

FTA

FEDERAL TRANSIT ADMINISTRATION

Massachusetts Bay Transportation Authority

Disadvantaged Business Enterprise (DBE) Program
Compliance Review

Final Report

June 2017



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology – This report details the findings of a compliance review of the Massachusetts Bay Transportation Authority’s (MBTA’s) Disadvantaged Business Enterprise (DBE) program implementation. The compliance review team examined this agency’s DBE program procedures, management structures, actions, and documentation. The compliance review team collected documents and information from the Federal Transit Administration (FTA) and MBTA. In addition, the compliance review team interviewed MBTA officials, DBE firm representatives, prime contractor representatives, and community-based organizations that advocate on behalf of minority- and woman-owned businesses. The three-day review included interviews, assessments of data-collection systems, review of program and contract documents, and field visits to the Park Street and Downtown Crossing Station construction projects.

MBTA’s DBE Program includes the following positive program elements –

Positive Program Elements

- **Shortfall Analysis and Corrective Action Plan** – MBTA did not meet its DBE goal in FY 2015 and subsequently conducted and documented a shortfall analysis, developed a corrective action plan, and submitted both documents to FTA in a timely manner, as required by 49 CFR Part 26.
- **Prompt Payment** – MBTA included the required prompt payment language in all contracts reviewed. DBEs interviewed reported no prompt payment issues.
- **Bidders List** – MBTA was close to finalizing its Bidders List. The Bidders List contained the names of 2,900 businesses. MBTA compiled the list from a variety of sources that contained information on businesses that had at some point expressed an interest in competing for MBTA contracting opportunities or had actually contracted with MBTA. The Bidders List met all requirements and would likely be available for use in developing the agency’s FY 2018–20 DBE goal.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- **DBE Policy Statement** – MBTA did not distribute its DBE Policy Statement as it stated it would in its DBE Program Plan. In addition, current MBTA contracts included portions of an old policy statement that referenced out-of-date program provisions. MBTA did not distribute the same policy statement across all media.

The Program has the following substantive deficiencies –

Substantive Deficiencies	
➤	DBE Program Plan – Several elements of the plan need to be updated to reflect actual implementation, including Financial Institutions, Business Development Plan, Small Business Element, Transit Vehicle Manufacturers (TVMs), and Use of Contract Goals.
➤	Business Development Program – MBTA did not provide sufficient documentation confirming its compliance with DBE Business Development Program requirements.
➤	Good Faith Efforts – MBTA did not implement and/or enforce the Good Faith Effort requirements described in its DBE Program Plan.
➤	Counting DBE Participation – MBTA did not sufficiently document its procedures for counting DBE participation in its DBE Program Plan. MBTA did not fully implement the corrective action plan documented in its FY 2015 A-133 Single Audit Report. The combination of legacy information systems MBTA used to record, track, and report on DBE participation is lacking and increases the potential for inaccurate data reporting.
➤	Small Business Element – MBTA had not fully implemented its Small Business Element.
➤	Transit Vehicle Manufacturers – MBTA did not implement the procedures in its DBE Program Plan for ensuring TVM compliance with 49 CFR Part 26.49. MBTA did not submit the required TVM report to FTA within 30 days after awarding TVM contracts.
➤	Required Contract Provisions and Enforcement – MBTA lacked procedures to ensure it included the required nondiscrimination contract assurance and protections against termination for convenience.

MBTA's DBE participation has significantly declined over the past three fiscal years. As shown in the table below, MBTA's DBE participation decreased significantly from FY 2013 to FY 2015.

Fiscal Year 2013 Goal: 14%		1	2	3 (1 + 2)
DBE Uniform Report		June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE prime contractors (<i>Line 8C</i>)	\$3,373,342	\$0	\$3,373,342
B.	Total dollars awarded to DBE subcontractors (<i>Line 9C</i>)	\$3,158,736	\$21,066,140	\$24,224,876
C.	Total dollars awarded to DBEs (A3 + B3)			\$27,598,218
D.	Total prime contract dollars awarded (<i>Line 8A</i>)	\$51,590,702	\$50,856,330	\$102,447,032
E.	Annual percentage awarded (C3/D3)			27%

Fiscal Year 2014 Goal: 14%		1	2	3 (1 + 2)
DBE Uniform Report		June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE prime contractors (<i>Line 8C</i>)	\$4,051,980	\$1,386,933	\$5,438,913
B.	Total dollars awarded to DBE subcontractors (<i>Line 9C</i>)	\$7,697,537	\$1,126,060	\$8,823,597
C.	Total dollars awarded to DBEs (A3 + B3)			\$14,262,510
D.	Total prime contract dollars awarded (<i>Line 8A</i>)	\$71,191,728	\$19,088,021	\$90,279,749
E.	Annual percentage awarded (C3/D3)			16%

Fiscal Year 2015 Goal: 14%		1	2	3 (1 + 2)
DBE Uniform Report		June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE prime contractors (<i>Line 8C</i>)	\$265,645	\$1,134,970	\$1,400,615
B.	Total dollars awarded to DBE subcontractors (<i>Line 9C</i>)	\$4,290,535	\$932,724	\$5,223,259
C.	Total dollars awarded to DBEs (A3 + B3)			\$6,623,874
D.	Total prime contract dollars awarded (<i>Line 8A</i>)	\$37,030,304	\$23,012,367	\$60,042,671
E.	Annual percentage awarded (C3/D3)			11%

As the table above shows, MBTA did not meet its overall DBE participation goal of 14 percent in FY 2015, achieving 11 percent. MBTA's shortfall analysis of its FY 2015 DBE participation noted that the State of Massachusetts funded the majority of active projects during the period. Of the 34 projects funded in FY 2015, only three received federal funding. As corrective action, MBTA identified federally funded projects scheduled for FY 2016 that it reported would make up for the shortfall in FY 2015. MBTA also stated it would update its FY 2018–20 triennial goal-setting methodology to identify and more fully consider the impact and timing of planned federally funded projects on its goal attainment. As additional corrective actions, MBTA unbundled large contracts when feasible to create additional opportunities for DBEs; hosted and attended DBE and small-business outreach sessions; and developed procedures to only consider federally funded projects when developing its future triennial goals.

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I. General Information

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

Grant Recipient:	Massachusetts Bay Transportation Authority
City/State:	Boston, MA
Grantee Number:	1369
Executive Official:	Brian Shortsleeve 617-222-3106 bshortsleeve@mbta.com
On-site Liaison:	Julian Tynes 857-368-8730 julian.tynes@dot.state.ma.us
Report Prepared By:	The DMP Group, LLC
Dates of On-site Visit:	December 6–8, 2016
Compliance Review Team Members:	John Potts, Lead Reviewer Donald Lucas, Reviewer Khalique Davis, Reviewer

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2. Jurisdiction and Authorities

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

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

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

4. MBTA Background Information

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

4.1 MBTA Organization and Administration

The Massachusetts Bay Transportation Authority (MBTA) is one of four organizational Divisions of the Massachusetts Department of Transportation (MassDOT). An 11-member Board of Directors appointed by the Governor oversees MassDOT, and by extension, MBTA. The MassDOT Board appoints the MBTA General Manager, who oversees all aspects of the agency, including but not limited to administration, operations, capital programs, finance, compliance, and civil rights. In July 2015, Massachusetts Governor Charles D. Baker, Jr., appointed a statutorily created five-member Fiscal and Management Control Board (FMCB). Governor Baker acted on the implementation of the FMCB based on recommendations from an MBTA Special Panel he established to review MBTA management and operations and subsequently outline a plan of action to reform and improve the agency. Simultaneous to the establishment of the FMCB, the MassDOT Board appointed the current Chief Administrator and Acting General Manager. At the time of the site visit, the Chief Administrator and Acting General Manager reported to the Secretary of Transportation, who was appointed by the Governor.

MBTA's Office of Diversity and Civil Rights (ODCR) implemented and managed the FTA DBE program on behalf of the agency. Although the MassDOT Secretary of Transportation and the Chief Administrator and Acting General Manager had ultimate responsibility for the MBTA DBE program, the Assistant Secretary of the ODCR, who was also designated as MBTA's Disadvantaged Business Enterprise Liaison Officer (DBELO), was responsible for the day-to-day management of the DBE program. The Assistant Secretary relied on and had the support of the following seven DBE program staff:

- Deputy Chief of Diversity and Civil Rights External Programs
- Assistant Director for Special Projects and Subrecipients
- Assistant Director of Government Compliance
- DBE Technical Administrator (vacant)
- Four Government Compliance Officers

Other departments within MBTA and MassDOT also supported the ODCR staff in the administration of the agency's DBE program, including Contract Administration, Procurement and Logistics, Budget, Finance, Information Technology, Legal, Human Resources, and the MassDOT Supplier Diversity Office, which was responsible for DBE certification for the State of Massachusetts. The Supplier Diversity Office functioned as the Massachusetts Unified Certified Program in which MBTA was a participant but not a certifying agency.

MBTA was the nation's fifth largest mass transit system, serving a population of 4,817,014 (2010 U.S. Census) in 176 cities and towns with an area of 3,249 square miles. MBTA operated 178 bus routes, two of which were bus rapid transit lines, three rapid rail transit lines, five light rail (Central Subway/Green Line) routes, four trackless trolley lines, 13 commuter rail routes,

THE RIDE [Americans with Disabilities Act (ADA) complementary paratransit service], and ferry service.

MBTA's ferry service operated on three routes from Boston, to and from various points in the inner Boston Harbor, and three terminals on the South Shore. Ferry terminals were located at Pemberton Point in Hull, Hewitt's Cove in Hingham, Fore River Shipyard in Quincy, Logan Airport, Charlestown Navy Yard, and Rowes Wharf and Long Wharf in Boston.

In addition to local services, MBTA operated express buses to and from downtown Boston and surrounding communities. MBTA also provided partial subsidies to five municipalities and other entities to operate intracommunity and feeder services.

MBTA's fleet consisted of 1,071 diesel and compressed natural gas (CNG) buses, 32 dual-mode buses, 28 electric trolley buses, 410 heavy rail vehicles, 200 light rail vehicles, 10 streetcars, 90 commuter rail locomotives, 410 commuter rail coaches, 949 ADA complementary paratransit vehicles, and 11 ferry boats. FTA funded all vehicles with some exceptions. MBTA purchased 108 of the 949 ADA complementary paratransit vehicles and two of the 11 ferry boats with FTA assistance.

MBTA's administrative offices were located at 10 Park Plaza in downtown Boston. Bus facilities consisted of nine garages and the Everett Central Major Repair Shop. There were eight rapid transit facilities, one each along the Red, Orange, and Blue Lines; four Green Line facilities; and one main subway repair facility in Everett. MBTA maintained three commuter rail maintenance facilities: the Boston Engine Terminal in Somerville, the Southside Service and Inspection Facility in South Boston, and the Light Inspection facility in Readville. In addition, MBTA had 17 miscellaneous operations and maintenance storehouses, plants, repair shops, and other facilities. All MBTA bus and rail facilities had partial FTA interest. The miscellaneous facilities were locally funded.

4.2 Budget and FTA-Assisted Projects

MBTA's revenue budget included operating and nonoperating revenue as included in the table below.

MBTA Transportation Budget

Revenue Source	FY 2015 Budget	%	FY 2016 Budget	%
Operating Revenue				
Transportation Revenue	597,647,752	33%	617,848,214	33%
Other Operating Revenue	48,527,035	3%	49,659,634	3%
Total Operating Income	646,174,787		667,507,848	
Non-Operating Revenue				
Dedicated Local Assessments	160,135,712	9%	162,858,019	9%
Dedicated Sales Tax	970,637,174	54%	985,077,246	53%
Other Income	31,045,029	2%	34,767,700	2%
Total Non-Operating Revenue	1,161,817,915		1,182,702,965	
Total Revenue	1,807,992,702		1,850,210,813	

Expenses	FY 2015 Budget		FY 2016 Budget	
Operating Expenses				
Wages	493,470,467	26%	493,470,467	24%
Fringe Benefits	199,051,351	10%	202,852,276	10%
Health & Welfare Fund	10,436,865	1%	11,474,924	1%
Payroll Taxes	39,070,578	2%	40,150,098	2%
Materials, Supplies, & Services	237,872,565	12%	268,329,515	13%
Casualty and Liability	16,566,513	1%	15,110,409	1%
Purchased Commuter Rail Svc	384,346,300	20%	386,736,497	19%
Purchased Local Svc Subsidy	122,116,771	6%	126,512,940	6%
Financial Service Charges	5,990,000	0%	6,490,000	0%
Total Operating Expenses	1,508,921,410		1,567,658,398	
Debt Service Expenses				
Interest	240,945,845	12%	238,256,615	12%
Principal Payments	178,695,803	9%	209,277,065	10%
Lease Payments	4,296,777	0%	4,575,488	0%
Total Debt Service Expenses	423,938,425	22%	452,109,168	22%
Total Expenses	1,932,859,835		2,019,767,566	
Net Revenue	(124,867,132)		(169,556,753)	
Additional Assistance	135,100,000	7%	187,000,000	9%
Net Revenue after Additional Assist	10,232,868		17,443,247	
Transfer (Weather Resiliency Fund)	0		(11,703,571)	
Net Revenue in Excess of Expenses	10,232,868		5,739,676	

MBTA's active FTA-assisted projects at the time of the site visit are listed in the table below. Most notable is MBTA's Green Line Extension (GLX) project valued at nearly \$2.3 billion. In 2015, FTA awarded a New Starts grant (MA-03-0333) to MBTA to assist in the construction of the GLX project (FTA's share totaled \$996.1 million, or 43 percent). At the time, the GLX project consisted of a 4.3-mile extension of existing light rail service, construction of approximately 0.1 mile of yard lead track, and relocation of approximately 0.3 mile of existing Green Line track. It included relocation of existing commuter/freight rail track; construction of approximately 4.7 miles of light rail track and related systems; relocation of the existing Lechmere Station; construction of six new stations; construction or rehabilitation of 1.26 miles of viaduct; replacement or rehabilitation of eight) bridges; construction of a vehicle storage and maintenance facility; implementation of new power, signals, and communications equipment; construction of a community pedestrian/bike path; and procurement of 24 light rail vehicles. MBTA's expected completion date for the GLX project was June 2021. Once completed, MBTA forecasted ridership to be 37,900 daily linked trips.

MBTA Active FTA Grants

Project No.	Application Name	Original Obligation Date	Last Disbursement Date	Total Obligation Amount	% of Funds Remaining	Total Undispersed Amount
MA030281	Access Improvements at Auburndale	5/25/05	6/13/16	291,262,000	100%	0

Project No.	Application Name	Original Obligation Date	Last Disbursement Date	Total Obligation Amount	% of Funds Remaining	Total Undispersed Amount
MA90X552	Orange Line Upgrades	9/8/08	12/27/16	1,600,000	98%	32,084
MA040026	Ferry System Improvements	9/24/08	3/20/15	3,372,000	42%	1,963,236
MA90X576	Orange Line Journal Bearing Replacement	3/29/10	2/7/17	3,600,000	57%	1,541,755
MA90X577	GANS-Fairmount 40' Bus Procurement	4/29/10	1/30/17	17,901,755	97%	512,503
MA90X589	Everett Repair Shops Equipment	7/13/10	2/7/17	3,000,000	97%	92,453
MA050115	FY 2010 Red Line #2 Selective Overhaul	8/3/10	12/27/16	30,867,080	95%	1,679,583
MA040053	Auburndale (Newton) CR Accessibility	8/11/10	2/7/17	392,000	100%	153
MA040051	Commonwealth Avenue Green Line Station	9/3/10	8/7/15	656,600	75%	162,098
MA040052	Hingham Commuter Ferry Dock	9/3/10	12/5/16	2,800,000	20%	2,237,915
MA040054	Rockport Commuter Rail Station Improvement	9/3/10	11/28/16	1,218,470	10%	1,101,114
MA050119	FY 2010 Locomotive and Coach Procurement	12/16/10	3/21/16	41,295,500	99%	301,327
MA050120	Coach Reliability and Safety Project	12/16/10	2/7/17	8,500,000	35%	5,490,549
MA90X590	IT Systems Mod/NR Vehicles/GL PTC Plan	2/22/11	12/27/16	13,076,702	86%	1,874,747
MA050124	Mansfield Station Ramping	9/13/11	10/24/16	125,000	19%	101,273
MA040048	Hingham Marine Intermodal Center	9/22/11	1/30/17	1,273,304	314%	-2,729,038
MA040064	Auburndale Fiber Optic Cable Installation	9/22/11	2/6/17	1,380,000	9%	1,260,250
MA040068	Ferry System Repairs and Upgrades	9/22/11	9/16/16	926,696	58%	388,062
MA030292	Construct Fitchburg Commuter Rail Improvement	9/28/11	2/7/17	67,152,000	105%	-3,340,619
MA050109	Green Line #7 Car Midlife Overhaul	3/15/12	2/7/17	73,975,821	74%	19,311,755
MA050129	Positive Train Control - CR Phase I	4/4/12	2/7/17	2,560,000	77%	597,568
MA90X621	Red & Orange Line Vehicle PM	4/17/12	2/7/17	23,840,954	63%	8,893,996

Project No.	Application Name	Original Obligation Date	Last Disbursement Date	Total Obligation Amount	% of Funds Remaining	Total Undispersed Amount
MA050105	74 Kawasaki Coach Overhaul	8/16/12	2/7/17	93,739,299	109%	-8,693,836
MA90X617	Science Park Station Project	8/16/12	6/27/16	17,600,000	100%	0
MA040025	High-Speed Catamaran Procurement	8/30/12	2/7/17	7,500,000	33%	5,003,643
MA90X622	Orient Heights Station - Pre SAFETEA-LU	9/5/12	6/29/15	14,053,461	98%	273,385
MA90X631	Orient Heights Station	9/5/12	2/7/17	26,310,502	87%	3,482,646
MA050121	MBTA Power Program - Grant A	9/8/12	2/7/17	60,000,000	38%	37,105,125
MA550005	Worcester-Boston Rail Corridor Improvement	9/21/12	2/7/17	8,985,072	62%	3,402,021
MA95X022	Wachusett Extension Project	12/20/12	2/7/17	5,509,062	85%	849,035
MA90X618	Haverhill Line Double Track	3/7/13	2/7/17	5,887,507	100%	0
MA90X641	192 ECD Bus Midlife Overhaul	4/22/13	2/7/17	32,399,404	91%	2,759,690
MA050128	FY 2013 Infrastructure Improvements A	8/10/13	2/7/17	28,995,690	78%	6,236,785
MA90X609	FY 2012 Bridge Program	8/10/13	2/7/17	65,000,000	55%	29,332,396
MA260063	Fairmount/Indigo Line TSCP Program	8/22/13	9/6/16	352,500	36%	227,277
MA90X644	FY 2013 Infrastructure Improvements B	8/27/13	2/7/17	40,504,835	52%	19,590,524
MA540001	FY 2013 Green Line #8 Enhancements	12/6/13	2/7/17	9,400,000	25%	7,053,280
MA540002	FY 2014 Bridge Program - Gloucester	9/4/14	2/7/17	48,000,000	3%	46,347,046
MA540003	FY 2014 AFC ITD Upgrades	9/5/14	1/3/17	4,080,000	35%	2,657,316
MA95X014	Locomotive Procurement - CMAQ Flex	9/18/14	2/7/17	55,889,870	223%	-68,627,684
MA90X591	FY 2015 MBTA Coach and Locomotive	1/27/15	1/30/17	39,838,048	341%	-95,840,916
MA790002	Ruggles Station	5/28/15	2/7/17	20,000,000	10%	18,067,780
MA44X002	MBTA Resiliency Project	6/2/15	2/7/17	35,065,132	6%	32,918,904

Project No.	Application Name	Original Obligation Date	Last Disbursement Date	Total Obligation Amount	% of Funds Remaining	Total Undispersed Amount
MA90X649	FY 2015 - Government Center	6/15/15	2/7/17	32,761,068	210%	-36,093,400
MA90X712	FY 2015 Preventive Maintenance	6/15/15	9/28/15	12,000,000	33%	8,000,000
MA90X711	Red Line Signal Upgrade	7/23/15	2/7/17	15,200,000	75%	3,831,064
MA260064	MBTA LoNo Project	8/5/15		4,139,188	0%	4,139,188
MA90X713	FY 2015 Bridge Program A	8/14/15	2/7/17	16,000,000	66%	5,508,456
MA90X735	Green Line Signal Replacement	8/14/15	2/7/17	26,564,404	4%	25,626,379
MA90X600	MBTA Power Program - Grant B	9/10/15	2/7/17	28,513,462	97%	786,198
MA90X736	MBTA Ferry Program	9/23/15	9/16/16	1,700,542	27%	1,248,653
MA540005	MBTA Winter Resiliency Program	11/24/15	2/7/17	18,589,517	172%	-13,366,290
MA340012	MBTA Lo-No Project - Supplementary	11/25/15		4,233,814	0%	4,233,814
MA90X739	MBTA FY 2016 Bus Procurement	11/25/15	2/7/17	108,911,802	65%	38,590,123
MA540006	MBTA Bridge and Tunnel Program	11/30/15	2/7/17	120,000,000	40%	72,325,601
MA2016019	FY 2016 Kawasaki Coach Overhaul (32 Units)	7/19/16		30,109,302	0%	30,109,302
MA2016022	FY 2016 - Columbia Junction	7/29/16		21,190,546	0%	21,190,546
MA2016024	FY 2016 MBTA Bus Procurement	8/1/16	2/8/17	148,355,322	0%	148,200,119
MA2016026	Green Line #7 - Selective System Overhaul	8/2/16		27,937,274	0%	27,937,274
MA2016028	FY 2016 - MBTA Floating Slabs	8/10/16	1/9/17	15,819,600	0%	15,750,873
MA2016031	MBTA Silver Line Courthouse Station	8/31/16		80,653	0%	80,653
MA2016032	Design & Construction Mansfield Access, Walkway (GATRA FLEX)	9/22/16		1,325,913	0%	1,325,913

4.3 DBE Program

MBTA receives federal financial assistance from the U.S. Department of Transportation (U.S. DOT), and as a condition of receiving this assistance, it is responsible for complying with the regulations set forth in 49 CFR Part 26. Accordingly, MBTA 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. MBTA submitted its most recent DBE Program Plan to FTA on November 6, 2014. FTA approved the plan on November 7, 2014. However, at the time of the compliance review, MBTA had updated and completed a draft of its DBE Program Plan, dated October 2016, to reflect its current practice, but had not yet submitted the updated plan to FTA for approval. For the purposes of this review, FTA reviewed MBTA's October 2016 draft DBE Program Plan.

MBTA's Office of Diversity and Civil Rights (ODCR) was responsible for the administration of its FTA DBE program. MBTA's Disadvantaged Business Enterprise Liaison Officer (DBELO) was the Assistant Secretary of the ODCR. As MBTA's DBELO, the Assistant Secretary of ODCR was responsible for monitoring and enforcing the DBE program to ensure compliance with appropriate federal laws and regulations, including those required by 49 CFR Part 26. The Assistant Secretary of ODCR had direct access to the head of the agency, the Chief Administrator, and the General Manager. An ODCR staff of seven and other departments' staff as needed and appropriate supported the DBELO in the management and administration of the DBE program.

MBTA did not conduct a disparity study when formulating its triennial DBE goals. MBTA's overall goals historically included race-neutral and race-conscious elements.

MBTA participated in the Massachusetts Unified Certification Program (MassUCP) administered by the State of Massachusetts Department of Transportation Supplier Diversity Office. MBTA was not a certifying participant in MassUCP.

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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 MBTA 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 MBTA 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 MBTA 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 MBTA 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 13]. The DBE program must also include monitoring and enforcement

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

5.2 Methodology

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

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

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

- Most current DBE Program plan;
- DBE goal methodology submissions;
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years;
- A Memorandum of Understanding or similar documents indicating MBTA's participation in the Unified Certification Program (UCP);
- A list of FTA-assisted contracts awarded during the current and previous fiscal years;
- A list of DBE firms that have worked on FTA-assisted projects sponsored by MBTA;
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by MBTA; 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 MBTA staff.

Following the opening conference, the review team examined MBTA's DBE Program Plan and other documents submitted by the DBELO. The team then conducted interviews with MBTA staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from MBTA's Office of Diversity and Civil Rights and the procurement and finance offices. The review team selected a sample of contracts and reviewed them for their DBE elements. The review also conducted interviews with prime contractors, subcontractors, and interested parties.

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

Participants in the compliance review are listed below.

Massachusetts Bay Transit Authority

Brian Shortsleeve, General Manager
Michael Abramo, Chief Financial Officer
Julian T. Tynes, Assistant Secretary, Office of Diversity and Civil Rights
Wanda Hubbard, Assistant Director of Government Compliance
Michelle McDowell, Government Programs Compliance Officer
Smith Denis, Government Programs Compliance Officer
Wystan Umland, Government Program Compliance Officer
Patsy Peterson, Government Program Compliance Officer
Kenrick Clifton, Assistant Director
Junie Celestin, Clerk/Assistant to Chief of Office of Diversity and Civil Rights
Takary Connor, Director of Administration and Finance, Procurement and Logistics
Eric Waaramaa, Director of Capital Budget
Benjamin Bloomenthal, Manager of Federal Programs, Budget Department
Gerard Polcari, Chief Procurement Officer
Margaret Hinkle, Director of Contract Administration
Gina Spaziani, Director of Financial Planning and Analysis
John Lozada, Manager of Federal Programs – ADA and Title VI
Miles Walters, Civil Rights, Title VI Specialist
Angela Hemingway, Deputy Director Small Business Resource Center
Peter Papagno, Manager of Procurement Contract Compliance
Aidan Flynn, Project Coordinator, Vehicle/Systems Procurement
Sean McDonnell, Manager (Construction Contract Procurement)
Geno Mirabella, Construction Inspector
Silyio Amate, Construction Inspector
Carl Nash, Construction Inspector
Robert Oliver, Construction Inspector

Federal Transit Administration

Peter Butler, FTA Region 1 Regional Deputy Administrator
Peggy Griffin, FTA Region 1 Regional Civil Rights Officer
Kristin Wood, FTA Region 1 Regional Planning Director
Britney Berry, FTA Headquarters Office of Civil Rights DBE Program Coordinator

Review Team – The DMP Group, LLC

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

5.3 Stakeholder Interviews

During the DBE compliance review, the review team contacted eight DBEs and nine minority- and women-owned business advocacy organizations (other interested parties). The feedback obtained from the interviews is summarized below.

DBEs

The review team interviewed five of the eight DBEs contacted, one of which worked on MBTA FTA-assisted projects within the past six years. MassUCP certified all the DBEs interviewed. Two of the DBEs were aware of MBTA's DBE program, and MBTA asked one of them had to comment on the agency's goal. The DBEs stated they learned of MBTA contracting opportunities through requests for proposals posted on the Supplier Division Office's website, invitations to and attendance at pre-bid conferences, and project site visits. Some of the DBEs felt that the MBTA commonly awarded contracts to the same select group of contractors. None of the DBEs interviewed reported problems with MBTA withholding retainage or problems with prompt payment. None of the DBEs interviewed reported any disputes or complaints with MBTA.

Interested Parties

The review team interviewed four of the nine interested parties contacted. None of the agencies were familiar with MBTA's DBE program or asked to participate in or comment on MBTA's DBE goals. MBTA did not make any of the agencies aware of contracting or subcontracting opportunities. One agency reported MBTA contacted them for a DBE referral and had attended an outreach event in which MBTA participated. Two agencies commented that MBTA could do more to provide information about its DBE program.

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 MBTA'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

- 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, FTA found deficiencies with this requirement. U.S. DOT DBE regulations require MBTA to develop and submit a DBE Program Plan and to update its plan when it makes significant changes to its program. FTA's Transit Award Management System (TrAMS) showed that FTA approved MBTA's most recent DBE Program Plan on November 7, 2014. In its approval letter, FTA communicated to MBTA that it must review the Final Rule issued on October 2, 2014, updating 49 CFR Part 26 and update its plan accordingly.

In response to FTA's request for documents for this compliance review, MBTA submitted an updated draft plan, dated October 2016. This more recent plan included several important updates including new procedures for Transit Vehicle Manufacturer procurements and Good Faith Efforts for procurements with contract goals pursuant to the new requirements in 49 CFR Part 26 that became effective on November 3, 2014 (vis-à-vis the previously referenced Final Rule). However, MBTA did not submit its updated plan to FTA until November 29, 2016 (more

than two years later), and at the time of the site visit had not obtained FTA approval. MBTA did not submit its updated DBE Program Plan in a timely manner as required by 49 CFR Part 26.

During the site visit, the review team also determined that MBTA's 2016 DBE Program Plan did not reflect actual practice in the following areas: DBE Financial Institutions, Fostering Small Business Participation, Transit Vehicle Manufacturers, Business Development Program, and its use of contract goals. This compliance review report provides further details by DBE program area.

In addition, throughout its DBE Program Plan, MBTA used language very similar to, and in several cases the same as, the language found in 49 CFR Part 26 to describe its DBE program-related procedures. Although the language was technically responsive and may not have conflicted with actual practice, it represented the standard, not necessarily what MBTA did to achieve the standard. MBTA must provide greater detail specific to its own practices and procedures to describe how it achieved compliance with the standard. For example, during interviews, MBTA staff described its process for counting DBE participation. Its verbal description of its process was not necessarily inconsistent with the language in its DBE Program Plan (much of which came from 49 CFR Part 26.55), but it provided greater detail as to how it actually implemented the language in its plan. The same was true for MBTA's description of its goal-setting procedures for public participation.

The review team recommended MBTA make several minor edits and formatting improvements to its DBE Program Plan. In most cases, the mistakes did not affect the reader's understanding; however, in some cases clarity was lost due to formatting or omission of information. For example, under the DBE Financial Institutions section MBTA attempted to identify the minority-owned commercial banks in which it deposits agency funds. MBTA's description reads as follows: "The Authority currently has funds on deposit with two minority-owned banks: and East West Bank." MBTA mistakenly omitted the first bank, which MBTA explained during the site visit to be Cathay Bank.

Corrective Action and Schedule

Within 60 days of the issuance of the final report, MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that reflects actual practice. MBTA must submit all future DBE Program Plan updates that document significant changes to its DBE program in a timely manner to FTA for review and approval, as required by 49 CFR Part 26.

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, FTA found a deficiency with this requirement. FTA also issued an advisory comment with this requirement. The policy statements included in MBTA's October

31, 2014 (approved), and October 2016 (submitted but not yet approved) DBE Program Plans stated that:

The Authority will disseminate this policy statement to the Authority's Board of Directors and all the components of its organization. This statement will be distributed to DBE and non-DBE business communities that perform work on USDOT-assisted contracts by publishing this statement in general circulation, minority-focused and trade association publications and on the Authority website.

MBTA did not provide documentation confirming the distribution of its policy statement as it stated it would.

In addition, the language in the policy statement on MBTA's website (http://www.mbta.com/business_center/DBE/#DBE_Program_Background), though similar, was not the same language that was in the policy statement included in the DBE Program Plans. For example, the policy statement posted on MBTA's website lacked some of the affirmations of equal opportunity and nondiscrimination that are included in the policy statements in its plans. The Disadvantaged Business Enterprise Liaison Officer designation language is also missing on the website but was present in the plans. FTA advised MBTA to publish and distribute a consistent DBE Policy Statement.

Finally, MBTA included an out-of-date version of its policy statement in contract A90CN06 – Downtown Crossing Vertical Transportation and Station Improvements (December 2015) and contract B64CN02 – Design-Build Services for the Rehabilitation of Merrimack River Bridge Piers Project (September 2015). The policy statement specified:

It is the policy of the Department of Transportation that minority business enterprises, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

U.S. DOT 49 CFR Part 26 replaced “maximum opportunity” with “level playing field.”

Corrective Actions and Schedule

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

- Documentation confirming it has distributed its DBE Program Policy Statement, as required by 49 CFR Part 26.23 and as stated in its DBE Program Plan; and
- Updated contract provisions that include current DBE Policy Statement language and documentation confirming implementation of said provisions.

In addition, FTA advised MBTA to distribute the same DBE Policy Statement across all media and to all intended recipients.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25)

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

Discussion

During this compliance review, FTA found no deficiencies with this requirement. However, FTA issued advisory comments regarding this requirement. MBTA designated its Assistant Secretary of the Office of Diversity and Civil Rights as its DBELO who, though relatively new to MBTA, demonstrated an active involvement in the management and administration of the DBE program. MBTA's DBE Program Plan detailed the duties and responsibilities of its DBELO, who performed those duties with the support of the following staff: Deputy Chief of Diversity and Civil Rights External Programs, Assistant Director Government Compliance, DBE Technical Administrator (vacant), and four Government Compliance Officers. Although the DBELO was relatively new to the agency, as were two of the Government Compliance Officers, the remainder of the DBE program staff had considerable experience with the program.

In light of the magnitude of MBTA's approximately \$2.3 billion Green Line Extension (GLX) project (FTA grant MA-03-0333-00), during the Review, the Review team expressed concern about MBTA's ability to effectively manage both the GLX project and its other projects simultaneously. Accordingly, the Review team encouraged MBTA to consider adding additional staff to ensure it complied with DBE program requirements across all projects, including adding staff exclusively dedicated to managing DBE program requirements for the GLX project.

The review team confirmed the DBELO had direct and independent access to the Acting General Manager, and although the DBELO had other duties related to the management of MBTA's Equal Employment Opportunity program, those other duties did not conflict with the management and administration of the DBE program.

Advisory Comments

FTA advised MBTA to fill its vacant DBE Technical Administrator position, at a minimum, and make available more staff, as needed, to ensure adequate support for the DBELO in the management and administration of the DBE program at all times. FTA advised MBTA to dedicate experienced staff to manage the DBE concerns of the GLX project, exclusively.

6.4 DBE Financial Institutions

Basic Requirement (49 CFR Part 26.27)

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

Discussion

During this compliance review, FTA found deficiencies with this requirement. MBTA did not have procedures in place and had not taken steps to identify minority-owned banks as described in its DBE Program Plan. In addition, MBTA did not provide documentation confirming it encouraged prime contractors to use the two commercial banks, Cathay Bank and East West Bank, referenced in its DBE Program Plan.

Pursuant to the requirement to investigate the existence of DBE financial institutions and make efforts to use them, MBTA stated that

It is the policy of the Authority to review the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. ODCR [the Office of Diversity and Civil Rights] will conduct a review of this procedure annually.

During the site visit, the review team requested documentation confirming MBTA's annual review of available services provided by minority-owned banks; however, MBTA had not completed such a review, and confirmed it did not have an annual review process in place as described. The review team provided technical assistance that included making MBTA aware of the Federal Reserve Statistical Release (FRSR) of minority-owned depository institutions to help them identify minority-owned banks in its area that were registered with the Federal Reserve Board. A review of the FRSR revealed two minority-owned banks in the greater Boston area, Leader Bank and One United Bank, which MBTA had not identified in its DBE Program Plan or could confirm it had considered.

In addition, and as a part of its annual review process going forward, FTA advised MBTA to confirm the information in its DBE Program Plan was current and accurate. For example, MBTA reported having contracted with Ramirez and Company, a DBE investment-banking firm. Although minority owned, Ramirez and Company was not in the Massachusetts Unified Certification Program (MassUCP) directory's list of certified DBE companies. Regarding this requirement, minority-owned financial institutions do not have to be DBEs; however, if MBTA refers to a minority-owned institution as a DBE, the MBTA should list the minority-owned institution in its DBE directory.

Corrective Actions and Schedule

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

- An updated DBE Program Plan that includes procedures for investigating the availability of DBE financial institutions that are socially and/or economically disadvantaged and a list of DBE financial institutions that MBTA and/or its contractors could possibly use for banking services;
- Documentation confirming it has investigated and considered the services of Leader Bank and One United Bank; and

- Documentation confirming it has disseminated information on the availability of DBE financial institutions to its FTA-assisted contractors encouraging them to use one or more of the DBE financial institutions identified by MBTA.

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, FTA found no deficiencies with this requirement. DBE program certification and administration in Massachusetts, including DBE Directory maintenance, was the responsibility of the Massachusetts Unified Certification Program (MassUCP), managed exclusively by the Massachusetts DBE transportation certification unit within the State's Supplier Diversity Office.

The [Massachusetts DBE Directory](#) included the information required for DBEs and was accessible online. MassDOT updated the DBE directory online in real time.

During the site visit, MBTA DBE program staff expressed concern that the information related to DBEs and the NAICS codes for which they were certified was not always accurate. For example, when setting goals or otherwise attempting to identify qualified DBEs for certain types of work, DBE program staff experienced instances when DBEs listed in the directory for particular NAICS codes lacked the qualifications to perform the work as defined under the same NAICS codes for which they were certified.

Corrective Action and Schedule

FTA requires no corrective actions on the part of MBTA for the DBE Directory requirement.

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, FTA found deficiencies with this requirement. MBTA's most recent Triennial Review report, dated November 24, 2015, and the related DBE Enhanced Review Module identified deficiencies related to the frequency and method with which MBTA analyzed the existence of overconcentration of DBE firms in any area of work. Specifically, the Triennial Review report stated, "problems noted include the inadequate preparation and submission of . . . overconcentration analysis." As corrective action, FTA required MBTA to

“report on progress being made to comply with the preparation and timely submission of the required DBE reports, including . . . overconcentration reports.” In preparation for this compliance review, FTA requested MBTA to provide the status of all open DBE program findings documented in the MBTA FY 2015 Triennial Review report. In response, MBTA provided worksheets (dated November 1, 2016) that tracked the progress of corrective actions from the FY 2015 Triennial Review, the Enhanced Review Module, and follow-up DBE technical assistance provided to MBTA by FTA in May 2016. Regarding the overconcentration finding requiring MBTA to provide a copy of its last overconcentration analysis, MBTA responded as follows:

In the DBE Program Plan, Subpart B – Administrative Requirements – Overconcentration (26.33), page 16, it states that the Disadvantaged Business Enterprise Liaison (DBELO) will . . . “monitor industries or fields of work to determine if overconcentration exists with DBEs as to unduly burden the opportunity of non-DBE firms to participate in a particular type of work. The availability of DBEs data (the Bidders List is one of the resources utilized) by NAICS Code will be scanned regularly for evidence of NAICS code overconcentration.”

MBTA’s response did not address FTA’s request for a copy of its last overconcentration analysis. During the site visit, the review team confirmed MBTA did not complete and submit the required overconcentration analysis. The review team also noted that MBTA’s response to FTA’s inquiry was inaccurate. In its DBE Program Plan, MBTA stated that the Assistant Director of Government Compliance would monitor overconcentration, not the DBELO, as indicated in MBTA’s response.

Corrective Actions and Schedule

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

- Documentation confirming the analysis of overconcentration, as required by FTA; and
- An updated DBE Program Plan that describes specifically how often (e.g., annually) MBTA will analyze overconcentration in its DBE program.

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, FTA found deficiencies with this requirement. FTA also issued advisory comments with this requirement. In its October 2016 DBE Program Plan, MBTA stated that it participated in MassDOT’s BDP (also referred to as DBE Supportive Services), funded by the Federal Highway Administration (FHWA). However, MBTA did not provide enough information on MassDOT’s BDP and how or if DBEs interested in working on FTA-funded projects participated in the MassDOT BDP. During the site visit, MBTA provided a document

titled *2016 Business Development Workshop Recruitment* that listed five DBEs and six DBE-eligible firms that MBTA recruited to participate in its BDP. However, MBTA did not confirm whether those firms participated in its FTA DBE program.

In addition, in its DBE Program Plan MBTA stated that it engaged the Greater New England Minority Suppliers Diversity Council to provide small business consultancy services. MBTA further stated that it collaborated with Mass Port, Mass Housing, the Center for Women-owned Enterprises, and the Division of Capital Asset Management and Maintenance. Although MBTA identified these resources in its plan, it did not clearly explain how these other resources integrated into and/or functioned as a part of its BDP, particularly as it related to its FTA DBE program.

Per interviews with MBTA DBE program stakeholders from the community, including but not limited to DBEs, some stakeholders felt MBTA and its prime contractors repeatedly contracted with the same DBEs. They expressed concern that MBTA contracting opportunities were limited to certain DBEs with established relationships with prime contractors, and they pointed out that to help DBEs develop, MBTA could do a more effective job fostering new relationships between prime contractors and DBEs. During MBTA's consultation process for its 2015–17 DBE goal, stakeholders had expressed similar concerns. In the documentation of its 2015–17 DBE goal methodology, MBTA stated, "Participants wanted to be more engaged with our prime contractors and requested more networking sessions."

Corrective Actions and Schedule

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

- An updated DBE Program Plan that clearly describes its BDP program and how MBTA implements its program specifically for DBEs interested in and/or working on FTA-funded projects;
- Information on MassDOT's BDP program that describes how, and to what extent, the program incorporates the DBE Business Development Program Guidelines in 49 CFR Part 26, Appendix C; and
- A list of DBEs associated with its FTA DBE program that have participated in the MassDOT BDP in the last three years, if any.

In addition, FTA advised MBTA to include more opportunities for prime contractors and DBEs to interact as a part of its BDP, including, but not limited to, a mentor–protégé program as described in 49 CFR Part 26.35.

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, FTA found no deficiencies with this requirement. In calculating its FY 2015–17 goal, MBTA implemented the DOT-recommended two-step goal-setting process.

In step one, MBTA first calculated the relative availability of DBEs to all firms in its market area, which MBTA defined as the State of Massachusetts. MBTA calculated the relative availability of DBEs by dividing the number of DBEs in the MassUCP database by the total number of firms in the most recent U.S. Census Bureau 2011 County Business Patterns North American Industry Classification System for Massachusetts by major contracting category [construction, professional services (design), and materials]. MBTA then determined its projected spending for FY 2015–17 in the same major categories. MBTA weighted its projected spending by the relative number of available DBEs and by the relative expenditure in each of the major categories. Based on the best information available at the time, MBTA correctly calculated its FY 2015–17 step one (base figure) DBE goal to be 1.39 percent.

In step two, MBTA considered past DBE participation commitments on contracts awarded between FY 2010 and FY 2013, noting median participation of 22 percent. MBTA then added its step one base figure (1.39 percent) to its step 2 median participation rate (22 percent) and averaged the sum total (23.39 percent / 2). MBTA correctly calculated its FY 2015–17 step two-adjusted DBE goal to be 11.69 percent. MBTA further adjusted its FY 2015–17 DBE participation goal based on the results of a 2010 Commonwealth of Massachusetts Division of Capital Asset Management (DCAM) Disparity Study and steps it took in response to the Study's findings.

The DCAM study found both statistical and anecdotal evidence of business discrimination against M/WBEs in all major procurement categories and data sources examined . . . The DCAM Disparity Study also concluded that there is statistically significant evidence of discrimination in Massachusetts in the small business credit market in that when minority-owned firms applied for loans, their loan request were substantially more likely to be denied than other groups; and that more minority-owned firms believe that the availability of credit is the most important issue likely to confront them. Based on the Authority's interaction with DBEs, these issues are often presented as barriers to DBE participation.

The Authority in conjunction with MassDOT has contracted with the Next Street Financial LLC firm to provide assistance with small business development with the emphasis on building capacity. The effort being put forth by Next Street and Authority

will put DBEs in a better position to compete in Authority's awards and lessen the impact of discrimination.

MBTA determined its FY 2015–17 DBE participation goal to be 14 percent based on its step one and step two calculations, additional information obtained from the DCAM Disparity Study, and the DBE capacity-building assistance it implemented in response to the Study's findings.

In calculating the portion of its FY 2015–17 DBE goal it would attain through race-neutral means, MBTA applied its FY 2013 race-neutral attainment of 10 percent to its overall FY 2015–17 DBE participation goal of 14 percent. In doing so, MBTA set an overall goal of 14 percent, 1.4 percent of which MBTA would attain through race-neutral means and the balance, 12.6 percent, through race-conscious means.

During the site visit, the review team discussed with MBTA the need to only consider FTA-funded projects in its DBE goal calculation, which MBTA previously addressed in its FY 2015 Shortfall Analysis and Corrective Action Plan. In addition, there was considerable discussion as to improvements that MBTA could make to its DBE goal setting process for FY 2018-2020. The review team encouraged MBTA to take a broader view as to what constituted its projected spending for the next three-year period. MBTA DBE staff should review the whole range of planning documents that are produced to ascertain spending that may have DBE contracting opportunities, including any short-range transit plans and the Transportation Improvement Program (TIP) approved by the Boston Region Metropolitan Planning Organization of the Boston urbanized area, as well as projects contemplated in MBTA 3-5 year budgeting process. MBTA should use its recently developed Bidders List to determine the total number of firms available instead of the most recent U. S. Census Bureau County Business Patterns North American Industry Classification System for Massachusetts. The Bidders List is a better indicator of total DBE and non-DBE firms available and would have a significant impact on determining the step one (base figure) goal, which MBTA calculated to be 1.39 percent for FY 2017-2017.

Corrective Action and Schedule

FTA requires no corrective actions on the part of MBTA for the Calculation requirement.

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, FTA found no deficiencies with this requirement. FTA issued advisory comments with this requirement. MBTA included much of the language from 49 CFR Part 26.45 to describe its public participation process in its 2016 draft DBE Program Plan,

without providing much detail on the actual implementation of its public participation approach. MBTA included the following language in its plan:

As the regulations require, prior to the submission of the methodology for review, the Authority will consult with minority, women and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Authority's efforts to establish a level playing field for the participation of DBEs. The focus of this exchange is to obtain information relevant to the goal setting process.

MBTA did not describe how it would consult with minority, women, and general contractor groups and other officials or organizations in its plan. Nor did MBTA describe which specific groups in the MBTA service area it would consult with, or how often it would provide opportunities for consultation. In its 2015–17 goal methodology, MBTA provided information on how it satisfied the consultative process, but the information was after the fact. MBTA stated that it held a public forum to solicit feedback from the DBE community on its 2015–17 DBE goal. If a public forum is a method employed by MBTA to solicit stakeholder input, FTA advised MBTA to state that in its plan. In addition, if the one forum was the only opportunity for stakeholders to provide feedback, FTA advised MBTA to provide more opportunities in the future. If the forum occurs at the same general time each year, FTA advised MBTA to state that in its plan. If there are other methods used to consult with the DBE community, FTA advised MBTA to state those in its plan as well.

During the site visit, MBTA discussed the recent formation of a DBE Advisory Committee comprising 31 members. The Committee consisted of representatives from 19 DBE firms, five prime contractors, one non-DBE Woman-owned Business Enterprise certified by the State of Massachusetts, four individuals from the community, and two representatives from the City of Boston government. FTA advised MBTA to include the DBE Advisory Committee in the development of all future DBE goals and to describe the Committee's involvement in its DBE Program Plan.

Finally, FTA advised MBTA to begin its 2018–20 goal-setting process as soon as possible in order to meet its August 1, 2017, deadline. The review team noted that MBTA submitted its FY 2015–17 goal late. In particular, as it relates to the public participation requirement, MBTA stated the following in its FY 2015–17 goal-setting methodology:

Following the consultations with the public, the Authority published notice of the proposed overall goal in general circulation and minority focused publications starting on June 27th informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the MBTA's Office of Diversity and Civil Rights, 3170, 10 Park Plaza, Boston, MA 02116 for thirty (30) days following the date of the notice, and informing the public that the Authority will accept comments on the goal for forty-five (45) days from the date of notice.

If MBTA posted its notice on June 27th and accepted comments for 45 days thereafter, the comment period would end on August 11th, 11 days past the due date.

FTA advised MBTA that in the development of its FY 2018–20 goal methodology, its consultative process should include scheduled, direct, interactive exchanges (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 that these exchanges must occur before submitting its methodology to FTA for review. MBTA should engage and consult with minority, women's, and general contractor groups, community organizations, and other officials or organizations.

In addition to the required consultative process described above, and per 49 CFR Part 26.45, MBTA must provide for the following:

A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

Advisory Comments

FTA advised MBTA to document the details of its public participation process in its DBE Program Plan. In the setting of all future goals, FTA advised MBTA to include its DBE Advisory Committee in its goal-setting process. FTA advised MBTA to begin its triennial DBE goal-setting process early enough to complete the required consultative process and notice and to submit goals in a timely manner.

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, FTA found deficiencies with this requirement. In its 2016 draft DBE Program Plan, MBTA stated its race-neutral means may include, but were not limited to, a list of 12 items, nine of which were similar to, if not the same as, the measures recommended in 49 CFR Part 26.51. Five of the 12 items listed by MBTA referenced measures taken or provided by its Small Business Supportive Services (SBSS), and included the following:

- *Providing assistance in overcoming limitations such as inability to obtain bonding or financing with referrals to the Small Business Supportive Services team.*

- *Providing technical assistance and other similar services with referrals to the Small Business Supportive Services team.*
- *The Small Business Supportive Services team assists with immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other Small Businesses by providing workshops in all aspects of small business management.*
- *Establishing a program to assist new start-up firms, particularly in fields in which Participation by small businesses has been historically low. This will be implemented through the Small Business Supportive Services provider.*
- *The Small Business Supportive Services provider will assist DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.*

However, during the site visit, MBTA did not satisfactorily demonstrate that DBEs associated with its FTA DBE Program participated in or benefited from any of the SBSS provisions listed above. MBTA must take steps to ensure the race-neutral measures included in its draft DBE Program Plan are implemented to the benefit of DBEs associated with its FTA DBE program and pursuant to 49 CFR Part 26.51 requirements.

In addition, MBTA did not explicitly include the Small Business Element (SBE) in its list of race-neutral means. Because the FTA considers the SBE a mandatory race-neutral measure, MBTA must explicitly include and implement its SBE as a race-neutral measure in its DBE Program Plan.

MBTA's SBE included the following statement:

The MBTA Small Business Program develops procurement procedures that facilitate small business participation and include but [are] not limited to the following elements: unbundling of large contracts where feasible; in the absence of DBE goals, requiring primes to provide subcontracting opportunities to small businesses; creation of race/gender-neutral small business set-asides on smaller procurements; initiating a small business bidding preference program; providing small business support services, conducting small business outreach activities and performing other functions that will facilitate small business participation.

The procedures listed by MBTA were the same as those recommended in 49 CFR Part 26.39. During the site visit, MBTA provided documentation confirming the unbundling of contracts Z92PS60, Z92PS63, Z92PS69, Z92PS74, and Z92PS55, but it did not provide documentation confirming implementation of any of the other procedures listed in its SBE. MBTA must develop an SBE that reflects actual implementation and practice.

Corrective Actions and Schedule

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

- An updated DBE Program Plan that includes only the actual race-neutral means used by MBTA for DBE goal attainment. MBTA's race-neutral means should include its SBE and

should also benefit DBEs associated with its FTA DBE Program, as required by 49 CFR Part 26.51.

- An updated SBE that includes only the actual measures used by MBTA to develop and provide contracting opportunities for small businesses, as required by 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 using race-neutral measures.

Discussion

During this compliance review, FTA issued an advisory comment with this requirement. In its 2016 draft DBE Program Plan, MBTA stated it used contract-specific DBE goals; however, MBTA did not provide any additional information. Although the review team confirmed that MBTA used contract-specific DBE goals, FTA advised MBTA to include more information on how it determines the race-conscious proportion of its overall DBE goal in its Plan.

According to its FY 2015–17 DBE goal-setting methodology, MBTA established current race-neutral participation levels based on past race-neutral attainment. For example, MBTA achieved 10 percent of its FY 2013 overall goal through race-neutral means. When calculating its FY 2015–17 goal, MBTA applied the same rate of attainment to the new overall goal. MBTA's FY 2015–17 overall goal was 14 percent (1.4 percent race-neutral). The difference between what MBTA calculated as its current race-neutral attainment (1.4 percent) and the overall goal (14 percent) represented the percentage of MBTA's overall goal attained through race-conscious means (12.6 percent).

Advisory Comment

FTA advised MBTA to update its draft DBE Program Plan to include a more detailed description of how it determined the portion of its overall goal attained through race-conscious means.

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 good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 5 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach it uses in its DBE Program Plan.

Discussion

During this compliance review, FTA found deficiencies with this requirement. In its most recent DBE Program Plan, MBTA indicated that for procurements with DBE contract goals, bidders must submit GFEs as a matter of responsiveness. When submitting GFEs at the time of bid, MBTA required the inclusion of the following information:

1. *The names and addresses of each SDO [Supplier Diversity Office] certified DBE firm with whom the bidder intends to make a commitment.*
2. *A description of the work that each DBE will perform.*
3. *The dollar amount of the participation of each DBE firm.*
4. *Written and signed documentation of commitment (Schedule) to use a DBE firm whose participation it submits to meet a contract goal.*
5. *Written and signed confirmation from the DBE that it will participate in the contract as provided in the prime contractor's Letter of Intent commitment.*
6. *If the contract goal cannot be met, evidence of Good Faith Efforts.*

A review of the five contracts listed in the table below revealed that MBTA did require the submission of GFEs at the time of bid as a matter of responsiveness. However, as noted in the table, MBTA's prime contractors had not fully implemented the GFE requirements in its DBE Program Plan.

Contract	Date	Description	GFEs	Notes
A90CN06	Dec. 2015	Downtown Crossing Vertical Transportation and Station Improvement	Yes	
B64CN02	Sep. 2015	Rehabilitation of Merrimack River Bridge Piers Project	No	
RROPS19	Nov. 2015	General Engineering Consulting Services	Not submitted at time of initial contract, but with each subsequent task order	Initial contract had a contract goal of 14%. MBTA subsequently issued three task orders under this contract. Only one of the three task orders (Task 3) included a contract goal (16.5%). The contract documentation associated with this task order included some but not all of the GFE information required by MBTA. For example, there was a description of the work the DBE was to perform but no written and signed confirmation from the DBE that it would participate in the contract.
S99PS04	Jan. 2016	General Engineering Consulting Services	Not submitted at time of	Contract had a 12% goal. Contract documents included a salary roster for the DBE,

Contract	Date	Description	GFEs	Notes
			initial contract, but with each subsequent task order	Keville Enterprises; however, the original contract documentation did not include all the GFE documentation MBTA stated it required in its contracts. MBTA subsequently issued four task orders under this contract, two of which had DBE participation. The contract documentation associated with these task orders included some but not all of the GFE information required by MBTA. For example, there was no written and signed confirmation from the DBE that it would participate in the contract.
Z92PS79	Oct. 2014	General Engineering Consulting Services	Not submitted at time of initial contract, but with each subsequent task order	Contract had a 16% goal. MBTA issued seven task orders under this contract, four of which had DBE participation. Task 3 contained no written and signed commitments from DBEs to participate in the contract. In Tasks 4, 5, and 6 MBTA included a list of DBEs that would participate in each task order along with all other required GFE information. However, for these same tasks, the prime listed RM Engineering as one of the DBEs. The MassUCP DBE Directory did not list RM Engineering as a certified DBE. The total amount committed to DBEs for all three task orders was \$793,745, of which the prime committed \$575,653 (72%) to RM Engineering.

Corrective Actions and Schedule

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

- Updated procurement procedures that confirm the inclusion of all required and applicable GFEs in FTA-funded contracts with DBE participation goals, including

confirmation that DBEs submitted by prime contractors to satisfy the GFE requirement are in the MassUCP DBE Directory;

- Documentation confirming a review and determination that all DBEs working on FTA-funded contracts with DBE participation goals are in the MassUCP DBE Directory; and
- An updated FTA Contract Requirements document that includes current DBE Program Provisions, as detailed in 49 CFR Part 26.

F) Protecting Against Termination for Convenience

Basic Requirements (49 CFR Parts 26.53 and 26.13)

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

Discussion

During this compliance review, FTA found deficiencies with this requirement. MBTA's DBE Program Plan contained the required protections against termination of DBE subcontractors for convenience. The plan stated that prime contractors must obtain prior written consent from MBTA before terminating a DBE subcontractor. However, MBTA did not include this protection in all contracts. In particular, MBTA's General Engineering Consulting Services contracts lacked the required provision for the protection against termination for convenience. After the site visit, the review team reviewed General Engineering Consulting Services contracts RROPS19, S99PS04, and Z92PS79 and related task orders and could not locate the required protection against termination for convenience.

In addition, MBTA did not review or monitor subcontracts for language inconsistent with the requirement to protect against termination for convenience. The review team reviewed subcontracts 61869-4, 61870-3, 61888-1, and 61889-2 associated with the Shoreline Bridge Replacement project (prime contract B73CN01). These contracts contained the following unsatisfactory language:

Article 18. Convenience Termination.

- 18.1 BHD may notify the Subcontractor to discontinue all Work or any part thereof at any time with or without cause. Such notice shall be given to the Subcontractor in writing, and, thereupon, the Subcontractor shall discontinue such Work or such part thereof as BHD so designates.*

The review team noted that MBTA included the following satisfactory language in contract A90CN06, Downtown Crossing Vertical Transportation and Station Improvements:

Upon approval by the Authority, the Successful Bidder shall enter into each such approved subcontract and shall thereafter neither terminate any such subcontract nor reduce the scope of the work to be performed by, or decrease the price to be paid to, the

DBE thereunder without in each instance the prior written approval of the Authority. The Authority retains the right to approve or disapprove any subcontract with a DBE proposed under this Provision for the same reasons and in the same manner that the Authority may approve or disapprove any other subcontract proposed to it.

MBTA also included the following language in contract B64CN02, Design-Build Services for the Rehabilitation of Merrimack River Bridge Piers project:

Design-Builder shall not terminate for convenience any subcontract with a DBE firm (or an approved substitute DBE firm) without prior written consent from the MBTA's Office of Diversity and Civil Rights. This includes but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm or with another DBE firm.

Corrective Action and Schedule

Within 60 days of the issuance of the final report, MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes monitoring procedures for ensuring prime- and subcontractor contracts sufficiently include the required protections against termination for convenience. In addition, MBTA must provide documentation confirming the implementation of said procedures.

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, FTA found deficiencies with this requirement. As background information, through FY 2015 MBTA relied on information from a minimum of four separate and disconnected data/information systems to compile and report on DBE activity. Those systems included the Financial & Materials Information System (FMIS), used by MBTA to process accounts payable and accounts receivable; Capital Management System (CMS), used by MBTA for contract administration; hard copy reports, forms, and notes created and maintained by Government Compliance Officers; and reconciliation spreadsheets (approximately 10) designed and used by the Assistant Director for Government Compliance in ODCR to synthesize information from the three previously described disconnected systems. MBTA's FY 2015 A-133 Single Audit Report dated June 7, 2016, documented a finding specific to a lack of process and internal controls that led to the auditor's inability to confirm the accuracy of MBTA's DBE semi-annual reports. The audit report stated the following:

Finding: *Reporting errors and segregation of duties issues noted with Disadvantaged Business Enterprise (DBE) Uniform Report.*

Condition: *Data pulled by the Authority from FMIS (Financial & Materials Information System) was pulled incorrectly. The data population did not match purchase orders correctly with the proper Business Units. When the data was aggregated by Business Unit (Federal-F and ARRA-Z), the wrong purchase orders [were] reported on. Multiple amounts included in the DBE Uniform report for the period October 1, 2014 to March 31, 2015 did not tie to supporting documentation as noted below. The report was prepared, authorized and submitted by the same person, the Assistant Director for Government Compliance, an instance of inadequate segregation of duties.*

Cause: *The Authority's process used in prior years to summarize financial data relating to DBE activity using Federal funds was not functioning for the reporting period October 1, 2014 to March 31, 2015. In prior years, outside IT consultants assisted the Authority with extracting data from FMIS and CMS to the PRISM system to produce support for the DBE report. The outside IT support was not available for the reporting cycle selected, which appears to have made compiling the information for this reporting cycle more complex and time-consuming for Authority staff.*

In addition, the Authority's policy requiring reports to be prepared and authorized by different officials was not followed. The report was prepared, authorized, and submitted by the same person, the Assistant Director for Government Compliance.

Effect: *There is an increased risk of inaccurate reporting to the Federal government concerning compliance with grant requirements for utilization of DBE contractors and subcontractors.*

Recommendation: *The Authority should ensure that DBE reports are supported by detailed documentation, as well as, prepared and authorized by an official that did not complete the report.*

Auditee Corrective Action Plan: *The aggregation of data for the report has been automated. The entire Federal Transit Authority (FTA) Semi-Annual Report Due on December 1, 2015 will be generated automatically. The Assistant Director will do the initial review. The Deputy Director for Civil Rights will review and the Assistant Secretary will sign off giving the approval to load the report into TEAM. There will be an approval sign-off for audit review.*

For the next reporting period – December 1, 2015, the report will be automatically generated. The Collaborative Group created a Dashboard for DBE FTA Reporting. All backup documentation is captured in the Dashboard to support the report.

As explained by MBTA, the Dashboard for DBE FTA Reporting (DBE Dashboard) automated, to some extent, the Assistant Director for Government Compliance's semi-manual, cumbersome, and time-consuming process of reconciling, validating, and reporting on the DBE-relevant data recorded in the FMIS and CMS systems. The DBE Dashboard imported the data from these systems and provided a menu-driven end-user "dashboard" to access the information in one place.

During the review, MBTA stated that it first used the DBE Dashboard to produce the June 1, 2016, semi-annual report and provided a hard copy of the report generated by the DBE Dashboard system. The information in the report provided by MBTA matched the information

entered into TrAMS for the same reporting period, with one exception. The report provided during the review indicated the report was for FY 2015, not FY 2016, and the report in TrAMS indicated the report was for FY 2016, the correct reporting period. Although the DBE Dashboard appeared to be an improvement over MBTA's previous process, the review team identified at least one data error in the new report-generation process.

In addition, the DBE Dashboard did not address a discrepancy in how MBTA's CMS Payment Voucher application calculated DBE participation in relation to stated DBE contract goals, nor how ODCR calculated the same data. The CMS Payment Voucher application calculated DBE payments in any given period as a percentage of all DBE payments paid through the previous period. CMS reported the resulting percentage as the DBE participation rate. Unlike CMS, ODCR calculated DBE participation in any given period based on the total cumulative amount paid to DBEs at the end of a given period represented as a percentage of the overall contract value. For example, contract B64CN02 had a total value of \$28,270,000 with an overall DBE contract goal of 6 percent (or \$1,696,200). The total DBE contract value for all DBEs at the beginning of the contract was \$1,982,782 (or 7 percent). In the period ending December 31, 2016, the prime contractor paid \$6,950 to DBEs. The cumulative amount paid to DBEs through the previous period (ending November 30, 2016) was \$743,306.25. For the period ending December 31, 2016, CMS reported DBE participation as 9.8 percent ($\$6,950 / \$743,306.25 = 9.4$ percent). The difference between 9.4 percent and 9.8 percent was likely due to retainage. Comparatively, ODCR calculated the total cumulative amount paid to all DBEs through December 31, 2016 ($\$743,306.25 + \$6,950 = \$750,256.25$) as a percentage of the total contract value ($\$750,256.25 / \$28,270,000 = 2.7$ percent). This discrepancy further highlights the fact that although MBTA has improved its DBE participation reporting function, the potential still exists for inaccuracies in its reporting.

Finally, MBTA did not comply with its own corrective plan as described in the FY 2015 A-133 Single Audit Report. For example, in its corrective action plan, MBTA stated, "The Assistant Director will do the initial review. The Deputy Director for Civil Rights will review and the Assistant Secretary will sign off giving the approval to load the report into TEAM." A transmittal letter from the Assistant Director for Government Compliance to the MBTA Director of Capital Accounting, accompanying the submission of its June 1, 2016, semi-annual report stated:

The attached FTA Semi-Annual Report was prepared by [the Assistant Director for Government Compliance], reviewed by [an ODCR Government Compliance Officer] and reviewed and approved by [the Deputy Director of Civil Rights, External Programs], and uploaded into the federal reporting system TrAMS.

Although this description represented an improvement in internal controls, it was inconsistent with MBTA's plan to correct the finding in its FY 2015 A-133 Single Audit Report. This process described the involvement of an ODCR Government Compliance Officer not mentioned in MBTA's corrective action plan. In addition, it did not confirm the approval by way of signature by the Assistant Secretary for ODCR. MBTA provided its December 1, 2016, semi-annual report generated from the DBE Dashboard prior to submitting the report to FTA. MBTA did not provide a description of the staff involved in the preparation, validation, and authorization of this report; however, the review team confirmed MBTA did not follow the process described in its FY 2015 A-133 Single Audit corrective action plan.

Considering the size and scope of MBTA's FTA-assisted public transit program, and particularly in light of the \$2.98 billion GLX project, MBTA must implement an updated information

management system that minimizes the potential for DBE program mismanagement and inaccurate program reporting. To the extent possible, MBTA should contemplate the following as features of any updated system: built-in internal controls, database-driven electronic program management forms (e.g., contractor affidavits, commercially useful function forms, project scoping and GFE worksheets, monitoring checklists, and project management diaries), and other useful DBE program management tools, all centralized and linked to project and contractor records.

This recommendation is consistent with the recommendations included in the *MBTA Fiscal and Management Control Board First Annual Report*, dated December 22, 2015. In its report the FMCB stated the following:

Even as these efforts continue, the MBTA must upgrade its antiquated human resources technology. The Authority currently has 15 separate human capital management software systems, 10 of which are no longer supported by the software's developers. The systems are generally not integrated and do not link to a common data source.

This same report identified the following goals related to the implementation of any new system:

- *Greater efficiency*
- *Higher accuracy*
- *Meet user needs*
- *Reduce risk*
- *Timely, accurate reports*
- *On demand reports*
- *Managers can spot problems before running reports*
- *Empowers managers to access information in the field*
- *Improves responsiveness*
- *Better communication*

MBTA must include DBE program considerations in its plans to implement new technologies to support agency functions.

MBTA included language from 49 CFR Part 26.55 in its DBE Program Plan to describe its standard for counting DBE participation, essentially restating the requirements for counting DBE participation. During the site visit, MBTA described in greater detail what it did to meet the requirements, including but not limited to the use of different forms and reports, contractor affidavits (i.e., MBTA Affidavit of Subcontractor Payment), information management systems (DBE Dashboard), on-site project monitoring, and proactive correspondence with DBEs to validate prime contractor activity and payment reports.

As described during the site visit, MBTA proactively monitored the type and quantity of work performed by DBEs on FTA-funded projects through a combination of methods. First, MBTA required prime contractors to complete and submit its Prime Contractor Monthly Report of DBE Participation form, which included the name of the DBE, project task, payment date, and payment amount. MBTA compliance officers validated these reports by comparing them to the payments recorded in its Capital Management System for the same period and through follow-up correspondence with DBEs to confirm payment receipt. MBTA provided copies of monthly reports submitted by two prime contractors, ABM Services and S. J. Services, Inc., and annual DBE Goal Summary Sheets that aggregated the information from the monthly reports. ODCR

sent the DBE Goal Summary Sheets to the DBEs that performed the work, along with a cover letter requesting the DBEs to review and confirm the payments reported.

MBTA also required prime contractors to submit the Affidavit of Subcontractor Payment form with all invoices. Through the completion of this form, MBTA required prime contractors to certify by signature which DBE subcontractors they paid, how much they paid each DBE, and that the DBEs receiving payment performed a commercially useful function.

The review team requested but did not receive MBTA instructions to contractors on what it required when reporting DBE participation on projects. Nevertheless, the review team reviewed reports produced from MBTA's DBE Dashboard that confirmed contractors were submitting the required DBE participation information, including the following:

- Contract number
- Payment period
- Payment number
- Prime contractor
- Contract award value
- Current contract value
- DBE subcontractors
- DBE goal
- DBE totals
- Subcontract totals
- Dollar amount paid through last month
- Dollar amount paid in current month
- Dollar amount paid to date
- Affidavits of subcontractor payment

Corrective Actions and Schedule

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

- An updated DBE Program Plan that includes a detailed description of the processes, procedures, and tools used by MBTA for counting DBE participation pursuant to 49 CFR Part 26.55. MBTA must include procedures that describe in detail the segregation of duties and other internal controls (e.g., data validation and DBE semi-annual report authorization) implemented in response to its FY 2015 A-133 Single Audit DBE finding;
- An updated DBE Program Plan that adds to the list of the DBELO's duties the authorization of all semi-annual reports prior to submission to FTA per MBTA's FY 2015 A-133 Single Audit DBE finding; and
- A description of MBTA's plan for and progress toward updating its information systems and how its plans will improve the integrity and accuracy of future DBE reports.

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

Corrective Action and Schedule

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

6.9 Shortfall Analysis and Corrective Action Plan

Basic Requirement (49 CFR Part 26.47)

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

Discussion

During this compliance review, FTA found no deficiencies with this requirement. MBTA's DBE Program Plan stated:

Pursuant to section 26.47 whenever the awards and commitments shown on the Authority's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the Authority will conduct and submit a shortfall analysis and corrective action, including milestones, due on Dec 29th as required under this section by analyzing the difference between the overall goal and the actual awards/commitments. The analysis will include an examination of causes for the shortfall and will provide corrective measures to address the shortfall. The Authority will review the following factors:

- 1. Whether there were circumstances in the procurement bidding process that might have contributed to the shortfall; i.e., more contracts awarded on good faith effort' and/or not all contracts let.*
- 2. Whether ongoing monitoring of the overall goal was adequately conducted in order to project and make timely adjustments to contract goal-setting.*
- 3. Whether contract goals were appropriately established on projects that had opportunities for DBE participation.*

4. *Whether there was a substantial change in the construction or procurement program, where a mid-cycle review would have demonstrated a need for a downward adjustment to the goal.*
5. *Whether there were outside factors that contributed to the shortfall such as a substantial decrease in the availability of DBEs to bid on Authority projects or more work from other entities that limited DBE capacity*

During this review, MBTA submitted documentation confirming it exceeded its DBE goals in FY 2013 and FY 2014. MBTA did not meet its goal in FY 2015 and provided its shortfall analysis and corrective action plan, along with the follow-up status reports required by the FTA to track implementation of corrective actions. As documented in the shortfall analysis, in FY 2015 MBTA achieved 11 percent DBE participation rather than that year's goal of 14 percent. MBTA determined the shortfall occurred because the State funded the majority of its projects that year. Of the 34 projects funded in FY 2015, only three received FTA funding. As corrective action, MBTA identified FTA-funded projects scheduled for FY 2016 that it reported would make up for the shortfall in FY 2015. MBTA also stated it would update its FY 2018–20 triennial goal-setting methodology to identify and more fully consider the impact and timing of planned federally funded projects on its goal attainment. Because MBTA was one of the 50 largest transit authorities in the country, it submitted its FY 2015 shortfall analysis and corrective action plan to FTA, as required, within 90 days of the end of the fiscal year on December 23, 2015.

After submitting its FY 2015 shortfall analysis and corrective action plan, FTA required MBTA to take additional corrective action, including:

- Unbundling large contracts when feasible to create additional opportunities for DBEs,
- Hosting and attending DBE and small-business outreach sessions, and
- Developing procedures to only consider federally funded projects when developing its future triennial goals.

FTA further required MBTA to provide periodic status reports on the implementation of its corrective actions. MBTA submitted the required status reports on time and implemented the following actions:

- Unbundled large general engineering consulting contracts originally valued at \$5 million into several smaller \$500,000 procurements;
- Hosted or participated in five DBE outreach events between April and July 2016, including two events hosted by the MBTA ODCR, MassBUYS Expo, Supplier Diversity Series at Roxbury College, and Mass Supplier Diversity Regional Series; and
- Worked with the MBTA Budget Department to identify federally funded projects included in its five-year Capital Improvement Plan. In addition, MBTA's Budget Department began providing quarterly listings of projects with a federal interest to the DBELO for goal-setting and goal-tracking purposes.

MBTA had not met its FY 2016 DBE goal and had begun preparing the required shortfall analysis and corrective action plan at the time of the site visit.

Corrective Actions and Schedule

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

6.10 Transit Vehicle Manufacturers (TVMs)

Basic Requirement (49 CFR Part 26.49)

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

Discussion

During this compliance review, FTA found deficiencies with this requirement. MBTA did not implement the procedures in its DBE Program Plan for ensuring TVM compliance with 49 CFR Part 26.49. MBTA did not submit the required TVM report to FTA within 30 days of awarding TVM contracts FC-679 and FC-683. MBTA entered into both contracts after November 2014 and included the purchase of new transit vehicles manufactured by New Flyer.

MBTA addressed TVM compliance in two sections of its DBE Program Plan. The following language is included in the DBE Program Staff section of the plan as one of the responsibilities of the MBTA Procurement and Logistics department:

Transit Vehicle Management (TVM) procurements are also processed in Procurement and Logistics. TVMs are required to be certified by the FTA. The FTA is the entity that sets DBE goals for the TVMs. ODCR is kept abreast of all TVM purchases and given notice of TVM certification approvals from the FTA. Procurement and Logistics reports out to the FTA on TVMs within 30 days after the awards.

The following language is included in the Transit Vehicle Manufacturers Goal section of the plan:

The Authority will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26.49. TVM certifications are sent to the Procurement and Logistics Department where they are filed.

MBTA does not have to remove the language included in the DBE Program Staff section. However, the review team advised MBTA to include the same language in the Transit Vehicle Manufacturers Goal section. In addition, the review team advised MBTA to update its plan to include a statement that it will complete the online FTA TVM Vehicle Award Report within 30 days after TVM contract award.

Corrective Action and Schedule

Within 60 days of the issuance of the final report, MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for meeting all applicable TVM requirements described in 49 CFR Part 26.49. In addition, MBTA must complete the online FTA TVM Vehicle Award Report for TVM contracts FC-679 and FC-683.

6.11 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, FTA found deficiencies with this requirement. U.S. DOT 49 CFR Part 26.13 requires the inclusion of the following clause in all DOT-assisted contracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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.*

MBTA included the required contract assurance in its DBE Program Plan, requiring all FTA-assisted prime contractor and subcontractor contracts to include the assurance. In addition, MBTA stated in its plan that it required prime contractors to submit their subcontracts to its ODCR compliance staff to review those contracts for the nondiscrimination assurance. However, contracts RROPS19, S99PS04, and Z92PS79 did not contain the required assurance. In addition, contracts A90CN06 and B64CN02 did not contain the entire assurance as included in its plan, omitting the four potential remedies listed in the clause above.

Contract B64CN02 included DBE nondiscrimination language in several places throughout the contract document; however, nowhere in the document did the language match the language included in the DBE Program Plan. The multiple references made it difficult to clearly understand MBTA's nondiscrimination assurance. For example, in Exhibit E, U.S. DOT Federal Transit Administration Contract Requirements, MBTA included the following language:

The (design-builder or subcontractor and its third party contractors) shall not discriminate on the basis of race, color, national origin, age, or sex in the performance of this (contract or agreement). The requirements of 49 C.F.R. Part 23 and the Authority's U.S. DOT-approved Disadvantaged Business Enterprise (DBE) Program (where required) are incorporated in this (contract agreement) by reference. Failure by the (design-builder or subcontractor and its third party contractors) to carry out these requirements is a material breach of the (contract or agreement), which may result in the termination of this (contract or agreement) or such other remedy as the Authority deems appropriate.

MBTA's reference to 49 CFR Part 23 is out of date. Current DBE requirements are found in 49 CFR Part 26.

Later in the same Exhibit E, MBTA included the following language under the heading "DBE Obligation":

The Authority and its contractors agree to ensure that minority business enterprises as defined in 49 CFR Part 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard the Authority and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity [outdated language] to compete for and perform contracts. The Authority and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted contracts.

Finally, in the same Exhibit E under the heading "Contractor Assurances," MBTA stated the following:

The Design-Builder or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder, Subrecipient or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The Design-Builder shall carry out applicable requirements of 49 CFR, Part 26, in the award and administration of DOT-assisted contracts. Failure by the Design-Builder 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.

Corrective Action and Schedule

Within 60 days of the issuance of the final report, MBTA must submit to the FTA Office of Civil Rights a memorandum signed by the MBTA Chief Administrator and Acting General Manager affirming MBTA will fully implement the procedures as described in its DBE Program Plan for ensuring the inclusion of the required DBE contract assurances in all prime contracts and subcontracts.

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, FTA found no deficiencies with this requirement. MBTA's DBE Program Plan contained the following language, which the review team confirmed was also included in contracts A90CN06, B64CN02, RROPS19, S99PS04, and Z92PS79:

In accordance with the Department of Transportation's Disadvantaged Business Enterprise Regulations 49 CFR Part 26, all prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than ten (10) days from receipt of each payment the Authority makes to the prime contractor. The prime contractor will also promptly return any retainage payments to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed.

Neither MBTA staff nor DBEs interviewed during the site visit reported issues with prompt payment.

Corrective Action and Schedule

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

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, FTA found deficiencies with this requirement. MBTA included legal remedies in its DBE Program Plan in *Appendix F, Disadvantaged Business Enterprise Participation Provision*, Section 10 Sanctions. The legal remedies contained in this section communicated 11 actions available to MBTA to enforce compliance with its DBE program and U.S. DOT requirements as promulgated in 49 CFR Part 26. The remedies included withholding of payment, suspension, contract termination, debarment, and referral to the Massachusetts Attorney General, the U.S. DOT Office of Inspector General, and the Department of Justice. These remedies were sufficiently responsive to FTA DBE requirements. However, MBTA did not include these remedies in its General Engineering Consulting Services contracts RROPS19,

S99PS04, and Z92PS79. In addition, the review team noted that only three of the 11 remedies described in its plan were included in contracts A90CN06 and B64CN02.

During the site visit, the review team discussed with MBTA ODCR staff a 2011 lawsuit filed by Bevco Associates, Inc., a DBE subcontractor on MBTA's Green Line Extension Project, against the prime contractor on the project, HDR/Gilbane Joint Venture. The basis of the lawsuit at the outset, as described in the documentation provided, was an alleged breach of contract due to harassment, unsubstantiated reduction in work scope, and civil rights violations. MBTA's ODCR staff explained that the parties in the lawsuit eventually reached a settlement. Although MBTA was not party to the lawsuit, the review team requested additional information about MBTA's involvement vis-à-vis its stewardship over the FTA-funded DBE program; namely, what (if any) remedy was contemplated by MBTA separate from and in addition to the lawsuit to protect the interests of the DBE program.

ODCR staff informed the review team that the prime contractor was still working for MBTA, which raised concern. MBTA did not contemplate or address a settlement of this nature as sufficient remedy in its DBE Program Plan. In addition, by apparently taking no further action (e.g., show cause), MBTA ran the risk of establishing a precedent for resolving future disputes similar in circumstance. Although legal closure was achieved, such a resolution may not always be in the best interest of the DBE program. For example, large prime contractors could elect to risk such a circumstance, knowing that the worst-case scenario would be for them to settle a dispute and avoid additional action on the part of MBTA if they were found in violation of the DBE program requirements. Such an action would effectively become a way for a prime contractor to resolve a potential and/or actual DBE program violation outside of the MBTA DBE Program context, which is not necessarily in the best interest of the program. The review team requested additional information on the lawsuit and MBTA's related actions during and after the settlement from its legal department, but MBTA did not provide the requested information before the issuance of this draft report.

Corrective Actions and Schedule

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

- An updated DBE Program Plan that describes its process for ensuring the legal remedies described in its plan are included in all prime- and subcontractor contracts. MBTA must implement its process to ensure compliance with 49 CFR Part 26; and
- An updated DBE Program Plan that includes procedures MBTA will follow to evaluate, take appropriate action, and document its proceedings in cases involving disputes between prime contractors and subcontractors that result in lawsuits in which the parties involved agree to a settlement, or MBTA resolves the suit otherwise.

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

MBTA is not a certifying member of MassUCP; therefore, this requirement is not applicable.

Corrective Action and Schedule

FTA requires no corrective actions on the part of MBTA for the Certification Standards requirement.

6.13 Certification Procedures

Basic Requirements (49 CFR Parts 26.83–26.86)

The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation. DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process. The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR Parts 26.85(c)-(g). The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

Discussion

MBTA is not a certifying member of MassUCP; therefore, this requirement is not applicable.

Corrective Action and Schedule

FTA requires no corrective actions on the part of MBTA for the Certification Procedures requirement.

6.14 Record Keeping and Enforcements

Basic Requirements (49 CFR Parts 26.11 and 26.37)

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

in conjunction with monitoring contract performance for purposes such as closeout reviews for contracts.

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

Discussion

During this compliance review, FTA found no deficiencies with this requirement. FTA issued an advisory comment with this requirement. FTA made the determination of no deficiency based on actions taken by MBTA in the 12 to 18 months prior to the site visit to increase staff, develop and implement tools (i.e., DBE Dashboard) to automate and assist with recordkeeping and reporting, and implement enhanced data-collection and monitoring procedures. MBTA submitted three of its most recent semi-annual reports (2015–16) on time. MBTA submitted the June 1, 2016, semi-annual report one day late on June 2, 2016. Three of the four semi-annual reports MBTA filed in 2013 and 2014 were late; of these, two were submitted over 30 days late.

Over the last 18 months, MBTA has improved the accuracy and timeliness of its semi-annual report submissions. Much of this improvement is due to the hiring of new staff and the development and use of the DBE Dashboard. As reported in the Counting DBE Participation section of this report, MBTA's challenges have more to do with record and data synthesis than record keeping. Although MBTA's DBE Dashboard has helped to automate the synthesis of information from disconnected data sources, MBTA can achieve more efficiency and scale, improved data integrity, and greater overall sustainability by implementing a new information management system that incorporates the needs of the DBE program.

During the compliance review, the review team observed active involvement on the part of the ODCR DBE compliance staff to monitor and document DBE participation on FTA-funded projects. In particular, the review team reviewed the following project files:

- Contract S03CN03 – Hingham New Intermodal Center
- Contract B64PS01 – Merrimack River Bridge Repair and Rehabilitation
- Contract H74CN10 – Franklin Line/Guild Street Bridge Repair and Rehabilitation
- Contract B73CN01 – Shoreline Bridge Reconstruction

Included in these contract files was substantial documentation demonstrating an active effort by MBTA to monitor and manage DBE participation on FTA-funded projects. For example, each of the files contained the following:

- Goal-setting worksheets showing DBE scope and availability assessments and calculations;
- DBE project participation schedules (planned versus actual);
- Project Engineer and Field Inspector daily reports identifying daily DBE participation on jobsites;
- Completed Commercially Useful Function checklists;
- Corrective action plans submitted in response to MBTA requirements to meet contract goals;
- Subcontractor payment reports from MBTA's Capital Management System showing project expenditures, including payments to DBEs and overall progress toward achieving contract goals;

- Construction project progress meeting minutes that documented MBTA compliance officer involvement; and
- Prime contractor monthly DBE participation reports.

FTA advised MBTA to ensure MassUCP was collecting and verifying DBE Annual Affidavit forms from DBEs participating on FTA-funded procurements as part of its ongoing monitoring and enforcement effort. In its most recent A-133 Single Audit Report, dated June 7, 2016, the auditors noted that “procurement checklists were completed but did not include prepared and reviewed signatures. Buy America and Disadvantaged Business Enterprise Affidavits were not obtained.” Timely and sufficient response to this advisory comment is important, particularly in light of a March 8, 2016, *Boston Globe* article titled, “Keolis Consultant Will Plead Guilty to Lying about ‘Disadvantaged’ Status.” The *Boston Globe* reported in this article that the “the wife of a former commuter rail executive admitted in federal court that her company was fraudulently operating as a ‘disadvantaged’ business, with her white husband actually running it while she worked full time for a federal agency.”

At the time of the site visit, MBTA was finalizing the development of its Bidders List (lacking only the completion of a vendor survey). MBTA compiled its Bidders List from the following sources:

1. **Contract Administration:** *Prime Vendors in Professional Services that have been previously vetted during our Architecture & Engineering bidding process.*
2. **Contract Administration:** *Prime Vendors in Construction that have been vetted/previously awarded/pre-approved during our construction bidding process.*
3. **ITD FMIS:** *DBEs who have been awarded Contracts/PO’s past & present.*
4. **Procurement & Logistics:** *Prime Vendors awarded Contracts/PO’s for FY15.*
5. **MassDOT, MassPort, MassHousing, CWE, DCAM and the MBDA:** *All DBEs awarded contracts*
6. **MBTA Business Center Data/Registration**

MBTA’s Bidders List included approximately 2,900 firms and contained the following information for each firm: firm name, firm address, DBE/non-DBE status, age of business, and annual gross receipts, as required by 49 CFR Part 26.11(c).

Advisory Comments

FTA advised MBTA to ensure MassUCP collected Annual Affidavits from DBEs participating on FTA-funded procurements as part of its ongoing monitoring and enforcement effort. FTA further advised MBTA to monitor DBEs for compliance with the representations documented on the Annual Affidavit. FTA advised MBTA to use its Bidders List in its DBE goal-setting effort for FY 2018–20.

7. Summary of Findings

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	DBE Program Plan	26.21	D	<p>Finding: MBTA's DBE Program Plan is out of date.</p> <p>Corrective Action: MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes all required elements and reflects actual practice.</p>	60 Days
2.	DBE Policy Statement	26.23	D, AC	<p>Findings: MBTA did not provide documentation that it distributed its DBE Policy Statement to the DBE and non-DBE business communities as described in its DBE Program Plan. MBTA's DBE contract provisions included DBE policy statement language that was out-of-date.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • Documentation confirming it has distributed its DBE Program Policy Statement, as required by 49 CFR Part 26.23 and as stated in its DBE Program Plan; and • Updated contract provisions that include current DBE Policy Statement language and documentation confirming implementation of said provisions. <p>FTA advised MBTA to distribute the same DBE Policy Statement across all media and to all intended recipients.</p>	60 Days
3.	DBE Liaison Officer	26.25	AC	<p>Advisory Comments: FTA advised MBTA to fill its vacant DBE Technical Administrator position, at a minimum, and to make available more staff, as needed, to ensure adequate support for the</p>	

				<p>DBELO in the management and administration of the DBE program at all times.</p> <p>In light of the magnitude of MBTA's approximately \$2.3 billion Green Line Extension (GLX) project (FTA grant MA-03-0333-00), FTA advised MBTA to dedicate experienced staff to manage the DBE concerns of the GLX project, exclusively.</p>	
4.	DBE Financial Institutions	26.27	D	<p>Findings: MBTA did not have procedures in place and had not taken steps to identify minority-owned banks as described in its DBE Program Plan. MBTA did not disseminate information on the availability of DBE financial institutions, as required.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that includes procedures for investigating the availability of DBE financial institutions that are socially and/or economically disadvantaged and a list of DBE financial institutions that MBTA and/or its contractors could possibly use for banking services; • Documentation confirming it has investigated and considered the services of Leader Bank and One United Bank; and • Documentation confirming it has disseminated information on the availability of DBE financial institutions to its FTA-assisted contractors encouraging them to use one or more of the DBE financial institutions identified by MBTA. 	60 Days
5.	DBE Directory	26.31	ND		
6.	Overconcentration	26.33	D	<p>Findings: MBTA did not conduct the required overconcentration analysis, nor did MBTA include in its DBE Program Plan the frequency with which it conducts overconcentration analyses.</p>	60 Days

				<p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • Documentation confirming the analysis of overconcentration, as required by FTA; and • An updated DBE Program Plan that describes specifically how often MBTA will analyze overconcentration in its DBE program. 	
7.	Business Development Programs	26.35	D, AC	<p>Findings: MBTA did not demonstrate that it had implemented a Business Development Program, as required.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that clearly describes its BDP program and how MBTA implements its program specifically for DBEs interested in and/or working on FTA-funded projects; • Information on MassDOT’s BDP program that describes how, and to what extent, the program incorporates the DBE Business Development Program Guidelines in 49 CFR Part 26, Appendix C; and • A list of DBEs associated with its FTA DBE program that have participated in the MassDOT BDP in the last three years, if any. <p>FTA advised MBTA to include more opportunities for prime contractors and DBEs to interact as a part of its BDP. In addition, FTA advised MBTA to establish a mentor–protégé program as described in 49 CFR Part 26.35.</p>	60 Days
8.	Determining/Meeting Goals				
8.a	Calculation	26.45	ND		60 Days
8.b	Public Participation	26.45	AC	<p>Advisory Comments:</p>	

				FTA advised MBTA to document the details of its public participation process in its DBE Program Plan. In the setting of all future goals, FTA advised MBTA to include its DBE Advisory Committee in its goal-setting process. FTA advised MBTA to begin its triennial DBE goal-setting process early enough to complete the required consultative process and to submit goals in a timely manner.	
8.c	Race-Neutral DBE Participation	26.51	D	<p>Findings: MBTA's race-neutral means of DBE goal attainment documented in its 2016 draft DBE Program Plan did not reflect actual practice. MBTA's Small Business Element did not reflect actual practice.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that includes only the actual race-neutral means used by MBTA for DBE goal attainment. MBTA's race-neutral means should include its SBE and should also benefit DBEs associated with its FTA DBE Program, as required by 49 CFR Part 26.51. • An updated SBE that includes only the actual measures used by MBTA to develop and provide contracting opportunities for small businesses, as required by 49 CFR Part 26.39. 	60 Days
8.d	Race-Conscious DBE Participation	26.51	AC	<p>Advisory Comment: FTA advised MBTA to update its draft DBE Program Plan to include a more detailed description of how it determined the portion of its overall goal attained through race-conscious means.</p>	

8.e	Good Faith Efforts	26.53	D	<p>Finding: MBTA did not implement and/or enforce the GFE requirements described in its DBE Program Plan.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • Updated procurement procedures that confirm the inclusion of all required and applicable GFEs in FTA-funded contracts with DBE participation goals, including confirmation that DBEs submitted by prime contractors to satisfy the GFE requirement are in the MassUCP DBE Directory; • Documentation confirming a review and determination that all DBEs working on FTA-funded contracts with DBE participation goals are in the MassUCP DBE Directory; and • An updated FTA Contract Requirements document that includes current DBE Program Provisions, as detailed in 49 CFR Part 26. 	60 Days
8.f	Protecting Against Termination for Convenience	26.53 and 26.13	D	<p>Finding: MBTA did not include the required protections against termination for convenience in all contracts.</p> <p>Corrective Actions: FTA advised MBTA to update its DBE Program Plan to include monitoring procedures for ensuring prime- and subcontractor contracts sufficiently include the required protections against termination for convenience. In addition, MBTA must provide documentation confirming the implementation of said procedures.</p>	60 Days
8.g	Counting DBE Participation	26.55	D	<p>Findings: MBTA did not sufficiently document its procedures for counting DBE participation in its DBE Program Plan. MBTA did not fully implement the corrective action plan documented in its FY 2015 A-133 Single Audit Report. The combination of legacy information systems MBTA used to</p>	

				<p>record, track, and report on DBE participation is lacking and increases the potential for inaccurate data reporting.</p> <p>Corrective Actions: MBTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that includes a detailed description of the processes, procedures, and tools used by MBTA for counting DBE participation pursuant to 49 CFR Part 26.55. MBTA must include procedures that describe in detail the segregation of duties and other internal controls (e.g., data validation and DBE semi-annual report authorization) implemented in response to its FY 2015 A-133 Single Audit DBE finding; • An updated DBE Program Plan that adds to the list of DBELO responsibilities the authorization of all semi-annual reports prior to submission to FTA per MBTA's FY 2015 A-133 Single Audit DBE finding; and • A description of MBTA's plan for and progress toward updating its information systems and how its plans will improve the integrity and accuracy of future DBE reports. 	
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	ND		

10.	Transit Vehicle Manufacturers (TVMs)	26.49	D	<p>Findings: MBTA did not implement the procedures in its DBE Program Plan for ensuring TVM compliance with 49 CFR Part 26.49. MBTA did not submit the required TVM report to FTA within 30 days after awarding TVM contracts.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for meeting all applicable TVM requirements described in 49 CFR Part 26.49. In addition, MBTA must complete the online FTA TVM Vehicle Award Report for TVM contracts FC-679 and FC-683.</p>	60 Days
11.	Required Contract Provisions and Enforcements				
11.a	Contract Assurance	26.13	D	<p>Finding: MBTA did not included the required nondiscrimination contract assurance in all contracts.</p> <p>Corrective Action: MBTA must submit to the FTA Office of Civil Rights a memorandum signed by the MBTA Chief Administrator and Acting General Manager affirming MBTA will fully implement its procedures as described in its DBE Program Plan for ensuring the inclusion of the required DBE contract assurances in all prime contracts and subcontracts.</p>	60 Days
11.b	Prompt Payment	26.29	ND		
11.c	Legal Remedies	26.37	D	<p>Finding: MBTA did not included the required legal remedies in all contracts.</p> <p>Corrective Actions: MBTA must submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> An updated DBE Program Plan that describes its process for ensuring MBTA includes the legal remedies described in its plan in all prime- and subcontractor contracts. MBTA must implement its process to ensure compliance with 49 CFR Part 26; and 	60 Days

				<ul style="list-style-type: none"> An updated DBE Program Plan that includes procedures MBTA will follow to evaluate, take appropriate action, and document its proceedings in cases involving disputes between prime contractors and subcontractors that result in lawsuits in which the parties involved agree to a settlement, or MBTA resolves the suit otherwise. 	
12.	Certification Standards	26.67 Thru 26.71	ND		
13.	Certification Procedures	26.83 Thru 26.86	ND		
14.	Record Keeping and Enforcements	26.11 and 26.37	AC	<p>Advisory Comments: FTA advised MBTA to ensure its Procurement Department collected Annual Affidavits from DBEs participating on FTA-funded procurements as part of its ongoing monitoring and enforcement effort. FTA further advised MBTA to monitor DBEs for compliance with the representations documented on the Annual Affidavit. FTA advised MBTA to include firms that bid on solicitations, not just firms that have been preapproved for or awarded contracts, and to use its Bidders List in its DBE goal-setting effort for FY 2018–20.</p>	

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

ATTACHMENT A – FTA NOTIFICATION LETTER TO MBTA



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

Headquarters

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

October 24, 2016

Brian Shortsleeve
Chief Administrator and Acting General Manager
Massachusetts Bay Transportation Authority
10 Park Plaza,
Boston, MA 02116

Dear Mr. Shortsleeve:

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 Massachusetts Bay Transportation Authority (MBTA) has been selected for a review of its overall DBE program to take place December 6-8, 2016.

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

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, and an exit conference. FTA has engaged the services of the DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: Maxine Marshall, John Potts, Donald Lucas, Gregory Campbell, and Khalique Davis. Please do not remove these individuals. FTA will do so at the close of the review. The DMP team and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled for December 6, 2016 at 9:00 a.m. to introduce the DMP team and FTA representatives to MBTA. 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. Please let us know if you will designate a member of your staff to serve as

MBTA'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 soft copy versions of these materials to the following contact person:

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

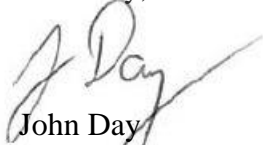
We request the exit conference be scheduled for December 8, 2016 at 4:00 p.m. to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

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

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

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

Sincerely,



John Day
Program Manager for Policy & Technical Assistance

cc: Mary Beth Mello, FTA Region 1 Administrator
Margaret Griffin, FTA Region 1 Civil Rights Officer
Julian Tynes, MBTA, Assistant Secretary Office of Diversity & Civil Rights
Benjamin Bloomenthal, MBTA, TrAMS User Manager
John Potts, The DMP Group, Lead Reviewer

Massachusetts Bay Transportation 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 MBTA's organization chart).
2. Most recent DBE goal setting methodology submissions, semiannual reports of DBE Attainment (three years of submissions), and/or quarterly reports of ARRA DBE attainment.
3. DBE goal shortfall analyses and corrective action plans for the most recent three Federal fiscal year (FYs 2013-2015) in which MBTA did not meet its DBE goal.
4. Current Memorandum of Understanding or similar documents for MBTA's participation in the Unified Certification Program, if applicable.
5. Any additional certification criteria/guidelines used by MBTA in determining DBE eligibility, if applicable.
6. Current MBTA DBE Directory.
7. The identification of firms, if any, that have worked on MBTA projects and have graduated from MBTA's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified as a DBE.
8. Information identifying FTA funded contracts awarded during the current and at least two preceding Federal Fiscal Years (the information should show the names of Prime and DBE participants, the scope of work, and the amounts awarded and actually paid to each DBE, etc.).
9. Documentation showing/establishing the "Good Faith Efforts" criteria established by MBTA, including verification that firms named on projects sponsored by the grantee are certified by the Massachusetts Unified Certification Program.
10. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and verification process, and monitoring and enforcement mechanisms).
11. Procedures for monitoring and addressing issues of overconcentration. Description of any occurrences of overconcentration in the last three years.
12. Small Business element as implemented by MBTA.
13. Description of outreach to DBE community, including a list of specific outreach efforts in the past three years.

Massachusetts Bay Transportation Authority
Disadvantaged Business Enterprise Program Compliance Review

14. Upcoming and/or anticipated DBE contracting opportunities, if any.
15. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the complete/executed contract between your agency and the transit vehicle manufacturer.
16. FTA-assisted transit vehicle requests for proposals (RFPs) for the last five (5) years.
17. List the names of all transit vehicle manufacturers that submitted bids for the RFPs provided in response to Item 13.
18. Shortfall analysis and corrective action plan for the last three (3) years, if applicable.
19. Names, titles, telephone numbers, and email addresses of interested parties (external organizations) with which MBTA has interacted on the DBE program issues.
20. Any complaints received or lawsuits filed concerning MBTA's DBE program over the past five (5) years.
21. The DBELO official position description.
22. Status of all open DBE program findings documented in the MBTA FY 2015 Triennial Review final report, dated November 24, 2015.
23. Other pertinent information determined by MBTA staff to be pertinent and demonstrative of its DBE compliance efforts.

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ATTACHMENT B – MBTA RESPONSE



Charles D. Baker, Governor
Karyn E. Polito, Lieutenant Governor
Stephanie Pollack, MassDOT Secretary & CEO
Brian Shortsleeve, Chief Administrator and Acting General Manager

massDOT
Massachusetts Department of Transportation

May 24, 2017

Mr. John Day
Program Manager for Policy and Technical Assistance
Office of Civil Rights, Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE, Room E-54-310
Washington, DC 20590

Via Email john.day@dot.gov

RE: Massachusetts Bay Transportation Authority (MBTA) DBE Review Draft Report, 2017

Dear Mr. Day:

This letter is in response to the Massachusetts Bay Transportation Authority (MBTA) DBE Compliance Review Draft Report dated May 2017. The review was conducted on December 6-8, 2016. A copy of the draft report was received via e-mail on May 15, 2017.

Thank you for providing the MBTA with a draft copy of the report and particularly for the opportunity to present the MBTA's comments.

The following includes our comments concerning the findings identified in the draft report and are intended to be considered to address the proposed corrective action.

Section 6.1 DBE Program Plan

FTA Corrective Action:

Within 60 days of the issuance of the final report, MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that reflects actual practice. MBTA must submit all future DBE Program Plan updates that document significant changes to its DBE program in a timely manner to FTA for review and approval, as required by 49 CFR Part 26.

MBTA Comment:

The compliance review was conducted on December 6-8, 2016. The DBE Compliance Review Draft Report states that "During the site visit, the review team also determined that MBTA's 2016 DBE Program Plan did not reflect actual practice in the following areas: DBE Financial Institutions, Fostering Small Business Participation, Transit Vehicle Manufacturers, Business Development Program, and its use of contract goals." This is understandable as the MBTA submitted the plan in November 2016 and is still pending approval from the

FTA. Additionally, as the updated new procedures referenced above by the FTA were only incorporated into the revised plan of November 2016, implementation of actual practice was not undertaken as we were waiting for FTA's concurrence as advised by FTA consultants.

Section 6.10 Transit Vehicle Manufacturers (TVM)

FTA Corrective Action:

Within 60 days of the issuance of the final report, MBTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for meeting all applicable TVM requirements described in 49 CFR Part 26.49. In addition, MBTA must complete the online FTA TVM Vehicle Award Report for TVM contracts FC-679 and FC-683.

MBTA Comment:

The Corrective Action above states that "the MBTA must complete the online FTA TVM Vehicle Award Report for TVM contracts FC-679 and FC-683". Please note that the MBTA did complete the reports on TRAMS for TVM contracts FC-679 and FC-683. (Please see attached).

Once again, the MBTA is appreciative for the opportunity to review the DBE Compliance Program Draft Report and to make comments. We thank you for taking our comments into consideration and we look forward to addressing all the findings so that we can ensure the MBTA's full compliance.

Sincerely,



Julian T. Tynes, Esq.
Assistant Secretary and DBE Liaison Officer
Office of Diversity and Civil Rights, MassDOT/MBTA

cc: Brian Shortsleeve
Mary Beth Mello
Gregory Danis
Benjamin Bloomenthal
John Potts
Yolanda Mitchell

Vehicle Award Report

49 CFR 26.49(a)(4) requires FTA recipients to report its vehicle procurement awards

Please submit the following information within 30 days of the award:

*** 1. Recipient Name**

Massachusetts Bay Transportation Authority

*** 2. Recipient ID #**

1369

*** 3. Please select the FTA Regional Office that serves your transit agency**

1

*** 4. Select the Transit Vehicle Manufacturer (TVM) awarded the contract**

New Flyer

*** 5. Contract Award Dollar Amount**

\$52,609,920.00

*** 6. Contract Award Date**

MM DD YYYY

Please enter a valid date

10 / 16 / 2015

*** 7. Provide agency point of contact**

Name Michelle Barry

Phone Number (617) 222-3402

Email Address

mbarry@mbta.com

8. Additional Information (Optional)

Done

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*** 1. Recipient Name**

Massachusetts Bay Transportation Authority

*** 2. Recipient ID #**

1369

*** 3. Please select the FTA Regional Office that serves your transit agency**

1

*** 4. Select the Transit Vehicle Manufacturer (TVM) awarded the contract**

New Flyer

*** 5. Contract Award Dollar Amount**

\$222,225,555.00

*** 6. Contract Award Date**

Please enter a valid date

MM	DD	YYYY
7	1	2015

*** 7. Provide agency point of contact**

Name: Michelle Barry

Phone Number: (617) 222-3402

Email Address

8. Additional Information (Optional)

Done

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See how easy it is to [create a survey](#).

