documentation on how this decision was made was provided.

Step 2: Adjusting the Base Figure

The goal methodology stated that MTD had considered making adjustments to the base figure, but ultimately determined that this was not appropriate as the scope of the project was significantly different from past projects. In 2014, MTD awarded a sidewalk improvement contract as part of the subrecipient project and in 2015 awarded the Maintenance Facility Renovation/Expansion project. Reviewing past participation on these projects might be relevant for the construction aspects within the scope of the Hydrogen Fuel Cell Buses and Infrastructure project. MTD did not review the Illinois 2017 Disparity Study as another potential data source to consider.

Finding: MTD did not justify the use of a project goal for the Hydrogen Fuel Cell Buses and Infrastructure project and did not submit a three-year DBE goal per 49 CFR Part 26.45. MTD was late in submitting an updated goal methodology to FTA. The goal methodology included inconsistencies with data included in attachments, and no documentation justifying the chosen geographic market area was provided. MTD did not review all potential data sources to determine if a step 2 adjustment was required.

c. Corrective Actions and Schedules

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

- A FFY 2019-2021 goal methodology, including consistent data, justification for the geographic market area chosen, and review of past participation and disparity studies for potential use in a step 2 adjustment.
- Its DBE Program Plan including an updated description of the goal calculation process.

D. B) Public Participation**A. Requirement (49 CFR Part 26.45)**

In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

MTD's DBE Program Plan describes the consultation that will be undertaken with IDOT, minority, women's, general contractor groups, and/or other small businesses to inform the DBE goal. Following this consultation, the Program Plan indicates that MTD will publish a notice of the proposed goal in the News-Gazette and on the MTD website informing the public that the goal is available for review for 30 days, and comments will be accepted for 45 days.

The February 2019 DBE goal methodology included attachments showing that notice of the goal had been posted on the recipient's website and placed in the News Gazette in September 2018. Staff confirmed that no scheduled, direct, interactive consultation was performed with minority, women's and general contractor groups, community organizations, or other officials or organizations that could be expected to have useful information for goal development. None of the seven community stakeholder groups interviewed by the review team had been consulted regarding MTD's DBE goal.

The USDOT DBE Questions and Answers note that,

By definition, the process of consultation involves a scheduled face-to-face conference or meeting of some kind with individuals or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information or advice before a decision is made. Publication of the proposed goal to the general public is not synonymous with, or a substitute for, consultation with interested or affected groups.

Recipients should identify groups within their contracting market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process. Those groups should be contacted and invited to participate in a face-to-face exchange (which may occur at a public meeting) aimed at obtaining the kind of information set out in the regulation regarding establishing the overall DBE goal. Efforts should be made to engage in a dialogue with as many interested stakeholders as possible. An advisory committee may be one method of consultation (but not the exclusive method, since this could lead to a recipient talking only to the same people all the time). A description of the consultation process and its purpose should be provided to all invitees.

Finding: MTD did not complete the consultative process required by 49 CFR Part 26.45(g) for its project goal submission.

c. Corrective Actions and Schedules

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

- Evidence of a consultative process undertaken in the development of the FFY 2019-2021 goal.

C) Race-Neutral DBE Participation

A. Requirement (49 CFR Part 26.51)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan does not include a description of race-neutral activities. The 2019 DBE goal methodology lists a number of race-neutral mechanisms that will be used on the Hydrogen Fuel Cell Buses and Infrastructure project, including outreach, disseminating information, including the UCP directory, designing procurement meetings and activities to facilitate participation of DBEs, and providing information in languages other than English. No procurements related to this project have been awarded, so it was not possible to verify implementation at this stage.

Solicitation documents from the two procurements reviewed stated that MTD will provide assistance to prime contractors in achieving DBE participation, including identifying DBEs, providing a list of Minority Assistance Agencies, and communicating requirements at bid conferences. However, no documentation was provided regarding race-neutral means of facilitating DBE participation in either the 2015 Maintenance Facility Renovation/Expansion project or the 2014 Residents Accessing Mobility Providing Sidewalks (RAMPS) subrecipient project. These were the most recent non-vehicle prime contracts awarded using FTA-funds.

Small Business Element

MTD's DBE Program Plan includes a brief statement that:

The MTD has incorporated the following non-discriminatory element to its DBE Program in order to facilitate competition on DOT- assisted public works projects by small business concerns. It will include, but is not limited to, unnecessary and unjustified bundling of contract requirements, race neutral small business set-asides for prime contracts below a certain value, requiring bidders on large contracts to identify specific subcontracts appropriate for small business participation.

Discussion with staff indicated that these activities do not reflect implemented practice. While MTD does review the size of contracts, MTD has never used race-neutral small business set-asides for prime contracts. The small business element in the program is brief and is not tailored to MTD's circumstances.

Finding: MTD's DBE Program Plan does not describe race-neutral means of facilitating DBE participation as required by 49 CFR Part 26.51(a-b) and its small business element required by

49 CFR Part 26.39 lacks detail. MTD does not have documentation of implementing its small business element and race-neutral measures.

c. Corrective Actions and Schedules

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

- A DBE Program Plan including an updated small business element and identifying race-neutral measures.
- Evidence of implementing the small business element and race-neutral measures.

D) Race-Conscious DBE Participation

A. Requirement (49 CFR Part 26.51)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan states that contract goals will only be used to meet a portion of the goal that MTD does not project to be able to meet using race-neutral means. The Program Plan describes how each procurement with subcontracting possibilities will be reviewed to determine if a DBE contract goal should be used and what the goal should be.

The FFY 2015-2017 goal and project goals developed in 2018 and updated in 2019 were entirely race-conscious. The 2019 DBE project goal submission stated that “The District determined that it would not be feasible to meet the DBE goal with race-neutral measures, and therefore determined it necessary to assume a 100 percent Race Conscious marketplace due to only having one project associated with this goal.” However, there are at least two procurements associated with the Hydrogen Fuel Cell Buses and Infrastructure project. No justification or explanation for how this race-neutral, race-conscious split was determined was included in the goal methodology. Staff lacked understanding about the use of contract goals, and how an overall DBE goal can include both a proportion that is race-neutral and a proportion that is race-conscious.

MTD’s last two FTA-funded non-vehicle procurements included race-conscious goals. The following table describes the goal included in the solicitation document, the commitment by the prime contractor and the DBE participation achieved during the project.

Contract	Prime Contractor	Prime Execution Date	DBE Goal in Solicitation Document	DBE Commitment by Prime Contractor	DBE Participation Achieved
Maintenance Facility Renovation/ Expansion	River City Construction, LLC	1/26/2015	4.63%	4.65%	4.10%

Contract	Prime Contractor	Prime Execution Date	DBE Goal in Solicitation Document	DBE Commitment by Prime Contractor	DBE Participation Achieved
RAMPS (Subrecipient project. Procurement led by MTD)	Champaign County Mobility, LLC	3/26/2014	9.8%	0%	0%

MTD included race-conscious goals on two procurements but did not have any documentation showing how these goals were determined. The 2015 Maintenance Facility Renovation/Expansion project included the goal within the FFY 2015-2017 DBE goal methodology, as this was the only procurement expected in this three-year period and comprised all of the calculation. No information was available for the 2014 RAMPS project.

Finding: MTD did not include a justification for a 100 percent race-conscious goal in the 2019 DBE project goal submission. MTD did not have an implemented approach for determining when to use race-conscious goals on procurements, as required by 49 CFR Part 26.51(e).

c. Corrective Actions and Schedules

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

- A FFY 2019-2021 goal methodology including an explanation for the proposed race-conscious, race-neutral split.
- An updated DBE Program Plan including a process for determining the race-conscious, race-neutral split in the DBE goal methodology, and an approach for determining contract goals.

E) Good Faith Efforts

A. Requirement (49 CFR Part 26.53)

The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract; a description of the work each DBE will perform; the dollar amount of DBE participation; written commitment to use DBE submitted in response to the contract goal; written confirmation from each DBE listed; or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than seven days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

Good Faith Efforts

The 2018 DBE Program Plan describes the GFE requirements for each solicitation that includes a DBE goal. If the contract goal is not met, a vendor must submit GFE as a matter of responsiveness. The Program Plan lists the information that must be submitted in compliance with 49 CFR 26.53(b), and references Appendix A to Part 26 for examples of GFE.

Two procurements including DBE goals were reviewed. In both, the solicitations required prime contractors to submit the names and addresses of the DBE firms proposed to 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 firms submitted in response to the contract goal; written confirmation from each DBE listed; or good faith efforts. Staff indicated that the DBE Utilization Plan and DBE Participation Statement templates were provided by the State. In both cases information was requested at the time of response to the solicitation as a matter of responsiveness.

The 2015 Maintenance Facility Renovation/Expansion procurement included a 4.63 percent contract goal. The successful prime contractor committed to 4.65 percent DBE participation and completed the required forms. The 2014 RAMPS procurement included a 9.8 percent DBE goal, but the prime contractor did not propose any DBE participation in their response to the solicitation. The prime contractor submitted a required certification that they would maximize participation of DBE firms and the Evidence of Good Faith Efforts Checklist, along with supporting documentation. No documentation of MTD's review of GFE was provided. There was no record of the other proposals submitted and whether these had met the DBE contract goal or provided GFE.

Administrative Reconsideration

The 2018 DBE Program Plan indicates that vendors have 10 days to request administrative reconsideration upon learning that MTD has determined their proposal is not responsive due to lacking GFE. The Program Plan lists the reconsideration process, in compliance with 49 CFR Part 26.53(d) and notes that the CAO (DBLEO) is the reconsideration official. Staff confirmed that as the Grants and Governmental Affairs Director is responsible for reviewing GFE, the DBLEO would not have previously reviewed GFE submissions and so could perform the role of reconsideration official. During the review period, no procurements required administrative reconsideration.

Finding: In one procurement, no evidence was found that MTD reviewed good faith efforts as required by 49 CFR Part 26.53(c)

c. Corrective Actions and Schedules

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

- An updated DBE Program Plan including a detailed procedure for completing and documenting good faith effort analysis.

F) Protecting Against Termination for Convenience

A. Requirements (49 CFR 26.53 and 26.13)

Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated

subcontract with its own forces or those of an affiliate, or reducing the scope of DBE contract) without the transit agency's prior written consent. Failure to obtain written consent is a material breach of contract.

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan specifies that if a DBE subcontractor shows inability or unwillingness to perform the prime contractor must notify the DBELO immediately and must make GFE to replace any DBE that has been terminated. If a contractor fails to comply, the DBE Program Plan states that all or part of payment/work will be stopped until action is taken and ultimately a termination for default proceeding can be issued. This procedure does not include the following requirements of 49 CFR Part 26.53(f):

- The prime contractor must receive written consent from MTD prior to termination.
- MTD must only provide written consent if it agrees that the prime contractor has good cause to terminate the DBE firm, based on 49 CFR Part 26.53(f)(2).
- Before transmitting to MTD the request to terminate, the prime contractor must give notice in writing to the DBE subcontractor with copy to MTD of its intent, and allow the DBE five days to respond with the reasons why it objects to the proposed termination.

One DBE subcontractor was terminated by the Prime Contractor for the 2015 Maintenance Facility Renovation/Expansion project. Based on a review of the project documentation the prime contractor provided a cure notice to the subcontractor on July 1, 2015. MTD provided information about the FTA requirements for DBE termination to the prime contractor on August 13, 2015. On September 10, 2015 the prime contractor sent an email to the subcontractor indicating that they would be required to terminate if work was not completed the following day. On the following day the prime contractor emailed MTD informing them that was the DBE subcontractor's last day. Based on the available documentation, the following observations were made:

- It was not clear if the issues relating to the cure notice letter in July were the same as those issues surrounding termination in September.
- No documentation showed that the prime contractor had provided the DBE subcontractor with five days to respond to the proposed termination in September.
- Although MTD was copied into the prime contractor's emails, there was no evidence that MTD had provided written consent that stated there was good cause for termination.

The prime contractor replaced the terminated DBE subcontractor with another DBE firm, and identified two other DBEs to work on the project. No documentation was provided that MTD requested confirmation that the terminated DBE subcontractor had been replaced by another DBE firm.

Finding: MTD did not implement the process described in 49 CFR Part 26.53(f-g) to protect against improper termination for convenience.

c. Corrective Actions and Schedules

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

- An updated DBE Program Plan with a detailed procedure for protecting against termination for convenience. This must include prime contractor notification to the DBE firm with time allowed for response, requirement for prior written consent from MTD, and the review of prime contractor's GFE to replace a DBE subcontractor with another DBE firm.

G) Counting DBE Participation

A. Requirement (49 CFR Part 26.55)

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

B. Discussion

During this compliance review **no deficiencies** were found with this requirement.

The 2018 DBE Program Plan includes a brief statement that MTD "will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55."

One prime contract was reviewed that included a race-conscious goal and DBE subcontractor participation. Prior to award, MTD validated that each of the proposed DBE subcontractors were included in the UCP directory under relevant NAICS codes. The templates used by MTD include a section that requires the prime contractor to certify that the DBE firms listed will perform a commercially useful function in the work of the contract. One of the DBE subcontractors on the 2015 Maintenance Facility Renovation/Expansion project was a regular dealer of electrical resources. As per 49 CFR 26.55(e)(2), MTD only counted 60 percent of the cost of the materials and supplies when calculating the prime contractor's proposed DBE participation prior to award.

H) Quotas

A. Requirements (49 CFR Part 26.43)

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

B. Discussion

During this compliance review **no deficiencies** were found with this requirement.

The 2018 DBE Program Plan indicates that MTD does not use quotas in any way in the administration of its DBE program. The review team did not note any evidence that MTD had used quotas or set-aside contracts during the review of procurement documentation.

6.9 Shortfall Analysis and Corrective Action Plan

A. Requirement (49 CFR Part 26.47)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan does not include the requirement to conduct a shortfall analysis and corrective action plan in any year that the DBE goal is not met.

MTD met their DBE goal in FFY 2015, but did not meet their goal in FFY 2016 or FFY 2017 because there was no FTA-funded procurement activity reported. A finding was given in the 2018 Triennial Review for lack of shortfall analysis in these years. This requirement was not applicable in FFY 2018 as MTD notified FTA that they did not meet the threshold for developing a DBE goal in that year.

49 CFR Part 26.47 requires recipients to complete a shortfall analysis and corrective action plan in years where an overall DBE goal is not met. The recipient must:

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

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year

The recipient provided the review team with shortfall analyses developed for FFY 2016 and FFY 2017. The analyses did not account for change orders that had occurred on the 2015 Maintenance Facility Renovation/Expansion project during this period. The corrective action plans included one action: that MTD would improve the goal setting process and determine if a triennial or project-based goal is appropriate.

Finding: MTD shortfall analyses and corrective action plans lacked detail and specific steps and milestones for correction required by 49 CFR Part 26.47.

c. Corrective Actions and Schedules

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

- Updated shortfall analyses for FFY 2016 and FFY 2017 including accurate performance data and a clear corrective action plan.
- An updated DBE Program Plan including the process for developing a shortfall analysis and corrective action plan.

The completion of this corrective action will be tracked within the Triennial Review process.

6.10 Transit Vehicle Manufacturers (TVMs)

A. Requirement (49 CFR Part 26.49)

The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the DBE requirements (DBE plan and annual overall DBE goal). Certified TVMs are listed on the FTA website and a recipient should ascertain that the TVM is on the list prior to permitting a bid or proposal.

The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan indicates MTD will require each TVM to certify compliance with the regulations, and will only set DBE goals for transit vehicle procurements with FTA concurrence.

Over the past three years MTD has executed five options off a base contract awarded from a joint procurement in March 2016. The Greater Lafayette Public Transportation Corporation "CityBus" 2015-2020 Transit Bus Joint Procurement awarded a contract to New Flyer of America, Inc. The procurement file included a signed DBE certification and a copy of the letter from FTA to New Flyer showing DBE goal concurrence.

49 CFR Part 26.49(a)(4) requires recipients to submit information to FTA within 30 days of making a transit vehicle award. The online reporting form was not submitted timely in four of the five options reviewed. This was a finding in the 2018 Triennial Review. MTD provided documentation that it had subsequently submitted the TVM reports as part of the corrective action. Additionally, there was documentation of the online report for a purchase executed after the Triennial Review site visit, in September 2018. MTD also provided their updated Procurement Manual that includes the procedure to submit the TVM reports within 30 days of vehicle purchase.

A list of all the purchases reviewed is noted in the table below.

Date of Option Award	Number of Vehicles	Total Award	TVM report submitted?
6/14/2016	12	\$7,215,570.00	As part of Corrective action
11/28/2016 (updated 1/4/2017)	18	\$10,891,439.82	As part of Corrective action
9/28/2017	4	\$2,419,842.72	As part of Corrective action
4/2/2018	3	\$1,821,059.22	As part of Corrective action
9/17/2018	2	\$1,242,933.62	Yes

Finding: MTD did not submit information to FTA about vehicle procurements within 30 days of award, as required by 49 CFR Part 26.49(a)(4).

c. Corrective Actions and Schedules

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

- Documentation of submission of unreported transit vehicle purchases and an implemented process to ensure that future awards of FTA-funded transit vehicle purchases are reported timely to the FTA Office of Civil Rights.

The completion of this corrective action will be tracked within the Triennial Review process.

6.11 Required Contract Provisions and Enforcement

A) Contract Assurance

A. Requirements (49 CFR Part 26.13)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan includes recipient and contract assurance language, but the contract assurance statement does not include exact language of 49 CFR Part 26.13. The text of this clause was modified in November 2014 and the DBE Program Plan was not updated to include the language providing examples of remedies as noted in 49 CFR 26.13(b) “which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.”

In September 2013, MTD signed a Memorandum of Understanding (MOU), or subrecipient agreement, with the Champaign County Regional Planning Commission as a subrecipient of 5317 funding for the RAMPS project. This agreement did not include the recipient assurance clause, as required by 49 CFR Part 26.13(a).

Since 2014, MTD has issued two federally-funded prime contracts, one of which was a procurement managed on behalf of its subrecipient for the RAMPS project. The table below lists these contracts as well as the subcontracts reviewed.

Project	Prime Contractor	Prime Execution Date	DBE Goal in Solicitation Document?	Subcontracts Requested
Maintenance Facility Renovation/ Expansion	River City Construction, LLC	1/26/2015	Yes	<ul style="list-style-type: none"> • Best Electric Co. • Green Trac, LLC (two separate subcontracts) • Miller Building Group • Varsity Striping & Construction Co. • JP Excavating & Trucking, Inc.(no subcontract executed)

Project	Prime Contractor	Prime Execution Date	DBE Goal in Solicitation Document?	Subcontracts Requested
RAMPS (Subrecipient project. Procurement led by MTD)	Champaign County Mobility LLC	3/26/2014	Yes	No subcontracts issued

Neither of the prime contracts reviewed included the exact contract assurance language included in the DBE Program Plan or in 49 CFR Part 26.13. The DBE template forms included an obligation statement that the contractor agreed to ensure disadvantaged businesses have maximum opportunity to participate and “the contractor shall not discriminate on the basis of race color, national origin, or sex in the award and performance of contracts.” Within the solicitation a DBE requirement clause also included “religion”, “age or physical handicap”; potential areas of discrimination that are not included in 49 CFR Part 26. The RAMPS solicitation also included reference to 49 CFR Part 23 which is the DBE regulation governing airport concessions and is not applicable to this procurement.

Six subcontracts on the Maintenance Facility Renovation/Expansion project were requested. JP Excavating replaced the one DBE subcontractor that was terminated. The prime contractor indicated that work was requested from JP Excavating on a time and materials basis and no formal subcontract was established. None of the five subcontracts reviewed included the required contract assurance clause. MTD did not have a monitoring system in place to determine whether subcontracts contain the required contract language such as through a random review of subcontracts throughout the year. The prime contractor was also not required to submit subcontracts to MTD for review.

Finding: MTD did not include the full non-discrimination clause specified in 49 CFR Part 26.13(b) in its prime contracts. MTD does not have procedures for validating subcontracts are established or for reviewing subcontracts to ensure all the required DBE clauses are included.

c. Corrective Actions and Schedules

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

- An updated DBE Program Plan including a procedure for reviewing prime contracts and subcontracts to ensure all DBE provisions are included.
- Evidence of implementing this procedure on all current contracts.

B) Prompt Payment

A. Requirements (49 CFR Part 26.29)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

Prompt payment

The 2018 DBE Program Plan includes a prompt payment clause for inclusion in each DOT-assisted prime contract. This provision requires the prime contractor to pay each subcontractor no later than 30 days from the receipt of payment from MTD. Any postponement of payment may only occur for good cause following written approval of MTD.

Two prime contracts were reviewed. Neither included prompt payment provisions.

Five subcontracts on the Maintenance Facility Renovation/Expansion project were reviewed. Each subcontract had a seven-day prompt payment clause and indicated that the subcontractor could stop work upon giving an additional seven days written notice to the contractor with the contract sum increased by the amount of the subcontractor's reasonable costs of the shutdown, delay and startup. If the subcontractor's work had been stopped for 30 days, then the subcontractor could terminate the agreement. As noted above, the prime contractor did not establish a subcontract with one of the DBE subcontractors used on the Maintenance Facility Renovation/Expansion project, so no prompt payment provisions were established for this subcontractor.

Return of Retainage

The return of retainage clause included in the 2018 DBE Program Plan states that a prime contractor will return retainage payments to each subcontractor within 90 days after the subcontractors' work is satisfactorily performed. This does not comply with the limit of 30 days and does not describe the method that would be used to comply with the requirement, per 49 CFR Part 26.29(b).

MTD withheld 10 percent retainage from the prime contractor on the Maintenance Facility Renovation/Expansion project. No retainage provisions were included in the solicitation or contract documents. The five subcontracts reviewed for this project noted that final payment to the subcontractor will be "made upon acceptance of the subcontractors work without delay." The prime contractor indicated that they had withheld retainage until MTD released the retainage associated with the activities of the subcontractors. MTD staff explained that they started releasing subcontractor retainage payments part way through the contract when they realized the DBE requirement to do so. The interviews provided conflicting information about the timing of retainage payments to subcontractors. This information was not tracked by MTD.

During an interview, the terminated DBE subcontractor suggested that they had received payments late, and this did not cover the full balance for the work completed. MTD staff stated that they were not aware of this concern and no formal complaint had been made to them.

MTD does not have a procedure in place for requesting and reviewing subcontracts to ensure the required prompt payment and retainage contract language is included. MTD did not have a practice of reviewing payment data to track if prime contractors are complying with prompt payment and retainage provisions. It was not possible to determine from the data provided if payments and retainage returned to subcontractors had occurred within the timeframes required by 49 CFR Part 26.29.

Finding: MTD did not include prompt payment and retainage clauses in all the prime contracts or verify inclusion in subcontracts. The retainage clause in MTD's DBE Program Plan does not

comply with 49 CFR Part 26.29(b). MTD does not have an implemented prompt payment and retainage verification process, as required by 49 CFR Part 26.29.

c. Corrective Actions and Schedules:

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

- An updated DBE Program Plan that includes an updated retainage clause and a procedure for ensuring prompt payment and retainage payment terms are included in prime contracts and subcontracts contracts and are monitored, as required by 49 CFR Part 26.29.
- Evidence of implementation of prompt payment and retainage monitoring on all current contracts.

C) Legal Remedies

A. Requirements (49 CFR Part 26.37)

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

B. Discussion

During this compliance review **deficiencies** were found with this requirement.

The 2018 DBE Program Plan includes a section describing monitoring and enforcement mechanisms that includes notifying DOT of any false, fraudulent, or dishonest conduct, and consideration during responsibility determinations in future contracts. In the section describing procedures for replacing a DBE on a contract, the DBE Program Plan states that MTD can issue an order stopping all or part of work, or ultimately issue a termination for default proceeding if the contractor does not comply with the correct procedures. As noted in Section 6.11A of this report, the full contract assurance language, including examples of remedies, is not included. There are no detailed descriptions of termination provisions or legal remedies, as noted in Section 6.1 of this report.

The two prime contracts reviewed included general termination clauses and a DBE clause in the solicitation that stated ""if the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBEs in the work provided, C-U MTD may declare the contractor noncompliant and in breach of contract."

The Maintenance Facility Renovation/Expansion project prime contractor did not follow the required process for terminating a DBE subcontractor. Additionally, this prime contractor did not achieve the level of DBE participation committed to at the time of award. MTD did not enforce compliance through the legal remedies included in the DBE Program Plan or its contract.

Finding: MTD did not implement appropriate legal remedies to ensure compliance by all program participants, as required by 49 CFR Part 26.37.

c. Corrective Actions and Schedules

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

- An updated DBE Program Plan including procedures for ensuring all FTA-funded prime contracts include legal remedies and for using these provisions where issues are identified, as required by 49 CFR Part 26.37.
- Evidence of implementation of legal remedies on all current contracts, where applicable.

6.12 Certification Standards

A. Requirements (49 CFR Part 26.67- 26.71)

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

B. Discussion

During this compliance review **no deficiencies** were found with this requirement.

The 2018 DBE Program Plan clearly states that MTD participates in the uniform certification program (UCP) administered by the Illinois Department of Transportation (IDOT). The Program Plan includes the IDOT website and contact details for certification and appeals.

6.13 Certification Procedures

A) Onsite Visits and Document Review

A. Requirements (49 CFR Part 26.83)

The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

B. Discussion

MTD is not a certifying member of the Illinois UCP; therefore, this requirement is not applicable.

B) Annual Affidavit

A. Requirement (49 CFR Part 83)

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

B. Discussion

MTD is not a certifying member of the Illinois UCP; therefore, this requirement is not applicable.

C) Interstate Certification

A. Requirement (49 CFR 26.85)

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

B. Discussion

MTD is not a certifying member of the Illinois UCP; therefore, this requirement is not applicable.

D) Certification Appeals

A. Requirements (49 CFR 26.86)

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

B. Discussion:

MTD is not a certifying member of the Illinois UCP; therefore, this requirement is not applicable.

6.14 Record Keeping and Enforcements

A. Requirement (49 CFR Part 26.11 and 26.37):

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

Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

B. Discussion:

During this compliance review **deficiencies** were found with this requirement.

Bidders List

The 2018 DBE Program Plan states that MTD will create a bidders list including DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The DBE Program Plan includes the data that will be collected in the bidders list as required by 49 CFR Part 26.11(c).

MTD does not maintain a bidders list. Staff confirmed that there was no process to collect and maintain this information about prime contractors and subcontractors that seek to work on FTA-funded contracts.

Finding: MTD does not maintain a bidders list as required by 49 CFR Part 26.11(c).

Semi-Annual Reporting

The 2018 DBE Program Plan states that MTD “will report DBE participation to DOT on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.” This references an incorrect reporting frequency and the incorrect reporting form.

The Grants and Governmental Affairs Director is responsible for drafting the Uniform Reports. The DBELO reviews the reports and submits them in TrAMS. The Grants and Governmental

Affairs Director collects and reviews invoice information from prime contractors, including information about subcontractor payments. She also manages FTA-funded procurements and is aware of any FTA-funded awards and commitments made. Most DBE Uniform Reports were submitted on-time; however, the June 1, 2017 report was submitted on June 20, 2017.

A review of MTD's Uniform Reports and discussion with staff indicated a number of inaccuracies:

- Change orders relating to the Maintenance Facility Renovation/Expansion project were not reported in the Awards and Commitments section
- Contract values listed represent the total value of the contract, not the FTA portion
- Actual Payments on Contracts Completed were not reported for either of two prime contracts
- Reports did not include all payment information relating to the prime contract performed on behalf of MTD's subrecipient
- Reports incorrectly listed the Total Number of Contracts in the Ongoing Payment section, including both prime and subcontracts.

Finding: Accurate information on DBE goal achievement has not been reported to FTA as required by 49 CFR Part 26.11.

Monitoring DBE Participation

The DBE Program Plan indicates that MTD will perform interim audits of contract payments to DBEs to "ensure the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation." Additionally, the Program Plan states that a running tally of actual payments to DBE firms will be kept and that MTD will verify the work committed to DBEs at contract award is actually performed by DBEs "through the bidding process, on-site monitoring, payroll reviews and maintenance of reports through the accounting department for quarterly DBE process. MTD will include a certification of contract reviews and monitoring at contract close-out on projects which DBE's are participating."

No documentation of on-site monitoring of the Maintenance Facility Renovation/Expansion project was provided. MTD received a finding in the 2018 Triennial Review for insufficient documentation of written certifications of DBE monitoring. As part of the corrective action submitted to FTA on January 3, 2019, MTD provided a DBE Project Compliance Review Checklist and a DBE Participation Field Log to document on-site monitoring efforts. Staff indicated that before future projects are implemented, a staff person would be identified to undertake on-site monitoring and the Grants and Governmental Affairs Director would validate the DBE firms included in the contract were performing the expected role on the project. During the site visit the review team interviewed the Facilities Director who is expected to have responsibility for on-site monitoring during the Hydrogen Fuel Cell Buses and Infrastructure project.

MTD provided a summary of the payments made to each DBE subcontractor during the Maintenance Facility Renovation/Expansion project and the calculated level of actual DBE

achievement at 4.85 percent. During the review, it was noted that there was an error with this calculation as one of the subcontractors was a supplier of electrical resources, and only 60 percent of the payments made to this subcontractor should have counted towards the goal achievement. The actual achievement level was 4.10 percent, lower than the 4.65 percent proposed by the prime contractor within the contract. MTD did not have a running tally of payments made to DBE subcontractors and had therefore not been aware that performance was lower than expected nor discussed this with the prime contractor during the course of the contract.

Finding: The recipient did not have an implemented monitoring process that included written certification that contract records were reviewed and work sites monitored, as required by 49 CFR Part 26.37.

c. Corrective Actions and Schedules

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

- An updated DBE Program Plan that includes:
 - an implemented process to create and update the bidders list,
 - a procedure for ensuring accurate completion of future Semi-Annual Uniform Reports,
 - a procedure, including identified roles and responsibilities, for monitoring prime contractor compliance with contract terms and documenting monitoring, including monitoring of payment, substitution, termination, commercial useful function, and certifying monitoring efforts.
- Revised Uniform Reports for FFY 2016-2018.

The completion of the corrective action relating to monitoring certifications will be tracked within the Triennial Review process.

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7. Summary Findings

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
1.	Program Plan	26.21	D	MTD did not adequately address the requirements of 49 CFR Part 26 in its Program Plan, or the Plan did not reflect actual practice.	MTD must submit to FTA: <ul style="list-style-type: none"> • An update DBE Program Plan with the required changes, including coverage of shortfall analysis, legal remedies, and TVM reporting to FTA. The DBE Program Plan must be submitted to the FTA’s Office of Civil Rights. 	60 days
2.	Policy Statement	26.23	D	MTD’s Policy Statement does not include all the objectives listed in 49 CFR Part 26.1. There is no documentation that the Policy Statement was circulated throughout MTD and to the DBE and non-DBE communities, as required by 49 CFR Part 26.23.	MTD must submit to FTA: <ul style="list-style-type: none"> • An updated DBE Policy Statement signed by the Managing Director. The Policy Statement must include the required objectives listed in 49 CFR Part 26.1. • Documentation confirming it has distributed the Policy Statement throughout the organization and to the DBE and non-DBE business communities. • An updated DBE Program Plan that includes the updated Policy Statement. 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
3.	DBE Liaison Officer	26.25	D	The 2018 DBE Program Plan does not accurately reflect the roles of the DBELO and support staff. The responsibilities of those involved in the DBE program are not clearly defined and are not correctly outlined in staff job descriptions. The DBELO's reporting relationship with the Managing Director is not properly designated in the organizational chart as required by 49 CFR Part 26.25.	MTD must submit to FTA: <ul style="list-style-type: none"> • Revised relevant staff job descriptions that align with their DBE roles and responsibilities. • A revised DBE Program Plan that includes an updated organizational chart as required by 49 CFR Part 26.25 and job responsibilities of the DBELO and other staff 	60 days
4.	Financial Institutions	26.27	D	MTD focused on identifying minority-owned financial institutions and encouraged prime contractors to use DBE banks, rather than promoting use of all economically and socially disadvantaged financial institutions as required by 49 CFR Part 26.27.	MTD must submit to FTA: <ul style="list-style-type: none"> • An updated DBE Program Plan including procedures for periodically reviewing the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals. • Documentation of its efforts to evaluate and consider the use of such financial institutions for its own purposes. • Documentation of its efforts to share information with prime contractors and 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
					encourage their use of financial institutions owned and controlled by socially and economically disadvantaged individuals.	
5.	DBE Directory	26.31	ND			
6.	Overconcentration	26.33	D	MTD has not determined if overconcentration of DBE firms exists, as required by 49 CFR Part 26.33.	MTD must submit to FTA: <ul style="list-style-type: none"> An updated DBE Program Plan that describes its procedures for analyzing and determining if overconcentration exists, as required by 49 CFR Part 26.33. Evidence that the MTD has conducted an overconcentration analysis. 	60 days
7.	Business Development Programs	26.35	ND			
8.	Determining/Meeting Goals					
8.a	Calculation	26.45	D	MTD did not justify the use of a project goal for the Hydrogen Fuel Cell Buses and Infrastructure project and did not submit a three-year DBE goal per 49 CFR Part 26.45. MTD was late in submitting an updated goal methodology to	MTD must submit to FTA: <ul style="list-style-type: none"> A FFY 2019-2021 goal methodology, including consistent data, justification for the geographic market area chosen, and review of past 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
				FTA. The goal methodology included inconsistencies with data included in attachments, and no documentation justifying the chosen geographic market area was provided. MTD did not review all potential data sources to determine if a step 2 adjustment was required.	participation and disparity studies for potential use in a step 2 adjustment. <ul style="list-style-type: none"> • Its DBE Program Plan including an updated description of the goal calculation process. 	
8.b	Public Participation	26.45	D	MTD did not complete the consultative process required by 49 CFR Part 26.45(g) for its project goal submission.	MTD must submit to FTA: <ul style="list-style-type: none"> • Evidence of a consultative process undertaken in the development of the FFY 2019-2021 goal. 	60 days
8.c	Race-Neutral	26.51	D	MTD's DBE Program Plan does not describe race-neutral means of facilitating DBE participation as required by 49 CFR Part 26.51(a-b) and its small business element required by 49 CFR Part 26.39 lacks detail. MTD does not have documentation of implementing its small business element and race-neutral measures.	MTD must submit to FTA: <ul style="list-style-type: none"> • A DBE Program Plan including an updated small business element and identifying race-neutral measures. • Evidence of implementing the small business element and race-neutral measures 	60 days
8.d	Race-Conscious	26.51	D	MTD did not include a justification for a 100 percent race-conscious goal in the 2019 DBE project goal submission. MTD did not have an implemented approach for	MTD must submit to FTA: <ul style="list-style-type: none"> • A FFY 2019-2021 goal methodology including an explanation for the 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
				determining when to use race-conscious goals on procurements, as required by 49 CFR Part 26.51(e).	proposed race-conscious, race-neutral split. <ul style="list-style-type: none"> An updated DBE Program Plan including a process for determining the race-conscious, race-neutral split in the DBE goal methodology, and an approach for determining contract goals 	
8.e	Good Faith Efforts	26.53	D	In one procurement, no evidence was found that MTD reviewed good faith efforts as required by 49 CFR Part 26.53(c)	MTD must submit to FTA: <ul style="list-style-type: none"> An updated DBE Program Plan including a detailed procedure for completing and documenting good faith effort analysis. 	60 days
8.f	Protecting Against Termination for Convenience	26.53	D	MTD did not implement the process described in 49 CFR Part 26:53(f-g) to protect against improper termination for convenience.	MTD must submit to FTA: <ul style="list-style-type: none"> An updated DBE Program Plan with a detailed procedure for protecting against termination for convenience. This must include prime contractor notification to the DBE firm with time allowed for response, requirement for prior written consent from MTD, and the review of prime contractor's GFE to replace a DBE 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
					subcontractor with another DBE firm.	
8.g	Counting DBE Participation	26.55	ND			
8.h	Quotas	26.43	ND			
9.	Shortfall Analysis and Corrective Action Plan	26.47	D	MTD shortfall analyses and corrective action plans lacked detail and specific steps and milestones for correction required by 49 CFR Part 26.47.	MTD must submit to FTA: <ul style="list-style-type: none"> Updated shortfall analyses for FFY 2016 and FFY 2017 including accurate performance data and a clear corrective action plan. An updated DBE Program Plan including the process for developing a shortfall analysis and corrective action plan. 	60 Days & Tracked by Triennial Review process
10.	TVM	26.49	D	MTD did not submit information to FTA about vehicle procurements within 30 days of award, as required by 49 CFR Part 26.49 (a)(4).	MTD must submit to FTA: <ul style="list-style-type: none"> Documentation of submission of unreported transit vehicle purchases and an implemented process to ensure that future awards of FTA-funded transit vehicle purchases are reported timely to the FTA Office of Civil Rights. 	60 Days & Tracked by Triennial Review process
11.	Required Contract Provisions and Enforcement					

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
11.a	Contract Assurance	26.13	D	MTD did not include the full non-discrimination clause specified in 49 CFR Part 26.13(b) in its prime contracts. MTD does not have procedures for validating subcontracts are established or for reviewing subcontracts to ensure all the required DBE clauses are included.	MTD must submit to FTA: <ul style="list-style-type: none"> • An updated DBE Program Plan including a procedure for reviewing prime contracts and subcontracts to ensure all DBE provisions are included. • Evidence of implementing this procedure on all current contracts. 	60 days
11.b	Prompt Payment	26.29	D	MTD did not include prompt payment and retainage clauses in all the prime contracts or verify inclusion in subcontracts. The retainage clause in MTD's DBE Program Plan does not comply with 49 CFR Part 26.29(b). MTD does not have an implemented prompt payment and retainage verification process, as required by 49 CFR Part 26.29.	MTD must submit to FTA: <ul style="list-style-type: none"> • An updated DBE Program Plan that includes an updated retainage clause and a procedure for ensuring prompt payment and retainage payment terms are included in prime contracts and subcontracts contracts and are monitored, as required by 49 CFR Part 26.29. • Evidence of implementation of prompt payment and retainage monitoring on all current contracts. 	60 days
11.c	Legal Remedies	26.37	D	MTD did not implement appropriate legal remedies to ensure compliance by all program	MTD must submit to FTA: <ul style="list-style-type: none"> • An updated DBE Program Plan including procedures 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
				participants, as required by 49 CFR Part 26.37.	for ensuring all FTA-funded prime contracts include legal remedies and for using these provisions where issues are identified, as required by 49 CFR Part 26.37. <ul style="list-style-type: none"> Evidence of implementation of legal remedies on all current contracts, where applicable 	
12.	Certification Standards	26.67-26.71	ND			
13.	Certification Process					
13.a	Onsite Visit	26.83	NA			
13.b	Annual Affidavit	26.83	NA			
13.c	Interstate Certification	26.85	NA			
13.d	Certification Appeals	26.86	NA			
14.	Record Keeping and Enforcements					
14.a	Bidders List and Reporting DBE Participation	26.11	D	MTD does not maintain a bidders list as required by 49 CFR Part 26.11(c). Accurate information on DBE goal achievement has not been reported to FTA, as required by 49 CFR Part 26.11.	MTD must submit to FTA: <ul style="list-style-type: none"> An updated DBE Program Plan that includes: <ul style="list-style-type: none"> an implemented process to create and update the bidders list, a procedure for ensuring accurate completion of 	60 days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

Item	Requirement of 49 CFR Part 26	Ref.	Review Finding(s) D or ND	Deficiency	Corrective Action(s)	Response Days/Date*
					future Semi-Annual Uniform Reports. <ul style="list-style-type: none"> • Revised Uniform Reports for FFY 2016-2018. 	
14.b	Monitoring	26.37	D	The recipient did not have an implemented monitoring process that included written certification that contract records were reviewed and work sites monitored, as required by 49 CFR Part 26.37.	MTD must submit to FTA: <ul style="list-style-type: none"> • An updated DBE Program Plan that includes: <ul style="list-style-type: none"> ○ a procedure, including identified roles and responsibilities, for monitoring prime contractor compliance with contract terms and documenting monitoring, including monitoring of payment, substitution, termination, commercial useful function, and certifying monitoring efforts. 	60 Days & Tracked by Triennial Review process

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency; NA = Not Applicable; AC = Advisory Comment, *Within the date of the Final Transmittal

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Attachment A: DBE Review Notification Letter

U.S. Department
Of Transportation
Federal Transit
Administration

Headquarters

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

November 28, 2018

Karl Gnadt
Managing Director
Champaign-Urbana Mass Transit District
1101 E. University Ave.
Urbana, IL 61802-2009

Dear Mr. Gnadt:

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 Champaign-Urbana Mass Transit District (MTD) has been selected for a review of its overall DBE program to take place March 12 – March 14, 2019.

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

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a three-day period. FTA has engaged the services of Calyptus Consulting Group, Inc. (Calyptus) of Boston, MA to conduct this compliance review. Calyptus 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 **March 12, 2019, at 9:00 a.m. ET**, to introduce the Calyptus team and FTA representatives to MTD. 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 the liaison with the

review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward these materials to the following contact person:

Dr. George Harris
Calyptus Consulting Group, Inc.
43 Thorndike Street
Cambridge, MA 02141
617.577.0041
gharris@calyptusgroup.com

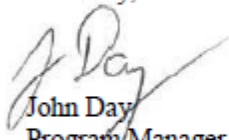
We request the exit conference be scheduled for **March 14, 2019, at 3:00 p.m. ET**, to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

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 MTD, will be considered public documents subject to release under the Freedom of Information Act, upon request.

MTD 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: Kelley Brookins, Regional Administrator, FTA Region V
Gregory Danis, Acting Regional Civil Rights Officer, FTA Region V
Brenda Elibracht, Chief Administrative Officer, MTD

Disadvantaged Business Enterprise Program Compliance Review

Enclosure 1

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

1. Current DBE Program Plan (which should include MTD's organization chart).
2. Current organizational chart showing DBE staffing allocations and reporting structure. Current DBE staff positions filled and vacant.
3. Most recent DBE goal methodology submissions.
4. Any ARRA reports. The reviewers are able to access MTD's other ARRA and DBE semi-annual reports through FTA's TrAM system or as attachments to the TrAM recipient screen.
5. Current Memorandum of Understanding or similar documents for MTD's participation in the Unified Certification Program.
6. Any additional certification criteria/guidelines used by MTD in determining DBE eligibility, if applicable.
7. The DBELO official position description.
8. Current MTD DBE Directory.
9. Provide the number of DBE applications MTD has reviewed, approved, and denied each year from the last three fiscal years. Include the number of DBE applications and the names of applicants that are currently pending review.
10. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts, and worksite locations, where applicable.
11. Provide contract records to include:
 - a) the last 15 FTA-assisted contracts awarded by MTD within the recent fiscal year
 - b) the last 15 FTA-assisted contracts completed by MTD within the recent fiscal year
 - c) the last 15 FTA-assisted contracts with DBE goals awarded by MTD within the recent fiscal year
 - d) the last 15 FTA-assisted contracts with DBE goals completed by MTD within the recent fiscal year.
12. Description of outreach to DBE community, including a list of specific

Disadvantaged Business Enterprise Program Compliance Review

outreach efforts in the past three years.

13. The identification of firms, if any, that have worked on MTD's projects and have graduated from MTD's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified.

14. Information identifying FTA-funded contracts awarded during the current and at least two preceding Federal Fiscal Years by MTD and its subrecipients. The federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.

15. Documentation showing/establishing the "Good Faith Efforts" criteria established by MTD, including verification that firms named on projects sponsored by the grantee are certified by the Unified Certification Program.

16. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment verification procedures and monitoring and enforcement mechanisms).

17. Small Business element as implemented by MTD.

18. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer.

19. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years.

20. List of all bids accepted for the RFPs provided in response to Item 15.

21. Shortfall analysis and corrective action plan for the last three (3) years.

22. List of all subrecipients and the amount of FTA funds allocated to each subrecipient in the last three years.

23. Names of interested party (external organizations) with which MTD has interacted on the DBE program issues.

24. Any current or outstanding complaints received concerning MTD's DBE program over the past five (5) years.

25. Other pertinent information determined by MTD's staff to shed light on its DBE compliance efforts.



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

Headquarters

5th Floor – East Bldg., TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

June 24, 2019

Mr. Karl Gnadt
Managing Director
Champaign-Urbana Mass Transit District
1101 E. University Ave.
Urbana, IL 61802-2009

RE: Disadvantaged Business Enterprise (DBE) Compliance Review Final Report

Dear Mr. Gnadt:

This letter concerns the Federal Transit Administration's (FTA) DBE Review of Champagne-Urbana Mass Transit District (MTD) conducted from March 12-14, 2019. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page. As of the date of this letter, the Final Report is a public document and is subject to dissemination under the Freedom of Information Act of 1974.

FTA's 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 our ongoing oversight efforts, FTA conducts a number of onsite compliance reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA utilizes the findings from these reviews to provide technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise specified, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please submit your responses to me at john.day@dot.gov.

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident MTD will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at (202) 366-1943 or via email at guljed.birce@dot.gov.

Sincerely,

John Day
Program Manager for Policy
and Technical Assistance

cc: Kelley Brookins, Regional Administrator, FTA Region 5
Marjorie Hughes, Regional Civil Rights Officer, FTA Region 5
Brenda Elibracht, Chief Administrative Officer, MTD