

# FTA

F E D E R A L   T R A N S I T   A D M I N I S T R A T I O N

## Chicago Transit Authority Disadvantaged Business Enterprise Program Compliance Review

Final Report  
August 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 the Chicago Transit Authority's (CTA) Disadvantaged Business Enterprise (DBE) program implementation. The compliance review team (1) examined this agency's DBE program procedures, management structures, actions, and documentation; (2) collected and analyzed documents and information from the Federal Transit Administration (FTA) and CTA; and (3) interviewed CTA officials, DBE firm representatives, prime contractor representatives, and community-based organizations that advocate on behalf of minority- and woman-owned businesses. The four-day review included interviews, assessments of data collection systems, and a review of program and contract documents.

### CTA's DBE program includes the following positive program elements –

#### Positive Program Elements

- **DBE Program Staff** – CTA's Diversity Program Senior Manager and staff were knowledgeable, capable, and notably committed to implementing and effectively managing the DBE program.
- **DBE Liaison Officer** – CTA's DBE Liaison Officer was knowledgeable, communicated regularly with CTA's president, and was actively involved in the administration and management of the DBE program.
- **Public Participation** – CTA created regular and numerous opportunities for the public to participate in DBE goal setting and other DBE program matters.
- **Race-Conscious DBE Participation** – CTA implemented all of the required and most of the recommended race-neutral and small business measures to maximize race-neutral DBE participation.
- **Good Faith Efforts** – CTA effectively implemented required Good Faith Efforts requirements.
- **Counting DBE Participation** – CTA effectively implemented procedures for counting DBE participation.
- **Recordkeeping and Enforcement** – CTA effectively monitored, recorded, and reported DBE participation, maintained Bidders List information, and enforced program DBE program compliance through its implementation of its B2GNow Diversity Management System.

### The Program has the following administrative deficiencies –

#### Administrative Deficiencies

- **DBE Policy Statement** – In its DBE Policy Statement, CTA identified its DBELO by job title, however, the title referenced in its DBE Policy Statement was not the job title of its DBELO.
- **Contract Assurance** – CTA did not include the required nondiscrimination assurance in its entirety in all FTA-assisted contracts or subcontracts.
- **Prompt Payment** – CTA did not include the required prompt payment clause in all subcontractor agreements as it said it would.
- **Certification Procedures** – CTA did not have procedures for reporting and periodically monitoring DBE denials and decertifications to the Illinois Department of Transportation.

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

- **DBE Financial Institutions** – CTA did not investigate the services offered by minority-owned depository institutions. CTA did not describe in detail how and how often it investigated and considered minority-owned depository institutions for its own use.
- **Goal Calculation** – CTA's FY 2019–21 Step 1 calculation included past performance considerations, and its method for determining the relative availability of ready, willing, and able DBEs included market area inconsistencies and source data applicability issues.
- **Transit Vehicle Manufacturers** – CTA did not document required TVM award procedures in its DBE Program Plan. CTA did not confirm it awarded transit vehicle contracts to FTA-approved TVMs or report TVM contract awards, as required.

To encourage the attainment of future goals and the continued implementation of CTA's DBE program in good faith, this report highlights several steps to help ensure CTA's compliance with 49 CFR Part 26 and the overall success of its DBE program.

## I. General Information

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

<b>Grant Recipient:</b>	Chicago Transit Authority
<b>City/State:</b>	Chicago, IL
<b>Grantee Number:</b>	1182
<b>Executive Official:</b>	Dorval R. Carter, Jr
<b>On-site Liaison:</b>	JuanPablo Prieto
<b>Dates of On-site Visit:</b>	December 11-14, 2018
<b>Site Visit Location:</b>	567 W Lake Street Chicago, IL 60661

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## **2. Jurisdiction and Authorities**

The Secretary of Transportation authorized the Federal Transit Administration (FTA) Office of Civil Rights to conduct Civil Rights Compliance Reviews. FTA conducts compliance reviews to ensure compliance of applicants, recipients, and subrecipients with Section 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."

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

The primary purpose of the compliance review is to determine the extent to which CTA has implemented 49 CFR Part 26, as represented in its DBE Program Plan. FTA intends this compliance review to be a fact-finding process to (1) assess CTA'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 to directly investigate discrimination against individual DBE firms or complainants or to adjudicate these issues on behalf of any party.

### 3.2 Objectives

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

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

The objectives of this compliance review are to:

- Determine whether CTA is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of CTA'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 CTA's DBE Program Plan from a variety of sources, including DBE program managers, other CTA management personnel, DBEs, prime contractors, and other stakeholders.

## 4. Background Information

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

### 4.1 Introduction to CTA and Organizational Structure

The Chicago Transit Authority (CTA) was created in 1945 pursuant to the Metropolitan Transportation Authority Act passed by the Illinois State Legislature. A seven-member Board of Directors governs the CTA. The Mayor of the City of Chicago appoints four members with the advice and consent of the Governor and the Chicago City Council. The Governor of the State of Illinois appoints the remaining three board members with the advice and consent of the Mayor of Chicago and the State Senate. CTA's President, hired by the Board, is responsible for day-to-day operations. CTA provides bus and rail services in the City of Chicago and to 35 adjoining suburban communities. CTA serves a population of over 8.6 million and provides approximately 479.5 million trips per year. CTA's transit vehicle fleet includes 1,140 heavy rail cars and 1,579 buses.

CTA's President directs the following organizational units: Internal Audit; General Counsel; Finance; Transit Operations; Infrastructure; Planning; Administration; Safety, Security & Control Center Operations; Strategy, Data & Technology; Red Purple Modernization; Communications; and Legislative Affairs & Government and Community Relations. The Offices of General Counsel, Internal Audit, and Finance have a dual reporting relationship in that they report to the CTA President and the Chair of the Board. CTA's Diversity Programs Department (DPD) within the Office of Administration is responsible for administering the DBE Program.

DPD is led by a Senior Manager, who serves as the DBE Liaison Officer (DBELO) for the CTA. The DBELO has a staff of 14, comprised of a Project Specialist, a Compliance Manager, two (2) Senior Compliance Specialists, three (3) Compliance Specialists, a Certification Manager, two (2) Certification Specialists, an Outreach Project Consultant, an Outreach Coordinator, a Workforce Project Consultant, and a Workforce Coordinator. Certification staff is responsible for reviewing certification packages including new DBE and SBE certification applications, annual "No Change Affidavits", interstate DBE applications, and expansion requests. Certification staff also conducts site visits to applicant firm office locations. The Small Business Development unit focuses on educating the small business community about contracting opportunities at the CTA. The Small Business Development staff hosts and attends networking and educational events in order to connect with DBE and potential DBE firms. The Compliance unit focuses on monitoring DBE participation and enforcing DBE program requirements (e.g., prompt payment). CTA requires that all DPD staff attend the National Transit Institute's DBE training course within one year of hire.

In addition to being adequately staffed, CTA implemented its B2GNow Diversity Management System (B2GNow) to automate and support DBE application processing, program monitoring and enforcement, outreach, and reporting. B2GNow is a third-party web-based application designed to assist agencies facilitate and manage compliance with 49 CFR Part 26 requirements.

CTA submitted triennial DBE participation goals for its overall DBE program and separate DBE participation goals for large capital projects. At the time of this compliance review, CTA had two large capital projects underway, the Red Purple Modernization Program and the Your New Blue Improvement Project, for which DBE goals were established and attainment tracked separately from its overall DBE program goal.

## 4.2 Budget and FTA-Assisted Projects

According to the CTA's *2017 and 2018 Budget Books (FINAL)*, CTA's transit operating and capital budgets for FY 2017 and FY 2018 were as follows:

CTA Operating Budget	FY 2017	FY 2018
<b>Revenue</b>	<b>(in thousands of dollars)</b>	
Passenger Fares	\$581,250	\$583,105
Reduced-fare subsidies	28,322	28,322
Advertising and concessions	35,165	38,347
Investment Income	\$1,121	\$1,600
Statutory Required Contributions	\$5,000	\$5,000
Other Revenue	\$35,489	\$51,202
<b>Total System Generated Revenue</b>	<b>\$686,347</b>	<b>\$707,576</b>
Public Funding (Sales Tax, etc.)	\$837,892	\$806,919
<b>Total Operating Revenue</b>	<b>\$1,524,239</b>	<b>\$1,514,495</b>
<b>Expenditures</b>		
Labor	\$1,050,436	\$1,046,059
Material	89,761	\$92,425
Fuel	\$33,946	\$33,576
Power	\$31,365	\$31,369
Other Expenditures	\$319,316	\$311,066
<b>Total Operating Expenditures</b>	<b>\$1,524,239</b>	<b>\$1,514,495</b>

CTA Capital Budget	FY 2017	FY 2018
<b>Sources of Funds</b>	<b>(in thousands of dollars)</b>	
FTA (Sections 5307, 5337, and 5339)	\$291,616	\$292,842
Other Federal (CMAQ, 5309, and DHS)	\$292,012	\$135,221
Local Funding (CTA and RTA Bonds)	\$698,875	\$468,740
<b>Total Available Funding</b>	<b>\$1,282,503</b>	<b>\$896,802</b>
CTA Share	\$27,780	\$485
RPM Operating Funds	\$61,749	---
<b>Total Programmed Funds</b>	<b>\$1,372,032</b>	<b>\$897,287</b>
<b>Expenditures</b>		
Bus Rolling Stock	\$39,881	\$28,254
Rail Line Improvements	\$970,158	\$415,225
Power & Way and Electrical, Signal, etc.	\$19,666	\$33,500
Power & Way, Track and Structure	\$17,140	\$137,945
Rail Rolling Stock	\$62,515	\$50,133
Miscellaneous Systemwide Projects	\$230,562	\$203,044
Support Facilities & Equipment	\$32,109	\$29,187
<b>Total Capital Projects</b>	<b>\$1,372,032</b>	<b>\$897,287</b>

The FY 2017 and FY 2018 operating budgets for CTA's Diversity Programs Department was \$1,885,778 and \$2,039,333, respectively.

In the past few years, CTA completed the following noteworthy projects:

- New Wilson Station (2018)
- 3200 Series railcar overhaul (2018)
- Ravenswood Loop Connector Track Improvements (2016)
- 95th Street Terminal Improvement Project (2018)
- Garfield Station Renovation (2019)
- Illinois Medical District Station Rehabilitation (2018)
- Your New Blue: 5 Station Renovations (Addison, Irving Park, Montrose, Harlem, and Cumberland) (2017)
- Upgraded Subway Cellular Infrastructure (2016)
- Your New Blue: 3 Station Improvements (California, Western, and Damen) (2016)

CTA is currently implementing the following noteworthy projects:

- Red and Purple Modernization Phase I
- Your New Blue: O'Hare to Jefferson Park Signal Upgrades and Special Trackwork
- Your New Blue: Grand, Chicago, and Division Station Renovations
- 4000 Series Bus Overhaul
- Ravenswood Loop Connector Signal Improvements
- Red Purple Modernization: Broadway Substation Upgrade
- Your New Blue: East Lake/Milwaukee/Illinois Substation Upgrade
- Your New Blue: Belmont Gateway and Jefferson Park Intermodal Improvements
- 20 All Electric Transit Buses and Design/Build and Installation of up to 13 Charging Stations
- 7000 Series Railcars

CTA plans to pursue the following noteworthy projects in the next 3 to 5 years:

- Red Line Extension
- Your New Blue: Logan Square Station Renovations
- South Mainline/Lake Line Track Improvements

Below is a list of CTA's executed and active grants at the time of the review.

Grant Number	Grant Amount	Year Executed	Description
IL-2018-028-00	\$125,070,746	2018	FY2018 Section 5337, 5307 and 5339 Rail, System Upgrade, Bus Maintenance and Replacement
IL-2017-002-02	\$356,131,640	2018	RPM Modernization FFGA 2016
IL-2018-013-00	\$380,350	2018	Enhanced Mobility of Seniors & Individuals with Disabilities - Tactile Signage at CTA Bus Stops
IL-2017-014-02	\$151,008,148	2018	FY2017 Section 5337, and 5307 Rail, Bus Maintenance and Replacement and System Upgrades
IL-2018-004-00	\$25,000,000	2018	Garfield Gateway Station
IL-2017-024-00	\$11,538,774	2017	Section 5339 Bus Maintenance and Replacement
IL-2016-023-01	\$149,619,219	2017	FY2016 SECTION 5337
IL-2017-006-00	\$400,000	2017	Integrated Fare Systems MOD - Mobility on Demand Sandbox Program
IL-2017-031-00	\$1,078,300	2017	Safety Research and Demonstration (SRD) Program
IL-2017-023-00	\$3,620,000	2017	Section 5339 LoNo Discretionary - Electric Buses, Chargers
IL-2016-001-00	\$1,250,000	2016	Transit-Oriented Development (TOD) Planning
IL-2016-033-00	\$4,056,000	2016	FY 2016 CMAQ
IL-2016-035-00	\$10,896,512	2016	FY 2016 Section 5339 and LAPSING 5337
IL-90-X738-01	\$125,120,682	2015	FY 2015 Equipment/Maintain Structures
IL-64-7001-00	\$750,000	2015	Second Chance Program
IL-34-0006-01	\$12,131,841	2015	FY 2015 Replace/Overhaul Buses
IL-34-0001-02	\$23,383,471	2015	Gross Project Cost Reduction/Asset Sale
IL-54-0005-01	\$129,902,630	2015	FY2015 Rehab Infrastructure/Bond Repay
IL-03-0285-00	\$35,000,000	2014	FY2014 RPM Project Development
IL-90-X729-00	\$125,579,498	2014	FY2014 Replace Buses/Bond Repayment



Grant Number	Grant Amount	Year Executed	Description
IL-95-X040-00	\$4,056,000	2014	FY 2014 Replace Buses-Artic Hybrid
IL-54-0001-01	\$126,401,143	2014	FY 2013 Equip/Fac.Maint/Bond Repay-Deob
IL-04-0072-00	\$6,000,000	2014	FY2011 Wilson Intermodal Access-LAPSING
IL-54-0004-00	\$129,579,930	2014	2014 RT Overh/Station Rehab/ Bond
IL-05-0065-01	\$95,927,170	2013	FY12 Acq.Rail Cars, Bond Debt Serv., PM
IL-90-X713-00	\$123,453,366	2013	FY2013 Replace Buses/Bond Repayment
IL-04-0082-00	\$23,000,000	2013	FY2012 Acq. Buses/Hoists; Asset Manage
IL-55-0001-00	\$500,000	2013	FY2013 Blue Line West Corridor Planning
IL-90-X693-02	\$16,509,460	2013	FY12 Shop Equip/Risk Manage. Implement
IL-04-0081-00	\$10,000,000	2013	FY2012 Expand 95th Street Terminal
IL-57-X024-00	\$43,230	2013	FY2012Transit Guides/Visually Impaired
IL-39-0010-00	\$2,000,000	2012	FY2011 Chicago Lakefront Corridor A
IL-03-0283-00	\$1,500,000	2012	FY10 West.Cor.-PE/Final Design; LAPSING
IL-95-X014-01	\$3,772,400	2012	FY2009 Purchase Electric Buses-LAPSING
IL-05-0063-02	\$191,940,254	2012	FY11 System Track Rehab/Wilson Engr-NEPA
IL-03-0281-01	\$11,000,000	2011	FY2010 Jeffery Corridor BRT - Construct
IL-90-X646-02	\$275,590,611	2011	FY11 PM, Debt Service Reserve, Bus Lease
IL-03-0279-00	\$7,500,000	2011	FY11 Plg/EIS Red Line Ext/RPM; LAPSING
IL-04-0061-00	\$37,400,000	2011	FY10 SGR Facility Rehab/Asset Management
IL-95-X016-00	\$1,244,282	2010	FY 10 5307 CMAQ
IL-90-X536-00	\$45,042,933	2006	FY06 5307 Formula (TRC)
IL-90-X460-00	\$115,633,961	2003	Rehab/Replace Bus & Rail Facilities
IL-90-X433-00	\$115,798,354	2002	Rehab/Replace Bus & Rail Facilities
IL-90-X313-00	\$61,918,213	1997	SECTION 5307 - FORMULA

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### 4.3 DBE Program

FTA determined CTA to be one of the 50 largest transit authorities receiving federal financial assistance from the U.S. Department of Transportation (DOT). As a condition of receiving this assistance, CTA is responsible for complying with the regulations set forth in 49 CFR Part 26. Accordingly, CTA developed a DBE Policy Statement that outlined its goals and mission for the program and a DBE Program Plan that described its efforts pursuant to compliance with the regulations. CTA submitted its most recent DBE Program Plan, dated August 19, 2018, to FTA on November 28, 2018. CTA's Senior Manager, Diversity Programs served as CTA's Disadvantaged Business Enterprise Liaison Officer (DBELO) and was supported by 14 full-time staff in the agency's Diversity Programs Department.

CTA's FY 2016–18 overall DBE goal was 26 percent (23 percent race-conscious and 3 percent race-neutral) as was its proposed FY 2019–21 overall DBE goal. CTA used both race-neutral and race-conscious means to attain its overall goals. CTA exceeded its DBE goals in FY 2016 (achieving 51 percent DBE participation) and FY 2018 (achieving 35 percent DBE participation) and fell short of meeting its DBE goal in FY 2017 by less than 1 percent. Technical assistance was provided to CTA during this compliance review on goal setting, goal attainment monitoring, adjusting race-neutral and race-conscious goals as needed, and maximizing overall DBE goal attainment through race-neutral means.

CTA also had two major capital projects underway for which CTA established project goals for DBE participation separate from its overall goal. CTA's Your New Blue project goal was 22 percent (21 percent race-conscious and 1 percent race-neutral) and its Red Purple Modernization project goal was 20 percent (19 percent race-conscious and 1 percent race-neutral).

CTA was one of five certifying partners in the Illinois Unified Certification Program (IL UCP). At the time of this compliance review, the IL UCP had 2,355 certified DBEs in its DBE Directory, 312 of which were certified by CTA.

## 5. Scope and Methodology

### 5.1 Scope

FTA specifies a review of the implementation of the following DBE program components in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to the CTA DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions by CTA as well as by prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers, and types of work performed, made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (or does not) exist and efforts to address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts and proper mechanisms to implement the DBE goal [49 CFR 26.43–26.53]
- A shortfall analysis and corrective action plan when CTA did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include CTA seeking FTA approval to establish a project-specific goal for vehicle purchases [49 CFR 26.49].
- A nondiscrimination and a prompt payment clause included in all FTA-assisted contracts and a prompt payment verification process [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, and the proper supporting documentation [49 CFR 26.65–26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, an interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies [49 CFR Part 26.13]. The DBE program must also include monitoring and enforcement

mechanisms to ensure DBEs actually perform the work committed to DBEs at contract award [49 CFR 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11 and 26.55].

## 5.2 Methodology

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

The FTA Office of Civil Rights sent a notification letter to CTA that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas to be covered during the on-site visit. The letter also informed CTA of staff and other parties whom the review team would interview.

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

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

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

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

At the end of the review, FTA representatives, CTA staff, and the review team convened for the exit conference, during which FTA and the review team discussed initial observations with CTA.

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Participants in the compliance review are listed below.

**Chicago Transit Authority**

Dorval R. Carter, Jr., President  
Veronica Alanis, Chief Operating Officer  
JuanPablo Prieto, Senior Manager, Diversity Programs  
Karen Seimetz, General Counsel  
Jeremy V. Fine, Chief Financial Officer  
Tom McKone, Chief Administrative Officer  
Sanja E. Noble, Director, Treasury  
Ellen G. McCormack, Vice President Purchasing and Supply Chain  
David Biggs, Deputy General Counsel  
Donald Gismondi, Director, Capital Grants & FTA Interpretation  
Chynna S. Hampton, Project Consultant – Workforce Initiative, Diversity Programs  
Carol Morey, Chief, Infrastructure  
April Morgan, Acting Chief of Staff, Chairman's Office  
Chris Bushell, Chief RPM Officer  
Andrew Fuller, Chief Internal Auditor  
Jeff Hulbert, Senior Compliance Officer, Law Department  
Donald Dupree, Compliance Specialist, Diversity Programs  
Brittney Bowman, Compliance Manager, Diversity Programs  
Shavon Moore, Manager, Diversity Programs  
Jennifer Wilkins, Senior Compliance Specialist, Diversity Programs  
Brendon Witry, Senior Project Manager, Purchasing  
John Reinitz, Director, Purchasing

**Federal Transit Administration**

John Day, Program Manager, Policy and Technical Assistance, FTA Headquarters  
Janelle Hinton, Equal Opportunity Specialist, FTA Headquarters  
Marisa Appleton, Civil Rights Officer for Oversight, FTA Region 5  
Greg Danis, Acting Regional Civil Rights Officer, FTA Region 5  
Anthony Greep, Community Planner, FTA Region 5

**The DMP Group**

Maxine Marshall, Lead Reviewer  
John Potts, Reviewer  
Donald Lucas, Reviewer  
Khalique Davis, Reviewer

### 5.3 Stakeholder Interviews

During this DBE compliance review, the review team attempted to contact ten DBEs, four non-DBE prime contractors, and six minority and/or woman-owned business advocacy organizations (other interested parties) between December 11, 2018 and January 31, 2019. The purpose of the interviews was to get feedback from CTA DBE program stakeholders concerning CTA's FTA-assisted DBE program, actual experiences, positive program elements, and any issues, concerns, and complaints. The following is a description of the interview questions asked of each interviewee and a summary of the interview results.

#### **Disadvantaged Business Enterprises**

Four DBEs awarded FTA-assisted CTA prime contracts or subcontracts since 2015 were selected to be interviewed during this compliance review. Six additional DBEs from the DBE database were selected to be interviewed. Two of the DBE firms were interviewed. Interviewees were asked the following questions:

1. *How were you solicited for this project?*
2. *What type of equipment was required for scope of work performed?*
3. *Do you own this equipment? If leased/borrowed, identify company and arrangement?*
4. *Does the prime lease/lend equipment to you?*
5. *Has CTA conduct any on-site monitoring regarding your firm's participation on the contract?*
6. *Has your firm subcontracted any work on this project? If yes, what work was subcontracted? What is the name of the subcontractor? What is the amount of the subcontracted work?*
7. *Was retainage being withheld?*
8. *How was retainage addressed in your subcontract? If yes, what is the rate of retainage? Is CTA withholding retainage from prime? What is your firm's understanding of when you will be paid retainage amount withheld?*
9. *Has your original contract amount changed (additions or deletions)? If so, explain?*
10. *Have these changes been documented in writing?*
11. *Are there any disputes regarding work performance or payment? If so, describe?*
12. *Does prime pay you through third party/joint checks?*
13. *Have you experienced any issues while working on this contract? Prompt payment? Retaliation, etc.? If yes, how was the issue resolved?*
14. *How many FTA-assisted projects has your firm worked on with the CTA? Estimated of how many projects and the amounts of projects?*
15. *How many years has your firm been certified?*
16. *Has your firm expanded its business since becoming certified?*
17. *How many years has your firm been working on CTA's FTA-assisted contracts?*

The DBEs interviewed reported they responded to procurement solicitations, notification from an assist agency or solicitation from a prime contractor. The DBEs had worked on FTA-assisted CTA contracts. The DBEs interviewed had not leased equipment for the scope of work for which they were contracted. One of the DBEs interviewed confirmed CTA had conducted onsite project monitoring. None of the DBEs interviewed subcontracted out any of their work or reported any issues with prompt payment from prime contractors or CTA. One of the DBEs reported receipt of a contract change order for additional work. None of the DBEs interviewed reported complaints or issues with CTA's DBE program.

### **Prime Contractors**

Two non-DBE prime contractors currently working on FTA-assisted contracts were interviewed during this compliance review. Interviewees were asked the following questions:

1. *How does prime solicit DBE work?*
2. *Has prime had any work performance issues with DBEs?*
3. *Has the prime substituted a DBE with another non-DBE subcontractor?*
4. *Does the prime lease/lend equipment to DBEs?*
5. *Has CTA conducted any on-site monitoring regarding DBE participation on the contract?*
6. *How soon does prime pay subcontractor after receipt of payment from CTA?*
7. *Is the prime withholding retainage from DBEs on this project? If yes, what percentage?*
8. *At what point will that retainage be reduced and/or returned to the DBEs?*
9. *How is DBE work considered when submitting change order requests?*
10. *Has prime made any joint check payments to DBEs?*

One of the prime contractors solicited DBE subcontractors using ads in the local paper or during pre-bid meetings hosted by CTA. The other contractor solicited DBE participation from DBEs it had worked with previously. Both prime contractors interviewed reported issues with DBE performance. One prime contractor experienced delays and had to substitute DBEs due to complications with the DBE subcontractors. Neither of the prime contractors reported making equipment available to their DBEs to perform work. Both contractors had regularly communicated project-related information to CTA and reported observing CTA conducting onsite monitoring activities. One of the prime contractors withheld retainage from its DBEs. Both prime contractors paid retainage to subcontractors as work was completed and approved by CTA. Both prime contractors reported DBE participation considerations when making change orders to contracts. One prime contractor reported making joint check payments to DBEs with prior approval from CTA. Both prime contractors interviewed reported they would like CTA to do a better job of vetting DBEs to ensure they are qualified to perform work for which they were certified.

### **Interested Parties**

Six stakeholder organizations were contacted for interviews to gain insight into how the CTA works with external organizations and the small minority and women-owned business community. The organizations contacted were:

- US Pan Asian American Chamber of Commerce – Mid-West
- Chicagoland Black Chamber of Commerce
- Illinois Hispanic Chamber of Commerce
- Latinos Progressando
- The Illinois Black Chamber of Commerce
- Hispanic American Construction Industry Association

The interview questions included:

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

Two stakeholders responded to the interview request. Both of the agencies were familiar with CTA's DBE program, and one of the agencies had been requested to participate in the development of or comment on CTA's DBE goals. The agency was a member of the CTA DBE Advisory Committee. Both of the agencies interviewed served as CTA assist agencies and disseminated information on CTA contracting and subcontracting opportunities. The Director of Operations for one agency received emails from CTA notifying them of contracting opportunities on a regular basis. Neither agency received requests to provide referrals for contracting opportunities. Both agencies reported participating in CTA-hosted DBE outreach events. Both agencies interviewed generally felt CTA's DBE program was effective and were not aware of any concerns with the program. One agency expressed an interest in seeing CTA provide additional training to DBEs so they can better perform on CTA contracts.



## 6. Findings and Advisory Comments

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

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

Findings of deficiency always require corrective action and/or additional reporting and are expressed as follows:

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

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

### 6.1 DBE Program Plan

#### Basic Requirement (49 CFR Part 26.21)

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

#### Discussion

During this compliance review, deficiencies were found with this requirement. DOT DBE regulations required CTA to develop and submit a DBE Program Plan that complies with 49 CFR Part 26 requirements and to update its plan when it made significant changes to its program. CTA submitted its most recent DBE Program Plan, dated August 19, 2018, to FTA on November 28, 2018. CTA updated its DBE Program Plan to reflect a change in the Disadvantaged Business Enterprise Liaison Officer's official title from "Interim Senior Manager, Diversity Programs" to "Senior Manager, Diversity Programs." At the time of the site visit, FTA reported in its Transit Award Management System (TrAMS) that the plan was "Under Review."

Although CTA was a certifying partner in the Illinois Unified Certification Program (IL UCP), it did not address by inclusion or by reference all required certification procedures in its DBE Program Plan. Specifically, CTA did not address procedures for Interstate Certification, Denial of Certification, or Summary Suspension of Certification.

## **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, CTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for Interstate Certification, Denial of Certification, and Summary Suspension of Certification, either by inclusion or by reference.

## **6.2 DBE Policy Statement**

### **Basic Requirement (49 CFR Part 26.23)**

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

### **Discussion**

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement. CTA's DBE Policy Statement contained all the required elements and was signed by CTA's current President on August 31, 2015. CTA's DBE Program Plan stated, *"The policy statement has been circulated throughout CTA as well as to DBE and non-DBE business communities that perform work on DOT-assisted contracts. The policy statement is also available on the CTA website."* The policy statement was included in its DBE Program Plan, which was available on its website. Although staff from different departments within CTA were aware of CTA's DBE Policy Statement and CTA provided documentation confirming frequent DBE program-related outreach to the DBE and non-DBE communities, CTA could not provide documentation confirming that it circulated its DBE Policy Statement throughout the agency or that it distributed the statement to the DBE and non-DBE business communities.

In addition, CTA's policy statement stated that its Disadvantaged Business Enterprise Liaison Officer (DBELO) was the "Director of Diversity Programs," however, in the DBE Liaison Officer section of its DBE Program Plan, CTA identified the Senior Manager, Diversity Programs as its DBELO.

### **Advisory Comments**

CTA was advised to distribute its current policy statement via email to both contractors and CTA staff. CTA was advised to update its DBE Policy Statement to correct the reference to its DBELO.

## **6.3 DBE Liaison Officer**

### **Basic Requirement (49 CFR Part 26.25)**

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

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## Discussion

During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, CTA identified its Senior Manager, Diversity Programs (SMDP) as its DBELO. CTA's DBELO was knowledgeable and fully committed to the administration and management of CTA's DBE Program and was sufficiently supported by a qualified staff of 14 (a Project Specialist, a Compliance Manager, two (2) Senior Compliance Specialists, three (3) Compliance Specialists, a Certification Manager, two (2) Certification Specialists, an Outreach Project Consultant, an Outreach Coordinator, a Workforce Project Consultant, and a Workforce Coordinator). At the time of the site visit, the Compliance Manager and Workforce Coordinator positions were vacant, however, CTA was actively looking to fill the vacancies. CTA's General Counsel, Chief Financial Officer, VP Purchasing & Warehousing, and Chief Infrastructure Officer also supported the DBELO in the administration of CTA's DBE program.

The SMDP's official job description included the following position summary:

*Oversees design, development and administration of CTA Disadvantaged Business Enterprise (DBE) programs to ensure they are in compliance with federal and state laws relating to DBE and Equal Employment Opportunity (EEO) participation. Develops, recommends, and executes outreach functions; educates and provides consultations to senior management on diversity programs ensuring goals are effectively met.*

The job description also detailed the amount of time allocated by the DBELO to the management of specific elements of the DBE program. The DBE program elements included in the SMDP's job description generally aligned with the DBELO responsibilities described in CTA's DBE Program Plan, as follows:

1. *Develop, monitor and provide the implementation and continuing evaluation of the DBE Program;*
2. *Work with all CTA departments to set the CTA's overall annual DBE participation goal;*
3. *Circulate the DBE Policy Statement to CTA personnel and the CTA's contracting community;*
4. *Identify contracts and procurements to ensure that general and/or contract- specific DBE goals are included in solicitations and monitor the results;*
5. *Review third-party contracts and purchase requisitions for compliance with this program;*
6. *Ensure that bid notices and requests for proposals are available to DBEs in a timely manner;*
7. *Provide DBEs with information and assistance in preparing bids, and obtaining bonding and insurance;*
8. *Analyze the CTA's progress towards goal attainment and identify methods for improvement;*
9. *Consult with legal counsel, project managers and CTA's Purchasing Department to determine contractor compliance with good-faith efforts;*
10. *Certify DBEs according to the criteria set by the DOT and act as liaison to the Illinois Unified Certification Program Committee;*
11. *Maintain and update a Directory of bona fide DBEs qualified to participate in the DBE Program;*

12. *Provide management and technical assistance for the expansion and overall business development of DBEs;*
13. *Publicize CTA business opportunities to DBEs;*
14. *Attend pre-bid, pre-award and pre-construction meetings to explain DBE Program requirements;*
15. *Monitor contractors' and subcontractors' compliance with their DBE participation commitments through the life of the contracts;*
16. *Plan and participate in training sessions for the purpose of informing potential bidders about the DBE Program and about business opportunities with CTA;*
17. *Ensure timely submission of DBE Program reports that are required by FTA;*
18. *Maintain accurate and up-to-date records demonstrating DBE efforts and progress within CTA;*
19. *Review the Affirmative Action Programs of contractors to determine their compliance with DBE Program requirements; advise contractors (if required) of the steps necessary to bring them into compliance regarding DBE utilization; and conduct compliance reviews as needed to ensure effective program implementation;*
20. *Investigate complaints and protests filed against the DBE Program;*
21. *Ensure that each contract and each subcontract executed by the prime contractor contains the assurances listed in Section 26.13;*
22. *Consult with CTA's Chief Financial Officer to increase investment of funds with minority and female financial institutions;*
23. *Establish contract-specific DBE goals where applicable;*
24. *Survey the DBE community and other relevant sources as part of the DBE participation goal-setting process;*
25. *Conduct outreach in order to increase business opportunities for DBEs at CTA;*
26. *Advise the CTA's President and Board on DBE matters and achievement;*
27. *Evaluate all change orders that affect the original contract value for potential DBE participation opportunities; and*
28. *Ensure that safeguards are instituted to mitigate any potential conflicts of interest including reporting relationships.*

Except for items 3 and 22 above (and as explained in section 6.2 and section 6.4, respectively, of this report), the DBELO demonstrated active involvement in fulfilling the responsibilities listed.

During the site visit, CTA provided documentation confirming that the DBELO had regular, direct and independent access to CTA's President. CTA provided printouts of several calendar items from the DBELO's electronic calendar, showing meetings the DBELO had with the President.

## **6.4 DBE Financial Institutions**

### **Basic Requirement (49 CFR Part 26.27)**

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

## Discussion

During this compliance review, deficiencies were found with this requirement. In its DBE Program Plan, CTA stated it investigated the “full extent of services offered by Minority Financial Institutions (MFI) owned and controlled by socially and economically disadvantaged individuals in the community and to make reasonable efforts to use these institutions and encourage prime contractors on DOT-assisted contracts to make use of these institutions.” In addition, CTA stated it included the following clause in its DBE Special Conditions included in all applicable contracts:

*Minority Financial Institutions - The Bidder is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals and community banks. Information about such institutions is available on-line at <http://www.federalreserve.gov/releases/mob/current/default.htm> and <http://www.fdic.gov/regulations/resources/cbi/data.html>.*

A review of CTA’s DBE Special Conditions showed the inclusion of the following:

*The Proposer is encouraged to utilize financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the authority as evidence of Proposer’s willingness to do business with DBEs. Information about such institutions is available in the Authority’s DBE Program Directory, which is available on-line at <http://www.federalreserve.gov/releases/mob/current/default.htm>.*

CTA also described its CTA Investment Policy, which called for the utilization of “approved minority and female owned financial institutions, money managers, and financial advisors in the investment of public funds.” In its DBE Program Plan and at the time of the site visit, CTA reported the following minority investment firms with which it invested public funds. These firms were: Cabrera Capital Markets (Hispanic), Loop Capital Markets (African-American), Rice Financial Products (African-American), Castle Oak Securities (African-American), and Blaylock Beal Van, LLC (African-American). During the site visit, CTA provided a Summary of CTA Investments-Broker Dealer Participation 2011 to 2018 (Q3), which reported the following:

**\$ represent total value of investment trades**

CTA Investments Total Broker Participation					
	Minority	%	Non-Minority (4)	%	Total Annual Investments
FY 2011	\$ 5,493,323,920	56%	\$ 4,400,943,132	44%	\$ 9,894,267,052
FY 2012	7,734,354,092	76%	2,468,796,542	24%	10,203,150,634
FY 2013	11,772,666,318	86%	1,872,309,447	14%	13,644,975,765
FY 2014	3,167,814,798	85%	548,456,591	15%	3,716,271,389
FY 2015	963,420,215	100%	3,999,981	0%	967,420,196
FY 2016	576,437,444	98%	11,388,518	2%	587,825,962
FY 2017	1,109,286,384	97%	34,975,011	3%	1,144,261,395
FY 2018 (Q3)	1,260,037,264	87%	180,457,089	13%	1,440,494,353

CTA Minority Owned Broker Participation					
	Hispanic Owned (2)	%	African-American Owned (4)	%	Total Annual Investments
FY 2011	\$ 2,391,978,562	24%	\$ 3,101,345,358	31%	\$ 9,894,267,052
FY 2012	6,394,350,453	63%	1,340,003,639	13%	10,203,150,634
FY 2013	9,947,832,623	73%	1,824,833,695	13%	13,644,975,765
FY 2014	1,365,717,783	37%	1,802,097,015	48%	3,716,271,389
FY 2015	505,982,362	52%	430,252,861	44%	967,420,196
FY 2016	387,615,761	66%	188,821,683	32%	587,825,962
FY 2017	389,189,347	34%	720,097,037	63%	1,144,261,395
FY 2018 (Q3)	491,353,117	34%	768,684,147	53%	1,440,494,353

Although CTA reported substantial investments with minority-owned investment firms, it could not confirm that it investigated the services offered by minority-owned depository institutions (of which there were many in the Chicago area compared to other areas of the country), which is what CTA encouraged prime contractors to do by referring them to Federal Reserve's list of Minority-Owned Depository Institutions. Moreover, CTA did not describe in detail how and how often it investigated and considered minority-owned depository institutions for its own use.

### Corrective Actions and Schedules

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

- Confirmation that its DBE Program Plan and DBE Special Conditions contain the same language regarding the use of minority and woman owned banks.
- An updated DBE Program Plan that describes in detail its process for investigating and considering the use of minority and woman owned depository institutions.
- Documentation confirming it has investigated and considered the use of minority and woman owned depository institutions since the DBE compliance review site visit.

## 6.5 DBE Directory

### Basic Requirement (49 CFR Part 26.31)

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

### Discussion

During this compliance review, no deficiencies were found with this requirement. CTA does not maintain a DBE Directory, as that is the responsibility of the Illinois Department of Transportation (IL DOT), the lead agency in the Illinois UCP. CTA is a certifying partner and adds certifications to the Directory. The DBE Directory is updated as changes occur. The DBE Directory is available through the ILUCP website administered by IL DOT.

CTA's DBE Program Plan stated the following:

*CTA utilizes the Illinois Unified Certification Program (ILUCP) DBE directory, a directory maintained by all the ILUCP Participants:*

- *Chicago Transit Authority*
- *Illinois Department of Transportation*
- *City of Chicago*
- *Metra*
- *Pace*

*The IL UCP DBE directory is updated on a regular basis per the ILUCP Procedures (Attachment 5). An online directory is available at the Illinois Unified Certification Program Website: (<https://webapps.dot.illinois.gov/UCP/ExternalSearch> )*

The DBE Directory contained all of the required elements, including name, address, phone numbers and types of work the DBEs performed.

## **6.6 Overconcentration**

### **Basic Requirement (49 CFR Part 26.33)**

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

### **Discussion**

During this compliance review, deficiencies were found with this requirement. In its DBE Program Plan, CTA stated the following:

*CTA will continue to review and monitor DBE Participation and statistical reports by the close of each Federal Fiscal Year in order to determine whether there is an overconcentration of DBEs. DBE participation on federally funded contracts will continue to be tracked by NAICS Codes. If CTA determines that DBE firms are over concentrated in certain types of work as to unduly burden the opportunity of the non-DBE Firms to participate in this type of work, CTA will consider appropriate measure to address over-concentration.*

CTA did not provide documentation confirming when and how it monitored DBE participation for overconcentration. Although CTA tracked DBE participation by NAICS code, it had not established when DBE participation reached the level of overconcentration. CTA had not defined what it considered overconcentration. During the site visit, the review team recommended establishing a percent threshold for DBE participation by NAICS code that when exceeded indicated overconcentration.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, CTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail its definition of overconcentration; its procedures for analyzing and determining if overconcentration exists, including the frequency



with which it will conduct overconcentration analyses; and the measures it will take to address overconcentration when it occurs.

## 6.7 Business Development Programs

### Basic Requirement (49 CFR Part 26.35)

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

### Discussion

During this compliance review, deficiencies were found with this requirement. FTA also issued an advisory comment with this requirement. In its DBE Program Plan, CTA stated it administered a BDP as part of its overall DBE activities, however, CTA did not do so in substantial accordance with 49 CFR Part 26 Appendix C guidance. Specifically, CTA's BDP did not define a program participation term or clearly define the program's development and transition stages for participant firms. Although CTA described and provided documentation of efforts to provide development assistance to DBE firms during the site visit, it did not describe its efforts as though they were elements of a structured BDP consistent with 49 CFR Part 26 Appendix C guidance or include a description of said efforts in its DBE Program Plan. In addition, CTA did not obtain FTA-approval for its BDP, as required.

Conversely, as an optional BDP element or stand-alone DBE development program, CTA's Mentor Protégé Program (MPP) was detailed and substantially consistent with 49 CFR Part 26 Appendix D guidance. The MPP included a thorough description of the program's purpose, benefits, participant incentives, eligibility requirements, and mentor-protégé relationship plan requirements (i.e., reporting, monitoring, areas of training, training goals, agreed-upon timelines, and progress milestones), and a relationship plan template to be used by mentor and protégé firms when developing plans. CTA explained that it had recently restructured and reconstituted its MPP and as such there had been limited participation at the time of the site visit. The review team reviewed 49 CFR Part 26 Appendix D with CTA, including the provision therein allowing for mentor firms to be paid with FTA grant funds for their participation in the MPP. This provision was highlighted for CTA's consideration as incentive to encourage mentor firms to participate in the program.

In a letter from FTA to CTA dated April 15, 2013, FTA described the terms of its concurrence with a previously submitted DBE Program Plan, as follows:

*We have reviewed your program in conjunction with the materials submitted in response to the DBE Compliance Review and have determined that CTA's program meets the requirements set out in DOT's DBE regulations. Notwithstanding FTA's concurrence, there are certain areas of concern. To address these concerns, CTA must provide FTA with CTA's DBE program with all special provisions, procedures, forms and other tools used to implement the program in accordance 49 CFR Part 26, within the body of the program document or as attachments to it.*

*Please also note that without additional information concerning the mechanisms being implemented to prevent the misuse of mentor-protégé program, namely: a method for ensuring that only certified DBEs may participate and safeguards related to the amount*



*and frequency of the use of protégés for DBE credit, FTA's concurrence does not extend to the Business Development Program proposed in response to §26.35. The items indicated in the attached checklist should be helpful in organizing your staff to address the identified issues.*

FTA included the following note in the referenced checklist:

*The BDP nor the counting section in this program addresses the requirement to not allow exorbitant DBE credit for mentors using protégés in accordance with §26.35(2).*

Although CTA's MPP was substantially consistent with 49 CFR Part 26 Appendix D guidance, CTA did not address the requirement to limit the amount of protégé participation mentor firms could count towards DBE goal attainment on contract goals.

Although CTA's BDP and MPP required improvements to fully comply with 49 CFR Part 26 Appendix C and Appendix D, the review team observed a willingness on the part of CTA to assist DBE's develop and compete in the marketplace. Considering CTA's DBE existing development assistance efforts, the number of DBEs in its service area, and CTA's commitment to the success of its DBE program, CTA was encouraged to address its BDP and MPP noncompliance to further demonstrate it was implementing its DBE program in good faith.

### **Corrective Actions and Schedules**

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

- Confirmation if it will or will not implement a BDP in accordance with 49 CFR Part 26 Appendix C guidance. If CTA decides to implement a BDP, in addition to its confirmation, it must submit an updated and detailed BDP for FTA review and approval. If CTA decides not to implement a BDP that is substantially responsive to 49 CFR Part 26 Appendix C guidance, in addition to its confirmation, it must submit an updated DBE Program Plan that states it does not have a BDP as prescribed by the regulation.
- An updated MPP that addresses the requirement to limit the amount of protégé participation mentor firms could count towards DBE goal attainment on contract for FTA review and approval.

### **Advisory Comment**

CTA was advised to address its BDP and MPP non-compliance, as described herein, and continue to implement a BDP and MPP.

## 6.8 Determining/Meeting Goals

### A) Calculation

#### Basic Requirement (49 CFR Part 26.45)

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

#### Discussion

During this compliance review, deficiencies were found with this requirement. FTA also issued advisory comments regarding this requirement. CTA submitted an interim overall DBE Goal on July 30, 2018 and, at the direction of FTA, submitted a final overall goal and methodology on October 10, 2018. CTA also submitted a separate project goal for the Phase 1 Red and Purple Modernization Project and methodology on October 14, 2018. The goal methodology documents did not include adequate detail to enable FTA to evaluate CTA's goals. Additionally, CTA's project goals did not include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

In its DBE Program Plan, CTA stated the following regarding development of its Overall Goal:

- *The CTA will utilize the services of a consultant to analyze available data, including census data, survey data and data on past CTA contracting with federal dollars when determining its overall agency DBE goal. This consultant will perform a detailed statistical analysis to assess the current availability data and a detailed statistical analysis that assesses the current availability of DBEs in relevant market and that assesses whether past or current discrimination has limited the current availability of DBEs in that market. In accordance with the methodology set forth in the regulations (49CFR Part 26.45), the CTA will then establish its overall DBE contract goal as follows:*
- **Step 1:** *The current availability of DBEs will be established by several methods. First, the pool of DBEs on CTA's vendor list will be identified and broken down by NAICS codes. Second, the pool of DBEs in the relevant market will be identified using Census Bureau data to examine the DBE availability in the industry subgroups in which CTA is spending the procurement dollars derived from DOT-assisted contracts. Then, the proportion of contractible dollars going to DBEs will be compared with the proportion of ready, willing and able DBEs in the marketplace.*
- **Step 2:** *In addition to measuring the relative availability of DBEs, the study will examine disparities in the ability of DBEs to obtain financing, bonding and insurance; data on employment and self-employment; and data on access to private and public markets for firms owned and operated by DBEs. If the study indicates that past and current discrimination has reduced the availability of DBEs in the relevant market, adjustments will made to estimate what the availability of DBEs would be absent discrimination.*
- *CTA will also examine past experience, confer with local experts, engage in public outreach, meet with technical assistance agencies and examine anticipated changes in*

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*DOT-assisted contracting over the next year to buttress the consultant's recommendation.*

CTA appeared to have a very thorough method of assuring that all FTA funded contracting opportunities were included in both the overall goals and the project goals. However, CTA did not describe a process for establishing project goals in its DBE Program Plan. During the site visit, the Review team learned that CTA had a well-maintained bidder's list for a more accurate Step One calculation of ready and willing DBEs and non-DBE firms.

At the time of the site visit, CTA was completing a disparity study to enable it to further refine and support its overall goal and had requested submission of an interim goal. However, since a disparity study was not a requirement, FTA requested that the overall goal be submitted and stated that adjustments, if necessary, could be made once the disparity study was completed.

On November 18, 2018, FTA issued a letter to CTA requested additional detail to support its overall goal. During the site visit, the review team provided technical assistance, found on the DOT website (DBE Tips for Goal Setting), regarding goal setting. These tips included the following general comments. The complete guidance can be found at:

<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

*As we have stressed before, it is extremely important to include all of your calculations and assumptions in your submission. In other words, you must "show your work." When you submit your overall goals (and the race/gender-neutral and race/gender-conscious portions of your goals), it is important that we can follow your thinking process. Set out explicitly what your data sources were, what assumptions you made, how you calculated each step of the process, etc. Along these lines, you should make sure that your goal submission contains a clear description of your public participation process, a good summary of the comments received during that process and a summary of what if any changes were made based on those comments. Without this information, it is difficult for anyone to evaluate the actual goal you have selected. Goal submissions that are not accompanied by a written explanation of how the goal was derived will be sent back for additional explanation.*

Additionally, CTA had two project goals, one for the *Your New Blue* (Project) and one for Phase One of the recently awarded *Red and Purple Modernization* (RPM) Capital Project in 2018. The DBE regulations, found at 49 CFR 26.45, state that a project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. CTA submitted overall goals for each project but did not project annual goals for the projects. Annual goals would allow CTA and FTA to measure progress and determine if adjustments were needed in future years to meet the project goal. Further, the goal methodology submitted for the RPM project goal did not include the detail described above for the overall goal. During the Compliance Review exit conference, FTA stated that it planned to send a similar letter, requesting additional detail for the RPM project goal.

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## Corrective Actions and Schedules

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

- A revised Triennial DBE Goal Setting Methodology for its overall goal for FY 2019–21 and for its RPM project goal that complies with 49 CFR Part 26.45 requirements and incorporates the DOT DBE goal-setting guidance found at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>. Additional guidance is available on FTA's DBE training website at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-training>.
- Annual goal projections for the time remaining year of the Your New Blue project goal and annual goal projections for each year of the Phase One RPM project goal.

## Advisory Comments

CTA was advised to include a discussion of project goals in its DBE Program Plan. It was also recommended that CTA use its bidder's list for a more accurate Step One calculation of ready and willing DBEs and non-DBE firms.

## B) Public Participation

### Basic Requirement (49 CFR Part 26.45)

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

### Discussion

During this compliance review, no deficiencies were found with this requirement. Per 49 CFR Part 26.45(g)(1)(i), CTA was required to do the following:

*(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:*

*(i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this*

*section, you may not implement your proposed goal until you have complied with this requirement.*

In its DBE Program Plan, CTA stated:

*When establishing or revising its agency DBE goal, CTA will:*

- 1. Consult with minority, women's and general contractor groups, community organization, and other officials and organizations.*
- 2. Publish (in general circulation and minority-focused media and trade publications) a notice announcing the overall goal and the fact that the goal and a description of the methodology used to establish it is available for inspection during regular business hours at the principal office of CTA for thirty (30) days following the publication. The public will be advised that it can submit comments to CTA on goals prior to the FTA goal submission but within forty-five (45) days of the date of publication.*
- 3. This information will be made available on the CTA website. The notice includes the address for CTA's principal offices where the program goals can be reviewed and the address to which comments could be sent.*

CTA provided substantial documentation of public participation for its overall project goal, as well as on-going participation in the DBE Program. CTA published notices announcing its overall goal and its RPM project goal in the City's largest general circulation newspaper, the Chicago Sun-Times and in four publications with predominately minority audiences (African American, Hispanic and Chinese). The notice was also posted on CTA's website for a 30-day period beginning on August 31, 2018. CTA also advertised and held an informational/discussion meeting on September 10, 2018 at the CTA headquarters office. Participants could also join the meeting by teleconference.

CTA reported that it had received three comments on its proposed goals and determined that it did not make any changes to the goals.

In addition to public participation prior to the submission of goals, CTA documented a significant engagement by the public in its DBE program. On a bi-monthly basis, CTA consulted with its DBE Advisory Committee, a group comprised of minority business advocacy groups and minority and non-minority businesses. The Committee's mission stated:

*The CTA's Diversity Programs' Disadvantaged Business Enterprise (DBE) Advisory Committee (The Committee) was formed to serve as a forum for fostering open communication about the concerns of DBE firms, Small Businesses, non-minority contractors and others. The Committee will provide recommendations for operational and administrative improvements to the CTA's Diversity Program.*

## C) Race-Neutral DBE Participation

### Basic Requirement (49 CFR Part 26.51)

Recipients must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the Small Business Element described in 49 CFR Part 26.39 is a mandatory race-neutral measure. The regulations provide additional examples of how to reach this goal amount.

### Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment regarding this requirement. CTA listed the following race-neutral measures in its DBE Program Plan:

1. *The invitation for bids/proposals which are publicly advertised will be solicited from an adequate number of known small businesses, providing them sufficient bid-submittal time prior to the date set for opening bids/proposals. Ensure that unreasonable requirements are not placed on firms in order for them to qualify to do business, such as unnecessary experience and excessive bonding. Also ensure establishment of delivery schedules, quantities and specifications, where the solicitation permits, that encourage participation by small and DBE businesses;*

The review team confirmed CTA was proactive in encouraging DBE and non-DBE small business participation on its FTA contracts. CTA's procurement page stated its "procurement web site is specifically targeted to manufacturers, dealers, sales agents, and any technically and financially responsible businesses," and included prominently displayed links to its procurement process, Small Business Program, and small business (including DBE) contracting opportunities. CTA clearly explained its procurement process, which included industry standard procedures and requirements. The first step in CTA's procurement process was the requirement for all interested firms (DBE and non-DBE) to register in B2GNow. CTA provided a link to B2GNow, which included additional information on CTA's small business and DBE programs. On both its Small Business Program and Small Business Contracting Opportunities web pages, CTA stated that its Small Business Program is "designed to give certified small businesses an opportunity to bid as primes on CTA contracts. Under the pilot program, selected contracts below \$3,000,000 in value will be set aside for small businesses to bid on as prime contractors." CTA also stated that "If you are currently certified as a Disadvantaged Business Enterprise (DBE) with one of the other four Illinois Unified Certification Program (IL-UCP) members you are considered a SBE and do not have to complete the verification process," and "Current DBE certified companies can opt into the SBE program by submitting a SBE Acknowledgement Form and a copy of your current DBE certification letter." CTA included the following language in all solicitations:

2. *Chicago Transit Authority hereby notifies all bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.*

The review team reviewed a random sampling of current solicitations posted on CTA's website (18CT102233342, 18FT102198137R, and 18OP80021) and all solicitations reviewed contained the language above.

CTA advertised all contracting opportunities in the classified section of the Chicago Sun Times and emailed all contracting opportunities to all firms registered in B2GNow.

*3. Unbundling large contracts to make them more accessible to small businesses;*

During the site visit, CTA provided documentation confirming the unbundling of contracts. The contract file for CTA contract B17OP00552 dated September 6, 2016 in the original amount of \$2,800,000 was unbundled into two contracts (\$1.8 million and \$1 million) to facilitate small business participation.

*4. Encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;*

CTA encouraged prime contractors to subcontract portions of work to DBEs on contracts with or without contract goals during all CTA-hosted pre-bid meetings and supplier networking events.

*5. Providing assistance to DBEs in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bidding process, reducing bonding requirements, use of progress payments when appropriate requirements are met, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing);*

CTA hosted numerous workshops through its Small Business Educational Series, coordinated and referred small businesses (including DBEs) to partner assistance agencies, and implemented a Mentor-Protégé Program, all of which provided assistance to small businesses (including DBEs) on how to obtain financing, bonding, and insurance to meet CTA contracting requirements. For example, CTA Small Business Educational Series covered topics such as bid preparedness and preparation and managing risk on CTA contracts. CTA's Mentor-Protégé Program curriculum included training on "Finance/Invoicing" and "Insurance and Bonding." The CTA small business assistance partner, Hispanic American Construction Industry Association, provided "Access to Capital" and "Bonding and Insurance" workshops. As did the Women's Business Development Center and Chicago Minority Business Development Council.

*6. Providing technical assistance and other services;*

CTA provided technical assistance to small businesses, including DBEs, as described above.

*7. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on CTA's mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);*

CTA carried out information and communications programs on contracting procedures and specific contract opportunities as described above.

8. *Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;*

CTA's DBE directory was made available online through the IL UCP website. The directory could be printed upon request.

9. *Institution of a Business Development Program which will assist DBE and other small businesses as new start-up firms (particularly in fields where DBE participation has historically been low), develop their capability to utilize emerging technology and conduct business through electronic media, help them improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency; and*

CTA's Business Development Program and Mentor-Protégé Program are discussed in Section 6.7 of this report.

10. *Implementation of a Railroad Protective Insurance Program to permit purchase of this insurance, when required by the contract, at lower costs than on the open market.*

The review team confirmed the existence of CTA's Railroad Protective Insurance Program implemented by CTA to "permit contractors with whom the Authority enters into short-term rights of entry for work on Authority property to purchase insurance through the Program and will also permit construction contractors on larger Authority projects to pay for railroad protective insurance on a sliding scale depending on the size of the construction project."

CTA was required to develop and implement a small business element that described its efforts to foster small business participation on FTA-assisted contracts. Per 49 CFR Part 26.51, the small business element taken as a whole is considered an additional race-neutral measure. CTA included a description of its Small Business Participation Plan in its DBE Program Plan implemented in response to the small business element requirement. 49 CFR Part 26.39 describes the requirement to foster small business participation and recommends the following measures:

*(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.*

*(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:*

*(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).*

*(2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.*



*(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.*

*(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.*

*(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.*

CTA's efforts to foster small business participation were described in, and collectively represented, CTA's Small Business Program, as follows:

- 1. Apply the Small Business Administration's (SBA) size standards for small businesses. Only those businesses that conform to the SBA size standards are eligible to participate in the SBE Program.*
- 2. Apply 49 CFR 26.67 to establish the economic threshold of a small business owner in order to be considered economically disadvantaged.*
- 3. Accept certifications by the entities listed on Attachment 7 to the DBE Special Conditions as revised from time to time by the DBELO.*
- 4. From time to time, the DBELO may add additional certifying agencies whose small business certifications CTA will accept. CTA will not accept self- certifications.*
- 5. DBE-certified firms will be grandfathered into the SBE Program.*
- 6. To be considered for the SBE Program, non-DBE firms that meet the size and economic thresholds described herein must submit a certification application, including all required supporting documents demonstrating Personal Net Worth and Business Size i.e. personal tax returns for the last three years and business tax returns for the last three years are small businesses.*
- 7. All participants in the SBE Program will be required to submit documentation supporting its certification as a small business when requested by CTA.*
- 8. Two types of contracts may be included in the SBE Program: (1) Select contracts under \$3,000,000 will be identified to allow and encourage small businesses to bid as prime contractors. (2) Certain larger construction contracts will require that prime contractors identify portions of the work to subcontract to only small businesses.*
- 9. Contract will be reviewed by the DBELO before advertisement to determine if the contract will be included in the SBE Program.*
- 11. At the time of submitting its bid on a larger construction contract included in the SBE Program, prime contractor bidders will be required to identify those specific portions of the work to be subcontracted only to small businesses. Compliance with this requirement will be an element of responsiveness to the bid.*

During the site visit, the review team discussed the difference in emphasis between race-neutral requirements described in 49 CFR Part 26.51 and efforts to foster small business participation required and recommended in 49 CFR Part 26.39, explaining that the former focused on technical assistance and information dissemination, and the latter focused on structuring

contracting requirements to facilitate competition by small business concerns. As described and implemented, CTA's Small Business Program included measures recommended in 49 CFR Part 26.39 that structured contracts to encourage small business participation. Specifically, CTA's Small Business Program elements 8, 9, and 10 substantially addressed 49 CFR Part 26.39 recommendations 1, 2, 3, and 5 above. In addition, and as previously reported, CTA described its practice of unbundling large contracts as a race-neutral measure. Moreover, CTA established small business participation goals on contracts with and without DBE goals. CTA tracked small business participation similar to the way it tracked DBE participation on contracts with DBE contract goals. CTA counted small business (DBE and non-DBE) participation on these contracts towards small business goal attainment. On contracts with small business participation goals, bidders were required to submit an SBE Schedules Package naming (and providing other details about) the small businesses participating on the contract. The SBE Schedules Package documented the allowance of small business joint ventures in order to encourage as much small business participation as possible.

Although two of CTA's race-neutral measures (i.e., unbundling contracts and encouraging prime contracts to subcontract portions of work that they might otherwise perform with their own forces) were more appropriately listed as small business program measures, in total, CTA was responsive to all requirements and recommendations described in 49 CFR Part 26.51 and 49 CFR Part 26.39.

### **Advisory Comment**

CTA was advised to include all measures related to technical assistance and information dissemination in its list of race-neutral measures, per 49 CFR Part 26.51; and to include all efforts to structure contracts to foster small business participation as elements of its Small Business Program, per 49 CFR Part 26.39.

## **D) Race-Conscious DBE Participation**

### **Basic Requirement (49 CFR Part 26.51)**

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

### **Discussion**

During this compliance review, no deficiencies were found with this requirement. In its FY 2019–21 goal methodology, CTA established a race-conscious goal of 23 percent, which represented the difference between its overall goal of 26 percent and its race-neutral goal of 3 percent.

In its DBE Program Plan, CTA stated the following with respect to race-conscious or contract goals:

*The CTA will use contract goals to meet any portion of its overall DBE goal it projects it will not be able to meet using race-neutral means. Contract goals will be established over the period to which the overall goal applies.*

*CTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities, and the size of the goals will be adapted to the*

*circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).*

CTA had a well-documented procedure for contract goal-setting in its *Diversity Program: Compliance Manual*, dated 11/15/18:

*The CTA's Diversity Programs Department is responsible for setting goals and evaluating Bidder/Proposer's DBE commitment on individual contracts. The Compliance Unit will only review a contract for a goal if the dollar value is **\$40,000** or more. The Compliance Unit also reviews contracts for the SBE Program for contracts under **\$3,000,000**. Currently four systems are used during the process: Outlook (Microsoft business software), RAP (CTA's recommended approval process), B2GNow (Business 2 Government software used by CTA for DBE Certification and the review completion.*

The written procedures detailed a step-by-step process beginning at intake and concluding with goal approval. The process began when the Compliance Manager received an email from the purchasing SharePoint site RAP stating that a goal request had been submitted and was waiting for review. The Manager would review the contract to ensure that all documentation was present. The Manager then assigned the request to a Compliance Specialist for review. The Compliance Specialist worked with the workforce unit that would be responsible for administering the contract. The Compliance Manual included screenshots of where contract goal status was entered and updated. The Compliance Specialist determined if the procurement was for a brand-new contract where there was no history in CTA of similar types of work. If this was the case, the B2GNow software would calculate a goal based on the relative availability of DBEs and non-DBEs in the work category, using the most specific NAICS codes. More often, the Compliance Specialist and B2GNow would utilize DBE achievement from similar CTA contracts to determine the contract goal. Once the initial goal was determined, the Compliance Manager would review and approve the goal proposal in B2GNow, before the Compliance Specialist prepared a goal memo document on the shared RAP drive. The Manager would schedule a signing session with the Department Head to answer questions and ensure acceptance of the goal.

During the site visit discussions, the Compliance Manager described this goal setting process and when asked, responded that the workforce units rarely dispute the proposed goal based on CTA's success in meeting the goals on prior projects with no adverse impacts on the quality or timeliness of the work.

For the past several years, CTA has generally met its goal using contract goals, indicating that race-conscious measures were necessary to achieve DBE participation.

## **E) Good Faith Efforts**

### **Basic Requirement (49 CFR Part 26.53)**

Recipients may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFEs) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract, a description of the work each DBE will perform, the dollar amount of DBE participation, written commitment to use the DBE(s) submitted in response to the contract goal, written confirmation from each DBE listed, or GFEs as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of

these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than five days after bid opening—as a matter of responsibility. The recipient must review bids by using either the responsiveness or responsibility approach and document which approach it uses in its DBE Program Plan.

## Discussion

During this compliance review, no deficiencies were found with this requirement. CTA's GFE requirements were described in its DBE Program Plan, complied with 49 CFR Part 26.53(b)(2)(i-vi) requirements, and were included in all solicitation documents and General Conditions for Construction Contract Provisions and DBE Special Conditions. CTA required contractors to submit GFEs as a matter of responsiveness for all invitations for bid solicitations. CTA required contractors to submit GFEs as a matter of responsibility for all requests for proposals and requests for qualifications solicitations. CTA required contractors to submit GFEs (i.e. DBE firm commitments) on its Schedule D form. A review of the following procurement files confirmed CTA implemented its GFE procedures and complied with 49 CFR Part 26.53(b)(2)(i-vi) requirements: C17FT101878289, C16FT101701191, B15FT04416, C16FI101819435, B17FT04489, C12FR101267045A, C15FI101728725.

Although CTA did not report instances of bidders requesting administrative reconsideration after being disqualified for failing to demonstrate GFEs, CTA's DBE Program Plan satisfactorily addressed procedures for administrative reconsideration of bids initially determined nonresponsive. In addition, CTA's DBE Program Plan satisfactorily addressed GFE requirements for prime contractors when substituting or terminating a DBE firm already under contract. Substitution and termination of DBE subcontractors by prime contractors required prior written approval from CTA. During the review, CTA reported few instances of DBE substitution and CTA's DBE-related GFE requirements were followed in each instance. CTA's DBE substitution procedures required the timely submission of DBE substitution requests by the prime contractor in B2GNow which tracked compliance with CTA DBE substitution procedures. After a prime contractor submitted a DBE substitution request in B2GNow, it was reviewed for approval by a compliance specialist and CTA's DBELO.

## F) Protecting Against Termination for Convenience

### Basic Requirements (49 CFR Parts 26.53 and 26.13)

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

## Discussion

During this compliance review, no deficiencies were found with this requirement. In the Good Faith Efforts section of its DBE Program Plan, CTA stated:

*CTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without CTA's prior written consent. Prior written*

*consent will only be provided where there is “good cause” for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.*

In addition, CTA’s DBE Special Conditions included a section titled “DBE Substitutions” that contained the following language:

*The Contractor shall neither terminate the subcontract for convenience, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without receiving prior written approval of the Director of Diversity. Such approval is required even if the DBE agrees with the change to the DBE’s contract desired by the Contractor.*

A review of eight procurements (C17FT101878289, C16FT101701191, C14FI101554098, B15FT0416, C16FI101819435, B17FT04489, C12FR101267045A and C15FI101728725) revealed that CTA’s FTA-assisted contracts included the required protections against termination for convenience.

## **G) Counting DBE Participation**

### **Basic Requirement (49 CFR Part 26.55)**

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

### **Discussion**

During this compliance review, no deficiencies were found with this requirement. CTA included a detailed description of how it counted DBE participation consistent with and responsive to the requirements described in 49 CFR Part 26.55 in both its DBE Program Plan and in its DBE Special Conditions.

To ensure it counted DBE participation accurately, CTA recorded the level and scope of work DBEs were contracted to perform in B2GNow. Before approving payment for prime contractor invoices, CTA confirmed that the DBE participation associated with invoices was within scope and eligible to be counted towards DBE goal attainment. In addition, CTA made regular site visits to project sites to conduct commercially useful function (CUF) reviews. During the site visit, the review team accompanied CTA Compliance Specialists on two CUF reviews at its 95<sup>th</sup> Street Station and the Quincy Loop Station Upgrade Project to observe CTA’s CUF monitoring procedures. CTA did a thorough job interviewing prime contractor and DBE subcontractor staff, reviewing daily worksite sign-in logs and taking pictures of active DBE staff and DBE-operated vehicles and equipment. The review team noted that prime contractor and subcontractor personnel were familiar with CTA’s Compliance Specialists, indicating that CTA made regular and frequent visits. When interviewing contractor staff, CTA asked questions from its Commercially Useful Functions Checklist, which was a 5-page questionnaire that addressed 49 CFR Part 26.55 requirements for counting DBE participation. CTA included pictures taken during the site visit at the end of the CUF Checklist. CTA uploaded all completed CUF

Checklists and related information to its B2GNow diversity management system for DBE compliance monitoring purposes.

## **H) Quotas**

### **Basic Requirements (49 CFR Part 26.43)**

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

#### **Discussion**

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

## **6.9 Shortfall Analysis and Corrective Action Plan**

### **Basic Requirement (49 CFR Part 26.47)**

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

#### **Discussion**

During this compliance review, no deficiencies were found with this requirement. FTA issued advisory comments regarding this requirement. As a “Top 50” transit agency, CTA was required to submit a shortfall analysis and corrective action plan to FTA within 90 days after the end of any fiscal year in which it did not obtain its DBE goal. CTA addressed this requirement in its DBE Program Plan. CTA experienced a DBE goal shortfall in FY 2017 but did not submit the required shortfall analysis and corrective action plan until 145 days after the end of the fiscal year on February 22, 2018.

In FY 2017, CTA’s overall DBE goal was 26 percent (18 percent race-conscious and 8 percent race-neutral). CTA’s FY 2017 DBE attainment was 25.2 percent (22.14 percent race-conscious and 3.01 percent race-neutral). During the site visit, CTA explained that because it experienced a shortfall of less than 1 percent, it was not sure a shortfall analysis and corrective action plan was necessary. After consulting with the FTA Region 5 Civil Rights Officer, CTA learned it must submit the required shortfall analysis and corrective action plan and immediately complied. However, said consultation and subsequent submission did not occur until after the original 90-day deadline. During the site visit, CTA confirmed its understanding that regardless of the shortfall amount, it must comply with 49 CFR Part 26.47 requirements.

CTA documented a thorough analysis of its available FY 2017 DBE contracting opportunities, commitments, and related participation, after which it primarily attributed its shortfall to unexpected DBE participation issues on three contracts. Regarding two of the contracts, prime contractors requested DBE substitutions (a DBE firm on one contract went out of business and a DBE firm on another contract could not meet CTA project deadlines). In both cases, CTA approved the substitutions, however, the substitutions did not occur in time to meet the FY 2017

DBE goal. Regarding the third contract, the prime contractor could not meet the contract goal at the time of bid, however, it submitted good faith efforts that were approved by CTA with the expectation that the prime contractor continues looking for DBE participation.

CTA's corrective action plan included measures to specifically address the reasons identified for the shortfall. Specifically, CTA implemented procedures to more regularly monitor DBE participation reported in B2GNow and to communicate early and often with prime contractors who were not on track to meet contract goals. During the site visit, CTA provided documentation confirming the use of two "Not Meeting Goal Letters" sent to prime contractors that were not on track to meet DBE contract goals. The first letter notified the prime contractor of CTA's concern and requested an explanation for low goal attainment and planned remediation. CTA sent a second letter to prime contractors that were not satisfactorily responsive to the first letter notifying them of their potential breach of contract and possible enforcement action. In addition, CTA implemented a small business educational series called "Driving Small Businesses the Distance," which was a quarterly series of classes for small business designed to teach them how to better compete for CTA prime contracts and subcontracts and to apply for DBE certification.

CTA's shortfall analysis and corrective action plan substantially addressed the reasons for its FY 2017 DBE goal shortfall. Although CTA did not identify low race-neutral participation as a reason for the shortfall, it did implement measures to increase race-neutral participation as corrective action. For example, CTA stated the reasons for its FY 2017 shortfall were all related to lower than expected DBE subcontractor participation on contracts with DBE contract goals, however, FY 2017 race-conscious goal attainment was 22.14 percent on an 18 percent race-conscious goal. Despite the unexpected DBE substitution issues experienced in FY 2017, DBE race-conscious attainment exceed the race-conscious goal. Conversely, FY 2017 race-neutral goal attainment was approximately 5 percent less than the FY 2017 race-neutral goal. Accordingly, CTA should have identified an issue(s) related to race-neutral attainment that could have contributed to its FY 2017 DBE goal Shortfall.

### **Advisory Comments**

CTA was advised to ensure it submits future shortfall analyses and corrective action plans regardless of the amount of the shortfall, as required. In addition, CTA was advised to identify all possible reasons for DBE goal shortfalls as indicated by available goal attainment data.

## **6.10 Transit Vehicle Manufacturers (TVMs)**

### **Basic Requirement (49 CFR Part 26.49)**

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

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## Discussion

During this compliance review, deficiencies were found with this requirement. In its DBE Program Plan, CTA stated the following:

*The CTA will require each TVM, as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26.49. In conformity with 49 CFR Part 26.49 (d), CTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles.*

The procedures in CTA's DBE Program Plan did not adequately address pre-award and post-award TVM requirements described in 49 CFR Part 26.49(a)(1) and 26.49(a)(4), which state:

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

Regarding the requirement to only award FTA-funded vehicle purchase contracts to TVMs listed on FTA's approved TVM list, although CTA required bidders to certify that they complied with TVM requirements at the time of bid, CTA did not provide documentation confirming that it verified bidders were on the FTA approved TVM list prior to award. During the site visit, CTA's Procurement (also called Purchasing and Supply Chain) and Diversity Programs staff indicated they were aware of FTA's approved TVM list on the FTA website and believed it had reviewed, printed, and filed a hard copy of the list in the procurement file prior to TVM contract award. However, TVM contract files for vehicle purchase contracts C14FI101554098 (Sifang), C12FT101275135 (Nova), and C17FT101878289 (Proterra) did not contain the FTA approved TVM list. Although the list was not in the files reviewed, the review team confirmed the TVMs that were awarded contracts were on the FTA approved TVM list at the time of the site visit. The review team also confirmed CTA knew how to access the approved TVM list on FTA's website.

Regarding the requirement to report TVM awards within 30 days after making an award, CTA did not address this requirement in its DBE Program Plan or demonstrate that it consistently reported TVM awards timely and as required. A review of TVM contract C14FI101554098 (Sifang) showed an award date of March 18, 2016, and CTA's notification of award by letter to the FTA Region 5 Civil Rights Officer (RCRO) on April 12, 2016. CTA reported the award within 30 days, however, it did not submit the report via FTA's online Transit Vehicle Award Reporting Form, as required. A review of TVM contract C17FT101878289 (Proterra) showed an award date of July 11, 2018. Again, CTA notified the RCRO of the award via letter, however, the letter was not dated. The RCRO uploaded the letter to TrAMS on November 28, 2018. During the site visit, it could not be confirmed when the letter was dated and transmitted to FTA. Assuming the notification occurred November 28, 2018, CTA submitted the letter more than 30 days after award.



CTA also did not submit TVM award reports to FTA when it exercised optional contract extensions to existing TVM contracts. CTA originally awarded Contract C12FT101275135 (Nova) on February 4, 2013 and exercised an optional contract extension in 2018. At the time it exercised the contract option, it did not confirm that the TVM was still on FTA's approved TVM list or report the exercised option, as required. The review team advised CTA that TVM contract extensions are to be treated like new awards subject to compliance with pre-award and post-award TVM contract requirements. In addition, the review team advised CTA that for multi-year contracts, it must confirm that TVMs previously confirmed to be on FTA's approved TVM list were still on the approved list at the beginning of each year of the contract.

During the site visit, the review team provided CTA with the web address for FTA's approved list of certified TVMs (<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>) and FTA's online Transit Vehicle Award Reporting Form (<https://www.surveymonkey.com/r/vehicleawardreportsurvey>).

### **Corrective Actions and Schedules**

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

- An updated DBE Program Plan that includes procedures for pre-award TVM eligibility verification and post-award reporting, as required by 49 CFR Part 26.49(a)(1) and 26.49(a)(4), respectively. CTA's TVM procedures must also address pre-award and post-award TVM requirements on multi-year contracts and when exercising optional contract extensions.
- Confirmation that it has reports all active FTA-funded TVM contracts in FTA's online Transit Vehicle Award Reporting Form located at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

## **6.1.1 Required Contract Provisions**

### **A) Contract Assurance**

#### **Basic Requirement (49 CFR Part 26.13)**

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

#### **Discussion**

During this compliance review, deficiencies were found with this requirement. The nondiscrimination contract assurance in CTA's DBE Program Plan and the nondiscrimination contract assurance in CTA's DBE Special Conditions included in all applicable contracts were different and neither complied with 49 CFR Part 26.13(b) requirements.

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

*Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub*

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

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

The contract assurance in CTA's DBE Program Plan was as follows:

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

The contract assurance in CTA's DBE Special Conditions was as follows:

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

The contract assurance in CTA's DBE Special Conditions was more compliant than the assurance included in CTA's DBE Program Plan, however, it was incomplete because it omitted the four required remedies for noncompliance.

### **Corrective Actions and Schedules**

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

- An updated DBE Program Plan that includes the contract assurance described in 49 CFR Part 26.13 in its entirety and states that the entire assurance required by the Part will be included in all FTA-assisted contracts.
- Updated DBE Special Conditions that include the contract assurance described in 49 CFR Part 26.13 in its entirety.
- Confirmation that the contract assurances in its DBE Program Plan and DBE Special Conditions are the same.

## B) Prompt Payment

### Basic Requirement (49 CFR Part 26.29)

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

### Discussion

During this compliance review, a deficiency was found with this requirement. As described in its DBE Program Plan, CTA required prime contractors to pay subcontractors and release retainage within 14 days of receiving payment from CTA. CTA required this prompt payment provision be included in all prime contracts and subcontracts. The prompt payment provision was included in CTA's General Conditions for Construction Contract Provisions, and DBE Special Conditions included in all FTA-assisted CTA prime contracts (as applicable). A review of prime contracts C17FT101878289, C16FT101701191, B15FT04416, C16FI101819435, B17FT04489, C12FR101267045A, C15FI101728725 confirmed the inclusion of CTA's General Conditions for Construction Contract Provisions and DBE Special Conditions and the prompt payment provision therein. A review of three subcontractor agreements revealed that two contained the required prompt payment provision and one did not, as follows:

CTA Project	Subcontractor Agreement	Prompt Payment Provision?
95 <sup>th</sup> Street Station	F.H. Paschen, S.N. Nielson & Associates, LLC (prime contractor) and Garth Construction Services (subcontractor) #24691-007	Yes
95 <sup>th</sup> Street Station	Paschen Millhouse Joint Venture (prime contractor) and Kate's Detective & Security Agency (subcontractor) #2468-005	Yes
IDOT Main Drain (95 <sup>th</sup> Street Station)	HBK Engineering, LLC (prime contractor) and Raimonde Drilling Corporation (subcontractor)	No

CTA stated in its DBE Program Plan that "subcontractor agreements will be reviewed by the Diversity Programs Department to ensure that proper non-discrimination, prompt payment, and retainage clauses are outlined in these agreements." However, as indicated in the subcontract agreements reviewed above, the prompt payment provision was missing in one of the FTA-assisted subcontractor agreements.

CTA did an excellent job of monitoring compliance with prompt payment requirements using B2GNow, a web-based system, in which CTA required prime contractors to report payments to subcontractors. Prime contractors received B2GNow system alerts when CTA made payments, which started the 14-day clock on subcontractor payments. Prime contractors were required to

report all related subcontractor payments within seven days after making said payments. When reporting subcontractor payments, B2GNow required prime contractors to enter subcontractor payment dates, which when compared to original prime contractor dates enabled CTA to track prompt payment compliance. B2GNow automated this monitoring process and alerted CTA staff when subcontractor payments were not made timely and in accordance with its 14-day prompt payment requirement. During the site visit, CTA demonstrated B2GNow's prompt payment monitoring functionality, confirming its effectiveness for monitoring prompt payment compliance.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, CTA must submit to the FTA Office of Civil Rights confirmation that all active FTA-assisted subcontracts contain its 14-day prompt provision as required in its DBE Program Plan.

### **C) Legal Remedies**

#### **Basic Requirements (49 CFR Part 26.37)**

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

#### **Discussion**

During this compliance review, no deficiencies were found with this requirement. CTA documented its legal remedies for noncompliance in its DBE Program Plan, General Conditions for Construction Contract Provisions, and DBE Special Conditions. CTA's legal remedies were extensive and detailed and are summarized as follows:

- Withholding payment
- Suspension and/or termination of the contract, in whole or in part
- Debarment and Suspension
- Arbitration and Related Rights to Damages
- Collection of Arbitration and Legal Fees
- Under Illinois law, it is a Class 2 felony to make certain false representations as to the status of a person or entity in obtaining a governmental contract. In addition, any person convicted of this felony offense must pay to the governmental unit that issued the contract a penalty equal to one and a half times the amount of the contract. {720 ILCS 5/17-29)
- Under Federal law, False, fraudulent, or deceitful statements made in connection with DBE participation in DOT assisted programs could also result in liability under 49 CFR Part 31, Program Fraud and Civil Remedies and possible prosecution under 18 U.S.C. 1001.

A review of contracts C17FT101878289, C16FT101701191, B15FT04416, C16FI101819435, B17FT04489, C12FR101267045A, C15FI101728725 confirmed the inclusion of CTA's General Conditions for Construction Contract Provisions (as applicable) and DBE Special Conditions and the legal remedies therein.

## 6.12 Certification Standards

### Basic Requirements (49 CFR Parts 26.67–26.71)

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

### Discussion

During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, CTA stated:

*The CTA and the other certifying members of the IL UCP will use the certification standards of 49 CFR, Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT- assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. CTA will make its certification decision based on the facts as a whole.*

CTA's *Updated Certification Manual* (2018) referenced the certification standards of 49 CFR, Subpart D of Part 26 and directed certifying staff that prior to initiating a detailed analysis of the firm's ownership and control requirements for eligibility, a firm must meet the following three basic requirements:

1. The firm must be a Small Business concern, in accordance with the Small Business Administration's (SBA) size standard that it has not had average gross receipts of over \$23.98 million for the previous three years.
2. Applicant owners must be socially and economically disadvantaged.
3. The firm's ownership and control must rest with the disadvantaged owner(s).

The Certification Branch within CTA's Diversity Programs Department was responsible for ensuring these standards were met.

## 6.13 Certification Procedures

### Basic Requirements (49 CFR Parts 26.83, 26.85, and 26.86)

The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation. DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process. The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR Parts 26.85(c)-(g). The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial.

The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

## Discussion

During this compliance review, a deficiency was found with this requirement. CTA was one of five certifying partners in the IL UCP administered by IL DOT. CTA substantially addressed the Certification Procedures requirements described in 49 CFR Part 26 Subpart E, complied with the terms of the IL UCP Procedures (updated August 22, 2018), and developed and used its *Updated Certification Manual* to ensure that the certification procedures were applied consistently.

CTA's *Updated Certification Manual* provided detailed direction to each Certification Specialist on not only what documents they should review but also why, and what they should be looking for. As examples:

- **Reviewing Resumes of Principal Owners and Management** - Resumes are reviewed to determine work history, knowledge and expertise of the disadvantaged owners with respect to the firm's principle area of specialty. All owners, managers, directors, and supervisors are required to submit their respective resumes in order to adequately assess who possesses the expertise within the firm.
- **Reviewing Tax Returns** - The tax returns are used in concert with the financial statements. They serve as further enhancements in verifying information in the overall review process. Certification Specialists should focus on the compensation to owners, dividends paid, verification of named officers and stock ownership, gross profit margins and gross receipts, affiliates or subsidiaries. In many instances of making decisions on a firm's size standard qualification, tax returns serve as the key document because it is an official report to the federal government. The W-2 and 1099 statements serve as clues to salaries or compensation being received by the firm's owners. In all instance of review, the Certification Specialist looking to ensure that the minority/woman owners are reasonably compensated in proportion to their areas of responsibility or position within the firm and their ownership interest. This document often leads the officer to ferret out the proverbial 51/49% husband/wife scenario which can ultimately lead to denial of DBE eligibility, compensation, and occupation of family members who may have an interest in the applicant firm. U.S. Individual Tax Returns are used as supportive evidence to the submitted Personal Net Worth statements but they also confirm economic disadvantaged eligibility, business interest or property owned compensation, and occupations of family members who may have an interest in the applicant firm.

These were just two examples of 22 very detailed descriptions of how a Certification Specialist should review documentation that may be required to support a certification decision. The *Updated Certification Manual* also described the file intake procedures, desk audit procedures, personal net worth review, gross receipts calculation procedure, on-site visit procedures, certification review procedures, committee review, and application closeout procedures for both approval of an application and denial of an Initial/New application, or a proposal to remove (delist) a DBE firm. The Manual also described the written appeal and hearing committee process. The Attachments to the *Manual* contained gross receipts and personal net-worth calculators, application documents checklist, site visit report, and other sample documents and regulations.

CTA could not document during the site visit that it or IL UCP had entered denied and decertified firms in the US DOT Online Database of Denied and Decertified firms. The Compliance Review team looked in the US DOT database for several firms that CTA had decertified. Neither CTA's *DBE Program Plan* or its *Updated Certification Manual* addressed this requirement. The *Illinois UCP Certification Procedures* did include this requirement, found at 49 CFR Part 26.85 (f) (1-3):

*When an IL UCP agency denies a firm's application, rejects a firm certified in another state or removes a firm's eligibility in whole or in part, it must make an entry in the Department of Transportation Office of Civil Rights' (DOCR) Ineligibility Determination Online Database. The entry shall include:*

- i) Firm's name;*
- ii) Firm's owner(s) name(s);*
- iii) Type and date of the action; and*
- iv) Reason for the action.*

*The IL UCP agencies will check the DOCR website at least monthly to determine whether any firm that is applying for certification or has already been certified, is on the list. If such a firm is on the list, the IL UCP will promptly request a copy of the listed decision from the UCP that made it. The information will be considered in determining what action to take with respect to a DBE or applicant. A UCP receiving the request will provide a copy of the decision to the requesting UCP within 7 days.*

As reported in the table below, a review of selected certification files, which were stored electronically in B2GNow, confirmed that CTA reviewed and retained all required items.

<b>Applicant Firm</b>	<b>DBE Application</b>	<b>Socio/Econ Disadvantage Affidavit</b>	<b>Personal Net Worth</b>	<b>Site Visit</b>	<b>Annual Affidavits</b>	<b>Business Tax Filings</b>	<b>Decision / Appeal Letters</b>
<b>ABC Humane Wildlife</b>	Yes	Yes	Yes	Yes	N/A	Yes	Yes
<b>Ashlaur Construction</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Vistara Construction</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Connetics</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Evan's Electric</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Dynamic Wrecking</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes

## Corrective Actions and Schedules

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

- An updated DBE Program Plan and Certification Procedures that address the requirement for checking the DOCR website monthly and entering firms who have been denied or decertified, in accordance with 49 CFR Part 26.85(f) (1-3).
- Documentation that CTA has entered denials and decertified firms in the DOCR website.

## 6.14 Record Keeping and Enforcements

### Basic Requirements (49 CFR Parts 26.11 and 26.37)

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

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

### Discussion

During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, CTA described monitoring procedures that included registering DBE commitments in B2GNow at the time of contract award, holding a kickoff meeting with contractors to confirm contractors' understanding of CTA DBE program compliance expectations, and regular onsite performance monitoring to ensure that work committed to DBEs is actually performed by DBEs and that DBEs were performing a commercially useful function. CTA was aided significantly in its monitoring efforts by B2GNow, a third-party application designed specifically to help monitor and track DBE program compliance. B2GNow recorded general contract terms and conditions, good faith efforts, DBE commitments, ongoing DBE payments and related payment dates, onsite performance reports, and ongoing management correspondence. CTA required contractors and subcontractors to report DBE utilization and payments directly into B2GNow on a monthly (or more frequent) basis. Based on the information reported, B2GNow automated prompt payment tracking, DBE attainment tracking, compliance specialist review and approval, and semi-annual uniform report generation. CTA reported Semi-Annual Uniform Reports timely, and during the site visit, CTA demonstrated the B2GNow DBE attainment and reporting functions, giving the review team confidence in the accuracy of its semi-annual reports.

CTA's enforcement mechanisms as described in its DBE Program Plan were as follows:

1. *CTA will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the Program, so that the DOT can*



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*take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109.*

2. *The CTA will monitor and enforce mechanisms to ensure compliance with 49 CFR Part 26. Failure to comply with the DBE requirements of the contract or failure to use DBEs as stated in the bid/proposal constitutes a material breach of contract. The DBELO shall have the discretion to recommend to CTA's Purchasing Agent that the Purchasing Agent apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the DBE requirements. Such sanctions include, but are not limited to, withholding payment to the Contractor until corrective action is taken; suspension and/or termination of the contract, in whole or in part; and debarring or suspending the Contractor from entering into future contracts with the CTA. Individual citizens aware of these violations by any company may report to CTA such incidence directly to the Diversity Programs Department at (312) 681-2600.*

CTA maintained a bidders list that complied with 49 Part 26.11(c). At the time of the site visit, CTA's bidders list contained 3,200 firms, of which 495 were certified DBEs.

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## 7. Summary of Findings

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
1.	DBE Program Plan	26.21	D	<p><b>Finding:</b> CTA did not address all required program elements in its DBE Program Plan.</p> <p><b>Corrective Action</b> CTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for Interstate Certification, Denial of Certification, and Summary Suspension of Certification, either by inclusion or by reference.</p>	60 Days
2.	DBE Policy Statement	26.23	AC	<p><b>Advisory Comment:</b> CTA was advised to distribute its current policy statement via email to both contractors and CTA staff. CTA was advised to update its DBE Policy Statement to correct the reference to its DBELO.</p>	
3.	DBE Liaison Officer	26.25	ND		
4.	DBE Financial Institutions	26.27	D	<p><b>Findings:</b> CTA's DBE Financial Institution procedures in its DBE Program Plan and DBE Special Conditions were slightly different. CTA did not describe in detail how and when it evaluated and considered using minority depository institutions.</p> <p><b>Corrective Actions:</b> CTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• Confirmation that its DBE Program Plan and DBE Special Conditions contain the same language regarding the use of minority and woman owned banks.</li> <li>• An updated DBE Program Plan that describes in detail its process for investigating and considering the use of minority and woman owned depository institutions.</li> <li>• Documentation confirming it has investigated and considered the use of minority and woman owned depository institutions since the DBE compliance review site visit.</li> </ul>	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
5.	DBE Directory	26.31	ND		
6.	Overconcentration	26.33	D	<p><b>Findings:</b> CTA did not have adequate procedures in place to analyze and address occurrences of overconcentration.</p> <p><b>Corrective Actions:</b> CTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail its definition of overconcentration; its procedures for analyzing and determining if overconcentration exists, including the frequency with which it will conduct overconcentration analyses; and the measures it will take to address overconcentration when it occurs.</p>	60 Days
7.	Business Development Programs	26.35	D	<p><b>Finding:</b> CTA's Business Development Plan did not substantially comply with 49 CFR Part 26 Appendix C guidance. CTA's MPP did not address overuse of protégé firms by mentor firms in the attainment of DBE contract goals.</p> <p><b>Corrective Actions:</b> CTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>Confirmation if it will or will not implement a BDP in accordance with 49 CFR Part 26 Appendix C guidance. If CTA decides to implement a BDP, in addition to its confirmation, it must submit an updated and detailed BDP for FTA review and approval. If CTA decides not to implement a BDP that is substantially responsive to 49 CFR Part 26 Appendix C guidance, in addition to its confirmation, it must submit an updated DBE Program Plan that states it does not have a BDP as prescribed by the regulation.</li> <li>An updated MPP that addresses the requirement to limit the amount of protégé participation mentor firms could count towards DBE goal attainment on contract.</li> </ul>	60 Days
			AC	<p><b>Advisory Comment:</b> Given CTA's diverse commercial market, internal resources and capabilities, and DBE development assistance efforts already in place, it was</p>	

[illegible]

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				CFR Part 26.51; and to include all efforts to structure contracts to foster small business participation as elements of its Small Business Program, per 49 CFR Part 26.39.	
8.d	Race-Conscious DBE Participation	26.51	ND		
8.e	Good Faith Efforts	26.53	ND		
8.f	Protecting Against Termination for Convenience	26.53 and 26.13	ND		
8.g	Counting DBE Participation	26.55	ND		
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	AC	<b>Advisory Comment:</b> CTA was advised to ensure it submits future shortfall analyses and corrective action plans regardless of the amount of the shortfall, as required. In addition, CTA was advised to identify all possible reasons for DBE goal shortfalls as indicated by available goal attainment data.	
10.	Transit Vehicle Manufacturers (TVMs)	26.49	D	<b>Findings:</b> CTA did not document required TVM award procedures in its DBE Program Plan. CTA did not confirm it awarded transit vehicle contracts to FTA-approved TVMs or report TVM contract awards as required.  <b>Corrective Actions:</b> CTA must submit the following to the FTA Office of Civil Rights: <ul style="list-style-type: none"> <li>An updated DBE Program Plan that includes procedures for pre-award TVM eligibility verification and post-award reporting, as required by 49 CFR Part 26.49(a)(1) and 26.49(a)(4), respectively. CTA's TVM procedures must also address pre-award and post-award TVM requirements on multi-year contracts and when exercising optional contract extensions.</li> <li>Confirmation that it has reports all active FTA-funded TVM contracts in FTA's online Transit Vehicle Award Reporting Form located at <a href="https://www.surveymonkey.com/r/vehicleawardreportsurvey">https://www.surveymonkey.com/r/vehicleawardreportsurvey</a>.</li> </ul>	60 Days

11.	Required Contract Provisions				
11.a	Contract Assurance	26.13	D	<p><b>Finding:</b> CTA did not include the required nondiscrimination contract assurance in its entirety in prime contractor and subcontractor agreements.</p> <p><b>Corrective Actions:</b> CTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• An updated DBE Program Plan that includes the contract assurance described in 49 CFR Part 26.13 in its entirety and states that the entire assurance required by the Part will be included in all FTA-assisted contracts.</li> <li>• Updated DBE Special Conditions that include the contract assurance described in 49 CFR Part 26.13 in its entirety.</li> <li>• Confirmation that the contract assurances in its DBE Program Plan and DBE Special Conditions are the same.</li> </ul>	60 Days
11.b	Prompt Payment	26.29	D	<p><b>Finding:</b> Missing prompt payment clause in subcontractor agreement.</p> <p><b>Corrective Actions:</b> CTA must submit to the FTA Office of Civil Rights confirmation that all active FTA-assisted subcontracts contain its 14-day prompt provision as required in its DBE Program Plan.</p>	60 Days
11.c	Legal Remedies	26.37	ND		
12.	Certification Standards	26.67-26.71	ND		
13.	Certification Procedures	26.83, 26.85, and 26.86	D	<p><b>Finding:</b> CTA did not have or implement procedures for reporting and monitoring decertified firms, as required.</p> <p><b>Corrective Actions:</b> CTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• An updated DBE Program Plan and Certification Procedures that address the requirement for checking the DOCR website monthly</li> </ul>	60 Days

				and entering firms who have been decertified, in accordance with 49 CFR Part 26.85(f)(1-3). <ul style="list-style-type: none"> <li>Documentation that CTA has entered decertified firms in the DOCR website.</li> </ul>	
14.	Record Keeping and Enforcements	26.11 and 26.37	ND		

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



## **ATTACHMENT A – FTA NOTIFICATION LETTER TO CTA**



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

Headquarters

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

October 31, 2018

Dorval R. Carter, Jr.  
President  
Chicago Transit Authority  
567 W Lake Street  
Chicago, IL 60661

Dear Mr. Carter:

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 Chicago Transit Authority (CTA) has been selected for a review of its overall DBE program to take place December 11-14, 2018.

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

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. The DMP and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled for **Tuesday, December 11, 2018 at 9:00 a.m. Central Standard Time**, to introduce the DMP team and FTA representatives to CTA. 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 CTA's liaison with

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

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward electronic (soft copy) versions of these materials to the following contact person, who is available to discuss material transmission options with you:

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

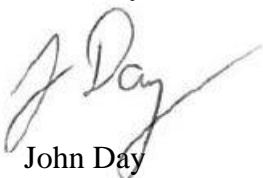
We request the exit conference be scheduled for **Friday, December 14, 2018 at 11:00 a.m. Central Standard Time**, to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

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

CTA 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,

A handwritten signature in dark ink, appearing to read "J. Day", with a stylized flourish extending from the end.

John Day  
Program Manager for Policy  
and Technical Assistance

Enclosure

cc: Kelley Brookins, Regional Administrator, FTA Region V  
Greg Danis, Equal Opportunity Specialist, FTA  
JuanPablo Prieto, Senior Manager Diversity Programs, CTA  
Maxine Marshall, Lead Reviewer, The DMP Group, LLC

Chicago Transit Authority  
Disadvantaged Business Enterprise Program Compliance Review

**Enclosure 1**

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

1. Current DBE Program Plan (which should include CTA's organization chart).
2. A narrative that describes the CTA individuals and resources dedicated to implementing the DBE program requirements, handling DBE program inquiries, and educating CTA staff on DBE program requirements. The narrative should include an organization chart showing CTA's DBE staff and a budget showing funds allocated to the DBE program.
3. FY 2019 – FY 2021 DBE goal setting methodology and status of any disparity studies currently underway or recently completed affecting CTA's FY 2019 – FY2021 DBE goal submission. Uniform Semiannual Reports of overall DBE goal attainment (fiscal years 2016, 2017, and 2018), and/or quarterly reports of ARRA DBE attainment, if applicable. Provide supporting documentation for the June 2016, December 2017, and June 2018 semiannual reports submitted in TrAMS.
4. Interim DBE goal methodology referenced in the letter dated July 30, 2018 to FTA regarding a proposed interim DBE goal for FY 2019.
5. DBE goal setting methodology for the "Your New Blue Project" and semiannual reports for the project submitted in fiscal years 2016, 2017, and 2018.
6. DBE goal setting methodology for the "Red Purple Modernization Phase One Project."
7. DBE goal shortfall analyses and corrective action plans for the most recent three Federal fiscal years (FY 2016- FY 2018) in which CTA did not meet its DBE goal.
8. Current Memorandum of Understanding or similar documents for CTA's participation in the Illinois Unified Certification Program (IUCP).
9. Any additional certification criteria/guidelines used by CTA in determining DBE eligibility, if applicable.
10. Provide the number of DBE applications CTA has reviewed, approved, and denied each year from FY2016 through FY2018 to date. Include the number of DBE applications and the names of applicants that are currently pending review.
11. Current CTA DBE Directory exported to Microsoft Excel. Current UCP DBE Directory sorted by certifying agency.

Chicago Transit Authority  
Disadvantaged Business Enterprise Program Compliance Review

12. Provide a list (preferably in an Excel spreadsheet) of ongoing FTA-assisted **CTA** contracts. The list should identify the award date, total contract amount, DBE contract goal (where applicable), prime contractor name, DBE participant names (where applicable), the scope of work, the amounts awarded and actually paid to each DBE (where applicable), and worksite locations (where applicable).
13. Provide a list (preferably in an Excel spreadsheet) of FTA-assisted contracts with DBE goals completed by CTA from FY 2016 – current.
14. The identification of firms, if any, that have worked on CTA projects and have graduated from CTA's DBE program in the last three years, i.e., exceeded the threshold dollar amounts and are no longer certified.
15. Good Faith Effort criteria established by CTA.
16. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
17. Examples of CTA's implementation of its DBE Program small business element identified in its DBE Program Plan as the "Small Business Enterprise Program."
18. List of FTA-assisted CTA and subrecipient (if applicable) transit vehicle procurements/contracts for the last five (5) years.
19. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years, developed by CTA and its subrecipients (if applicable).
20. List of all bids accepted for the RFPs provided in response to Item 19.
21. Transit Vehicle Manufacturer Reports submitted to FTA as required by 49 CFR Part 26.49(a)4).
22. Names of interested parties (external organizations) with which CTA has interacted on the DBE program issues.
23. Any complaints or lawsuits received concerning CTA's DBE program or its prime contractors over the past three (3) years.
24. The DBELO official position description and position descriptions for other CTA staff or contractors responsible for implementing the DBE Program.
25. Current DBE staff positions filled and vacant.
26. Prompt payment verification process.

Chicago Transit Authority  
Disadvantaged Business Enterprise Program Compliance Review

27. List of FTA-assisted projects completed since 2015, list of FTA-assisted projects currently underway, and list of future FTA-assisted projects planned for the next five years.
28. Other pertinent information determined by CTA's staff to further demonstrate CTA's DBE compliance efforts.

## **ATTACHMENT B – CTA’S RESPONSE TO DRAFT REPORT**

*section, you may not implement your proposed goal until you have complied with this requirement.*

In its DBE Program Plan, CTA stated:

*When establishing or revising its agency DBE goal, CTA will:*

- 1. Consult with minority, women's and general contractor groups, community organization, and other officials and organizations.*
- 2. Publish (in general circulation and minority-focused media and trade publications) a notice announcing the overall goal and the fact that the goal and a description of the methodology used to establish it is available for inspection during regular business hours at the principal office of CTA for thirty (30) days following the publication. The public will be advised that it can submit comments to CTA on goals prior to the FTA goal submission but within forty-five (45) days of the date of publication.*
- 3. This information will be made available on the CTA website. The notice includes the address for CTA's principal offices where the program goals can be reviewed and the address to which comments could be sent.*

CTA provided substantial documentation of public participation for its overall project goal, as well as on-going participation in the DBE Program. CTA published notices announcing its overall goal and its RPM project goal in the City's largest general circulation newspaper, the Chicago Sun-Times and in four publications with predominately minority audiences (African American, Hispanic and Chinese). The notice was also posted on CTA's website for a 30-day period beginning on August 31, 2018. CTA also advertised and held an informational/discussion meeting on September 10, 2018 at the CTA headquarters office. Participants could also join the meeting by teleconference.

CTA reported that it had received three comments on its proposed goals and determined that it did not make any changes to the goals.

In addition to public participation prior to the submission of goals, CTA documented a significant engagement by the public in its DBE program. On a ~~monthly~~ bi-monthly basis, CTA consulted with its DBE Advisory Committee, a group comprised of minority business advocacy groups and minority and non-minority businesses. The Committee's mission stated:

*The CTA's Diversity Programs' Disadvantaged Business Enterprise (DBE) Advisory Committee (The Committee) was formed to serve as a forum for fostering open communication about the concerns of DBE firms, Small Businesses, non-minority contractors and others. The Committee will provide recommendations for operational and administrative improvements to the CTA's Diversity Program.*





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

Headquarters

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

August 5, 2019

Dorval R. Carter, Jr.  
President  
Chicago Transit Authority  
567 W Lake Street  
Chicago, IL 60661

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

Dear Mr. Carter:

This letter concerns the Federal Transit Administration's (FTA) DBE Review of the Chicago Transit Authority (CTA) conducted from December 11-14, 2018. 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 noted, 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 responses sufficiently addresses the DBE requirements. Please submit your responses to me at [john.day@dot.gov](mailto: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 CTA 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](mailto: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  
JuanPablo Prieto, Senior Manager Diversity Programs, CTA