

9. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

PURPOSE OF THIS REVIEW AREA

Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

QUESTIONS TO BE EXAMINED

1. Did the recipient submit a DBE program for approval?
2. Has the DBE Liaison Officer (DBELO) been appropriately designated?
3. Did the recipient submit its latest goal in FTA's Transit Award Management System (TrAMS) by August 1 prior to the beginning of the applicable Federal fiscal year?
4. Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually by the required due dates?
5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?
6. For each of the past three completed Federal fiscal years, if the recipient's DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?
7. If the recipient exceeded its overall goal using contract goals in fiscal years 2016 and 2017, did it make appropriate procurement adjustments?
8. Has the recipient implemented steps to meet the maximum feasible portion of its overall goal race-neutrally?
9. When including a DBE goal in a solicitation, is the recipient ensuring that the contract is only awarded to a bidder that meets the goal or makes good faith efforts to meet the goal?
10. If the recipient or a subrecipient set a project-specific DBE goal on a transit vehicle procurement did it receive prior Federal Transit Administration (FTA) approval?
11. Did the recipient notify FTA's Office of Civil Rights of any FTA-funded transit vehicle awards?
12. Does the recipient monitor and enforce contractual requirements consistent with its approved DBE Program?
13. Does the recipient implement DBE certification standards and procedures in accordance with the DBE regulation?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Most recent DBE program, if not uploaded to TrAMS
- Current organizational chart which includes the DBELO
- DBELO job description
- Shortfall analysis and corrective action plan, if not required to be submitted to FTA
- List of any DBEs terminated/substituted on a project

Recipient Follow-up

- Information demonstrating that the recipient does not meet the threshold for DBE program submission
- Information that demonstrates when and on what subjects the DBELO and Chief Executive Officer (CEO) have direct and independent communications about the DBE program
- Documentation of notification to FTA of transit vehicle award(s)
- Documentation supporting the recipient's assessment that no DBE goal submission was necessary.
- Written procedures for compiling/preparing the Uniform Report on DBE Awards, Commitments, and Payments
- Missing reports that may not have been uploaded to TrAMS
- Evidence of reduced use of contract goals if DBE contract goals are used and overall agency DBE attainment exceeds overall agency goals
- Documented implementation of race-neutral and small business element measures
- Written certifications of monitoring for sample contract files
- Documentation of prompt payment and return of retainage monitoring

DBE1. Did the recipient submit a DBE program for approval?

BASIC REQUIREMENT

Approved DBE programs are required for FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) with those funds exceeding \$250,000 in a Federal fiscal year.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Written DBE programs are required for FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding \$250,000 with those funds in a Federal fiscal year. Contracting opportunities are counted in the aggregate, and include FTA-funded purchase orders, capital projects, professional services, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan-funded projects, and contracting activities of subrecipients. Small and micro-purchases are also counted toward this threshold.

The DBE program plan is not an annual submission and recipients do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted to FTA for approval. Recipients (particularly new recipients) that do not meet the threshold are not required to develop a written DBE program.

A recipient that is required to have a written program and is part of a local government may be allowed to submit a single plan to the Federal Highway Administration (FHWA) if it receives more funding from FHWA than from FTA. The recipient still must submit transit-specific overall three-year agency goals to FTA, if applicable.

INDICATORS OF COMPLIANCE

- a. If the recipient did not submit a DBE program for approval, does it appear that the recipient meets the threshold requiring one?*
- b. If the recipient submitted a DBE program and FTA has issued correspondence indicating required revisions, has the recipient made those revisions?*

DETERMINING COMPLIANCE

Review the Civil Rights Status screen in TrAMS to determine if the recipient has submitted a DBE program. From the listing of FTA-funded procurements requested in the Procurement area and a review in TrAMS of

the recipient's FTA awards and projects, determine if the recipient has met the threshold requiring a DBE program submission.

Transit vehicle purchases do not count towards the threshold. *Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Request and review any correspondence from FTA to the recipient on its submission. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that noted revisions or additions were made.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it had \$250,000 of FTA funds in contracting opportunities in a given Federal fiscal year and a DBE program was not submitted by the time of the site visit.

DEFICIENCY CODE DBE1-1: No approved DBE program

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit its DBE program to TrAMS and notify the FTA regional civil rights officer (RCRO) once completed.

The recipient is deficient if it received comments from FTA on its DBE program submission but has not made revisions. If the recipient made revisions to its program, but it does not appear that those revisions met the intent of FTA's comments, do not make a deficiency, but make the RCRO aware of this for their follow up.

DEFICIENCY CODE DBE1-2: Revisions to DBE program not made

SUGGESTED CORRECTIVE ACTION: The recipient must revise and submit its DBE program to TrAMS and notify the FTA RCRO once completed.

GOVERNING DIRECTIVE

49 CFR 26.21(a)

"If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part: (2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts)."

DBE2. Has the DBELO been appropriately designated?

BASIC REQUIREMENT

For recipients that meet the threshold requiring that they have a DBE program, the recipient's chief executive officer (CEO) must designate a DBE Liaison Officer (DBELO), with direct and independent access to the CEO concerning DBE matters, and adequate staff to administer the DBE program.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

For recipients that meet the threshold requiring that they have a DBE program, the recipient's chief executive officer (CEO) must designate a DBE liaison officer (DBELO) and adequate staff to administer the DBE program. The DBELO must have direct and independent access to the CEO concerning DBE matters.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. It means that the DBELO must not be required to get anyone's consent or sign-off or "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, this direct and independent access should be verified through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

INDICATORS OF COMPLIANCE

- a. *Is there currently a DBELO implementing the DBE program?*
- b. *Does the DBELO have direct and independent access to the CEO?*

DETERMINING COMPLIANCE

Examine the recipient's DBE program in TrAMS for identification of the DBELO and its position within the agency. Request and review the current organizational chart of the agency for the name and reporting relationship of the DBELO. Request and review the job description for the DBELO for responsibilities and reporting relationships. The current DBELO should also be listed in the agency's contact information in TrAMS.

During the site visit, confirm current staff assignments and reporting relationships in interviews with the DBELO and the CEO. Confirm that the DBELO has direct and independent access and is not required to get anyone's consent or sign-off or "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, verify direct and independent access through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not currently have a DBELO who is responsible for implementing the DBE program or if the DBELO does not have direct and independent access to the CEO.

DEFICIENCY CODE DBE2-1: Inadequate designation of DBE Officer

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence of corrective actions implemented to designate DBE responsibilities properly.

If the current DBELO is not in the same organizational position as noted in the recipient's latest approved DBE program, notify the RCRO for their future follow-up.

GOVERNING DIRECTIVE

49 CFR 26.25

"You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program."

DBE3. Did the recipient submit its latest goal in TrAMS by August 1 prior to the beginning of the applicable Federal fiscal year?

BASIC REQUIREMENT

For recipients that reasonably anticipate awarding (excluding transit vehicle purchases) more than \$250,000 in FTA funds in prime contracts in a Federal fiscal year, overall three-year goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

For recipients that reasonably anticipate awarding (excluding transit vehicle purchases) more than \$250,000 in FTA funds in prime contracts within a Federal fiscal year, overall three-year goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. DBE goals must be partially based on an assessment of the availability of DBEs or potential DBEs. Recipients are not allowed to simply rely on past participation or past goal methodologies when they establish their goal.

On rare occasions, a recipient may submit a zero percent DBE goal. It is important for recipients to consider all contracting opportunities funded with its FTA capital, operating, and planning awards during its goal-setting process. The regulation defines a contract as any legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of 49 CFR Part 26, a lease is considered to be a contract.

INDICATORS OF COMPLIANCE

- a. *Did the recipient submit its goal on time?*

- b. *If the recipient did not submit its goal, is there evidence to support that no submission was necessary?*

DETERMINING COMPLIANCE

Review the Three Year Goal Setting Submissions Schedule on FTA's website to determine the appropriate fiscal year for the recipient's submission. Review the Civil Rights Status screen in TrAMS to determine if the recipient's latest overall goal was submitted by August 1 preceding the fiscal year in which its goal was due, or by any other due date provided to them by FTA.

Review the recipient's awards in TrAMS to assess past or projected contracting activity. Review the list of awarded FTA-funded procurements submitted as a part of the Procurement section of the review to determine if the recipient awarded or projects to award contracts with FTA funds that exceed \$250,000. The FTA-funded procurements of the recipient and its subrecipients should be aggregated to determine if this threshold is met. Transit vehicle purchases do not count towards the threshold.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not submit its DBE goal by August 1 preceding the applicable fiscal year (or by some other date designated by FTA).

DEFICIENCY CODE DBE3-1: DBE goal submitted late

SUGGESTED CORRECTIVE ACTION: The recipient must implement a procedure and revise its DBE program to ensure that future goals will be submitted by August 1 of the applicable year (or by some other date designated by FTA). If the currently due goal has not been submitted, the recipient must also upload the goal to TrAMS and notify the FTA RCRO when this is completed.

The recipient is deficient if it should have submitted a DBE goal but did not.

DEFICIENCY CODE DBE3-2: DBE goal not submitted

SUGGESTED CORRECTIVE ACTION: The recipient must develop a goal, upload it to TrAMS, and notify the FTA RCRO once completed.

GOVERNING DIRECTIVES

49 CFR 26.45 (f)(1)(i)

“If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable.”

49 CFR 26.45 (a)(1)

“Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts. (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year.”

DBE4. Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually by the required due dates?

BASIC REQUIREMENT

Each recipient that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TrAMS.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Each recipient that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TrAMS. The report addresses the contracting opportunities of the recipient and its subrecipients. Reports are due by June 1 (for the period covering October 1–March 31) and by December 1 (for the period covering April 1–September 30). A revised reporting form was provided in the DBE Final Rule, which became effective November 3, 2014. This form is to be used for all reports due June 1, 2015 and after.

DBE reports must be entered in TrAMS DBE reporting module and comments from FTA on those reports must be addressed. Recipients that no longer meet the threshold requiring a goal, but are completing projects under a previous goal continue to submit DBE reports until those contracts are completed. TrAMS will not issue a DBE report to recipients with N/A for the DBE goal, so FTA has been retaining a “concur” or “in review” status (with a clarifying comment) for recipients that no longer meet the threshold but still have open FTA-funded contracts applicable under a prior goal.

INDICATORS OF COMPLIANCE

- a. *Did the recipient submit semi-annual reports on time?*
- b. *If the recipient did not submit one or more semi-annual report for the past three fiscal years, is there evidence to support that no submission(s) was/were necessary?*

DETERMINING COMPLIANCE

Verify that semi-annual reports are submitted in TrAMS by accessing Civil Rights Documents from the Recipients Documents. Verify that reports were submitted by June 1 (for the period covering October 1 –

March 31) and December 1 (for the period covering April 1 – September 30). Discuss with the RCRO any issues that have been identified with timely submissions of reports.

Verify that semi-annual reports are submitted in TrAMS by accessing Civil Rights Documents from the Recipients Documents. Discuss any issues the RCRO has identified with non-submissions of reports. Review listing of FTA-funded procurements provided for the Procurement section of the review and projects identified in awards in TrAMS to determine if reports were warranted (based on award or completion of procurements) but not submitted.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not submit one or more reports by the due dates of June 1 (for the period covering October 1 – March 31) and December 1 (for the period covering April 1 – September 30).

DEFICIENCY CODE DBE4-1: Semi-annual DBE reports not submitted or not submitted timely

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO any late reports and an implemented procedure to ensure that future reports are submitted on time.

GOVERNING DIRECTIVES

49 CFR 26.11(a)

“You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.”

49 CFR Appendix B 5.

“For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30.”

49 CFR 26.21(c)

“You must continue to carry out your program until all funds from DOT financial assistance have been expended.”

DBE5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?

BASIC REQUIREMENT

Uniform Reports of DBE Awards or Commitments and Payments must include all required information.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Recipients of FTA funds are expected to keep accurate data regarding contracts awarded and paid with FTA dollars and report on such per the instructions for completing the Uniform Report of DBE Awards or Commitments and Payments. See Appendix B to 49 CFR Part 26.

INDICATOR OF COMPLIANCE

- a. *Does a review of FTA information and selected FTA-funded procurements indicate that the recipient is completing the reports accurately?*

DETERMINING COMPLIANCE

Review the Civil Rights Status screen in TrAMS for completed reports. Discuss any issues the RCRO has identified with accuracy of reports.

During the site visit, obtain information on how all recipient and subrecipient FTA-funded contracting activities are included in the recipient's reports. Verify that the process includes FTA-funded purchase orders, micro-purchases, capital projects, professional services, TIFIA loan-funded projects, and contracting activities of subrecipients, as applicable by cross-referencing procurement and subrecipient lists provided for other areas of the review. Select two FTA-funded (non-transit vehicle manufacturer (TVM)) procurements from the procurement listing provided for the Procurement area of the review. Examine report back-up documentation and procedures for the appropriate report submission to demonstrate that DBE reporting information on these awards (lines 8 and 9) reconciles to recipient procurement award records. Transit vehicle purchases should not be included in these reports.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if its reports do not include applicable FTA-funded contracting activity undertaken by itself and any subrecipients and it cannot demonstrate how these reports reconcile to procurement records.

DEFICIENCY CODE DBE5-1: DBE uniform reports contain inaccuracies and/or are missing required information

SUGGESTED CORRECTIVE ACTION: The recipient must submit corrected reports to the FTA RCRO, along with implemented procedures for correctly completing Uniform Reports of DBE Awards or Commitments and Payments. The recipient must submit a revised DBE Program to correctly describe how it will implement accurate reporting.

GOVERNING DIRECTIVES

49 CFR 26.37

“(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.”

49 CFR Part 26 Appendix B “INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

“Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.”

“1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten vendors attach a separate sheet. 3. Specify the Federal fiscal year (i.e., October 1-September 30) in which the covered reporting period falls. 4. State the date of submission of this report. 5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30. If the report is due to the FAA, data should cover the entire year. 6. Provide the name and address of the recipient. 7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific race-conscious and race-neutral projections (both of which include gender-conscious/neutral projections). The race-conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race-conscious measure. The race-neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.”

“Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.”

“Line 8: Prime contracts awarded during this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the total number of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the number of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR Part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of race-neutral methods. See the definition of race-neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through race-neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all subcontracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of subcontracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in subcontracts to DBEs.

9(D). From the total number of subcontracts awarded or committed in item 9(B), specify the number of subcontracts awarded or committed to DBEs.

9(E). From the total dollar amount of subcontracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using race-conscious measures.

9(F). From the total number of subcontracts awarded or committed to DBEs this period, provide the number of subcontracts awarded or committed to DBEs using race-conscious measures.

9(G). From the total dollar amount of subcontracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using race-neutral measures.

9(H). From the total number of subcontracts awarded/committed to DBEs this period, provide the number of subcontracts awarded to DBEs using race-neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.”

DBE6. For each of the past three completed Federal fiscal years, if the recipient’s DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?

BASIC REQUIREMENT

Each recipient that does not achieve its overall DBE goal must conduct a shortfall analysis and develop and implement a corrective action plan.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

If the awards and commitments shown on a recipient’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 three-year period, the recipient must do the following:

- Analyze in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year
- Establish specific steps and milestones to correct the problems identified in the analysis to enable the recipient to meet the goal for the new fiscal year

The 50 largest transit agencies as determined by the FTA must submit, within 90 days of the end of the fiscal year (December 29th), the analysis and corrective actions described above for review. All other recipients must retain the analysis and corrective actions in their records for three years and make it available to FTA upon request for review.

If the shortfall analysis submitted by a recipient is not sufficient, FTA may issue a Shortfall Corrective Action letter or a reasonable cause notification. If the latter, the recipient can enter into a conciliation agreement.

INDICATORS OF COMPLIANCE

- a. Was the recipient required to conduct shortfall analyses and develop a corrective action plan?*
- b. If applicable, did the recipient submit shortfall analyses and corrective action plans to FTA on time?*
- c. If the recipient is not considered to be a Top 50 Recipient by FTA, but was required to conduct a shortfall analysis and develop a corrective action plan, do the analysis and plan contain required elements?*

DETERMINING COMPLIANCE

Using DBE reports found in TrAMS, complete Exhibit 9.1 at the end of this section. To compare the annual DBE achievement of a recipient to its overall applicable goal, review the combined results of both semi-

annual reports for each fiscal year (the report due June 1 and the report due Dec 1). The overall goal is stated at the top of the report. The annual percentage awarded to DBEs is calculated by dividing the total dollars awarded to DBEs (by adding cell 10C for both reports) by the total prime contract dollars awarded (by adding cell 8A for both reports).

Verify that, if the awards and commitments at the end of any fiscal year were less than the overall goal applicable to that three-year period, a shortfall analysis and corrective plan was developed.

If there was no shortfall identified, move to the next question.

For recipients needing to conduct a shortfall analysis and develop a corrective action plan, review FTA's Listing of Top 50 Recipients to determine if the recipient is designated as one of the Top 50 Recipients. If one of the Top 50, review recipient documents in TrAMS to ascertain if the shortfall analysis was uploaded and the date of upload. If the recipient is not in the top 50, move to the next paragraph.

Request and review the recipient's most recent shortfall analysis and corrective action plan. Determine if the shortfall analysis analyzed in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year and included:

- Shortfall percentage
- Shortfall explanation
 - DBE Participation on fiscal year FTA-assisted projects
 - Race-conscious/race-neutral breakdown
 - Race-neutral measures
 - Specific reasons for shortfall

Review the corrective action plans to verify if they included:

- Description of all corrective action measures
- Explanation of how proposed corrective actions will increase DBE participation in the current year
- Timeline for implementation

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its DBE achievements were less than its overall goal and it did not conduct a shortfall analysis and develop a corrective action plan.

DEFICIENCY CODE DBE6-1: DBE goal achievement analysis and corrective action plan not completed

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO the required analyses and corrective action plans for the missing year(s), along with a written process to ensure future shortfall analyses are completed.

The recipient is deficient if it was required to submit its shortfall analysis and corrective plan to FTA by December 29th after the end of the applicable fiscal year(s), but did not or did not submit it on time.

DEFICIENCY CODE DBE6-2: DBE goal achievement analysis and corrective action plan not submitted timely

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO the required analyses and corrective action plan(s) for the missing year(s), along with a written process to ensure future shortfall analyses are completed on time.

The recipient is deficient if it did not include all required elements in its shortfall analysis or corrective action plan.

DEFICIENCY CODE DBE6-3: DBE goal achievement analysis and corrective action plan do not include all required elements

SUGGESTED CORRECTIVE ACTION: The recipient must submit a revised analysis and/or corrective action plan to the FTA RCRO.

GOVERNING DIRECTIVES

49 CFR 26.47(c)

“If the awards and commitments shown on your 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, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith: (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year; (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;”

49 CFR 47(c) (3)(i)

“If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval.”

49 CFR 26.47(c) (3)(ii)

“As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.”

DBE7. If the recipient exceeded its overall goal using contract goals in fiscal years 2016 and 2017 did it make appropriate procurement adjustments?

BASIC REQUIREMENT

Recipients that continuously exceed their goal using race conscious measures must make adjustments in its use of contract goals.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

In order to ensure that its DBE program continues to be narrowly tailored to overcome the effects of discrimination, a recipient must adjust the use of contract goals if it obtains DBE participation that exceeds its overall goal in two consecutive years through the use of contract goals (i.e. not through the use of race-neutral means alone). In this case the recipient must reduce the use of contract goals proportionately in the following year.

INDICATOR OF COMPLIANCE

- a. *If the recipient uses race-conscious contract goals and it is exceeding its overall goals, is it making adjustments to reduce the race-conscious portion of its overall DBE attainment?*

DETERMINING COMPLIANCE

Review DBE reports in TrAMS and Exhibit 9.1 at the end of this section to determine if the recipient is exceeding its overall goal at the end of the last two completed fiscal years. To compare the annual DBE achievement of a recipient to its overall applicable goal, review both semi-annual reports for each fiscal year (the report due June 1 and the report due Dec 1). The overall goal is stated at the top of the report. The annual percentage awarded to DBEs is calculated by dividing the total dollars awarded to DBEs (by adding cell 10C for both reports) by the total prime contract dollars awarded (by adding cell 8A for both reports). To determine the portion of the attainment achieved through race-conscious measures, divide the total amount

awarded to DBEs race-consciously (by adding cell 10E for both reports) by the total prime contract dollars awarded (by adding cell 8A for both reports).

If the recipient is exceeding its overall goal and it is using race-conscious contract goals, during onsite interviews and documentation, verify if the recipient can demonstrate how it is adjusting its procurement processes to reduce its use of contract goals.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it has obtained DBE participation that exceeds its overall goal for two consecutive years through the use of contract goals but has not taken action to reduce its use of contract goals.

DEFICIENCY CODE DBE7-1: No proportionate reduction of race-conscious goals

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO procedures to reduce the use of race-conscious goals if it is exceeding its goals using race-conscious means.

GOVERNING DIRECTIVE

49 CFR 26.51(f)

“To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows: (4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.”

DBE8. Has the recipient implemented steps to meet the maximum feasible portion of its overall goal race-neutrally?

BASIC REQUIREMENT

Recipients are to meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Recipients are to meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

Race-neutral means include, but are not limited to, the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing)
- Providing technical assistance and other support services
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate)

- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low
- Ensuring distribution of the UCP directory to the widest feasible universe of potential prime contractors
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media

Recipients include information on their race-neutral measures in the DBE program plan. Additionally, in their overall goal submission, recipients must include the projection of the portions of the overall goal they expect to meet through race-neutral means and the basis for that projection. If a recipient projects meeting part of their goal through race-neutral means and the remainder through contract goals, they must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

By February 28, 2012, recipients were to submit an element to their DBE program for fostering small business participation. This element, required by a February 2011 change to the DBE regulation, must include provisions to structure contracting requirements to facilitate competition by small business (not based on race or gender). Recipients must take all reasonable steps to eliminate obstacles to DBE participation, including unnecessary and unjustified bundling of contract requirements, that may preclude small business participation in procurements as prime contractors or subcontractors.

As part of this program element, recipients may include, but are not limited to, the following strategies:

- Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g. \$1 million)
- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”), requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts

To meet the race-neutral portion of overall agency goal, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform

INDICATORS OF COMPLIANCE

- Has the recipient implemented the race-neutral measures noted in its DBE program, its overall goal methodology, and any shortfall analyses/corrective action plans?*
- Has the recipient implemented the element in its DBE program for fostering small business participation?*

DETERMINING COMPLIANCE

Determine the portion of overall goal attainment that the recipient achieved race-neutrally in the past two completed fiscal years. To determine this, using Exhibit 9.1, divide the total amount awarded to DBEs race-neutrally (add cell 10G from the two years in which the goal was exceeded) by the total prime contract dollars awarded (add cell 8A from the two years in which the goal was exceeded). If the information from the recipient’s semi-annual reports indicates that it has attained all of its overall goal race-neutrally and there are no deficiencies in the questions of this review relating to reporting, move to the section below on fostering small business participation.

Review the recipient's currently-approved DBE program submission in TrAMS for race-neutral measures that were to be implemented. Review the recipient's currently-approved three-year goal methodology in TrAMS, for the portion of its goal that it projected meeting race-neutrally and for race-neutral measures that were to be implemented. If the recipient was required to submit a shortfall analysis and corrective action plan in the past two completed fiscal years, review those documents to determine if the recipient stated race-neutral measures that it would implement. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, or is awarded a subcontract on a prime contract that does not carry a DBE goal.

During onsite interviews and review of documentation, determine if measures described by the recipient have been implemented.

Fostering small business participation: Review the recipient's currently-approved DBE program in TrAMS, for the small business element that was to be implemented. The recipient detailed specific measures that it would take in its approved program. During onsite interviews and review of documentation, determine if the recipient's small business element measures described in the DBE program have been implemented.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it is not meeting the portion of its overall goal that it projected race-neutrally and cannot provide documentation of implementing race-neutral measures described in its DBE program, goal submission, or shortfall analysis/corrective action plan.

DEFICIENCY CODE DBE8-1: Inadequate implementation of race-neutral measures

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an implementation plan for applying race-neutral measures and evidence that these measures have been implemented.

If the recipient is not implementing the small business element.

DEFICIENCY CODE DBE8-2: Small business element not implemented

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence of implementing its small business participation strategies.

GOVERNING DIRECTIVES

49 CFR 26.51 (a)

"You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation."

49 CFR 26.39 (c)

"You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program."

DBE9. When including a DBE goal in a solicitation, is the recipient ensuring that the contract is only awarded to a bidder that meets the goal or makes good faith efforts to meet the goal?

BASIC REQUIREMENT

Recipients must establish contract goals to meet any portion of their overall goal they do not project being able to meet using race-neutral means.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Not every FTA-funded contract is required to have a DBE goal. The recipient has the discretion to determine if the bidder must present information on DBEs proposed to meet the goal as part of bid responsiveness (provided at the time of bid) or no later than seven days after bid opening as a matter of responsibility. The seven days was reduced to five days beginning January 1, 2017. The DBE Final Rule, which became effective November 3, 2014, included the limitations on the number of days for responsibility.

Note: In 49 CFR part 26, days is defined as calendar days. In computing any period of time, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday.

Prior to awarding a contract to a firm that did not meet a specific DBE contract goal, the recipient must determine whether the efforts the firm made to obtain DBE participation were “good faith efforts” to meet the goal. Examples of efforts the recipient may consider, include whether the contractor attended any pre-bid meetings held by the recipient to inform DBEs of contracting opportunities, or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR part 26.

It is important to note that DBEs are certified to perform certain types of work. To receive credit for good faith efforts and to count towards goal attainment, named DBEs must be certified to do the scopes of work that they are contacted/contracted to perform.

INDICATORS OF COMPLIANCE

- a. *For solicitations with DBE goals, is the recipient requiring information on DBE participation from bidders/proposers within the correct timeframe? If the recipient does not use DBE contract or project-specific goals (i.e. it is operating a race-neutral program), skip to Question 10.*
- b. *For solicitations with DBE contract goals, did the recipient document its determination of “good faith efforts” prior to awarding a contract where the bidder did not meet the goal?*

DETERMINING COMPLIANCE

Review the DBE program and procurement policies and procedures to determine if the recipient notes that information provided in response to a DBE goal is a condition of responsiveness or responsibility. Review the recipient’s list of procurements to identify procurements that included a DBE contract goal. Document if the submission of DBE information by bidders/proposers is stated as a matter of responsiveness or responsibility in a sample of these procurements. If it is a matter of responsibility, verify if the correct number of days (five or seven depending on solicitation date) was required by the recipient for receipt of the information. Onsite review a sample of procurements which included DBE goals to verify that the recipient received information from the bidder(s) as required in the solicitation.

Request and review the list of contracts that were awarded since the last Comprehensive Review at less than the solicitation DBE goal. Determine if the recipient documented that the awardee made good faith efforts towards meeting that goal prior to award. For a procurement where the awarded DBE amount is less than the goal stated in the solicitation, examine the recipient’s documented good faith efforts review. Part of determining good faith efforts is verifying that DBEs are certified for the type of work they are being named for prior to award. For a procurement with a DBE goal, verify that the DBEs included in the award were certified for the work for which they were named. Determine this by reviewing the DBEs’ description in the state’s UCP directory and comparing the work they are certified to perform with the work they are named as performing in the contract.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it is not requiring and collecting information from bidders/proposers on proposed DBEs within the timeframes described in the regulations.

DEFICIENCY CODE DBE9-1: Inadequate timeframe for DBE responsibility determination

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO revised procurement procedures to limit the amount of time that the bidder is allowed to demonstrate DBE responsibility to five days.

The recipient is deficient if it is not documenting its good faith efforts review or does not verify that DBEs are certified to perform the type of work they are being named for prior to awarding a contract which contained a DBE goal.

DEFICIENCY CODE DBE9-2: Inadequate good faith efforts determination

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO a method for determining "good faith efforts" in compliance with the regulation and/or evidence that it has included documentation in applicable procurement files.

GOVERNING DIRECTIVES

49 CFR 26.53 (b) (3)(i)

"At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017."

49 CFR 26.53 (a)

"When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things: (1) Documents that it has obtained enough DBE participation to meet the goal; or (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

(b) (2) (ii) To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror."

DBE10. If the recipient or a subrecipient set a project-specific DBE goal on a transit vehicle procurement did it receive prior FTA approval?

BASIC REQUIREMENT

Recipients may only set goals on transit vehicles if approved to do so by FTA.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Recipients may, with FTA prior approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of having TVMs certify their compliance.

INDICATOR OF COMPLIANCE

a. *Is FTA approval on file for any transit vehicle DBE goal set by the recipient?*

DETERMINING COMPLIANCE

During the site visit, review FTA-funded transit vehicle procurement files. Note if the solicitation contained a DBE goal. If the solicitation contained a DBE goal, request a copy of FTA’s approval of the project-specific goal that pre-dates the solicitation date.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it included a DBE goal in a transit vehicle procurement without prior approval from FTA.

DEFICIENCY CODE DBE10-1: Unapproved DBE goals on transit vehicle purchases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an implemented process to ensure that future FTA-funded transit vehicle purchases do not include DBE goals unless approval has been obtained from FTA.

GOVERNING DIRECTIVE

49 CFR 26.49 (f)

“As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.”

DBE11. Did the recipient notify FTA’s Office of Civil Rights of any FTA-funded transit vehicle awards?

BASIC REQUIREMENT

Recipients must notify FTA’s Office of Civil Rights of any FTA-funded transit vehicle procurement.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

For transit vehicle awards made November 3, 2014 and after, FTA recipients are required to submit, within 30 days of making an award, the name of the successful bidder for transit vehicles and the total dollar value of the contract. This notification should be submitted by using the online Transit Vehicle Award Reporting Form located on FTA’s Civil Rights DBE Webpage. The online reporting form was initiated in June 2016. Prior to that, recipients were to communicate awards made November 3, 2014 and after to their RCRO.

If the recipient issues a contract for transit vehicles that includes a base order and subsequent options, the recipient is to submit the information for the base number of vehicles and subsequently for each order of vehicle options awarded. The recipient should be submitting this information for itself and for subrecipients that are procuring transit vehicles with funds that it passes through to them.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

INDICATOR OF COMPLIANCE

- a. *For FTA-funded transit vehicle purchases or award(s) of options, did the recipient make appropriate, timely notification of the award to FTA's Office of Civil Rights?*

DETERMINING COMPLIANCE

During the review of the procurement area, document any FTA-funded transit vehicle awards. Review the listing of vehicle award notifications from FTA's Office of Civil Rights to verify if applicable notifications were made. On-site, ask the recipient for documentation of submission, if not available from FTA's Office of Civil Rights. Verify notifications were submitted a maximum of 30 days after the award.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not notify FTA within 30 days of making a transit vehicle award that occurred after November 3, 2014.

DEFICIENCY CODE DBE11-1: Unreported transit vehicle purchases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an implemented process to ensure that future awards of FTA-funded transit vehicle purchases are reported timely to the FTA Office of Civil Rights.

GOVERNING DIRECTIVE

49 CFR 26.49 (a) (4)

"FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement."

DBE12. Does the recipient monitor and enforce contractual requirements consistent with its approved DBE Program?

BASIC REQUIREMENT

Recipients must implement appropriate mechanisms to ensure compliance with the DBE regulation by all program participants.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Recent investigations by the Office of Inspector General have raised concerns about the administration of DBE programs. Recipients must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. Recipients must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local laws). These mechanisms must be set forth in the recipient's DBE program.

For all contracts, recipients must have mechanisms in place to monitor compliance with prompt payment and inclusion of required clauses. They must also be able to verify the commercially useful function of DBEs on all projects so that accurate reporting can be accomplished, including reporting for race-neutral achievements.

For contracts with a DBE goal, a recipient must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Monitoring is important for both race-conscious and race-neutral contracts to ensure accurate counting for required semi-annual reports.

Prior to awarding a contract with a DBE goal to a contractor, the recipient is required to collect from the awardee:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount of the participation of each DBE firm participating
- Written documentation of the bidder/offeror's commitment to use the DBE subcontractor whose participation it submits to meet a contract goal
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment

This information forms the DBE commitment (not goal) of the awarded contract. The recipient should document efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed.

In February 2011, the regulation added the requirements that recipients:

- Include a written certification that it has reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).
- Require that a prime contractor not terminate or substitute a DBE subcontractor listed on a contract with a DBE goal without good cause and prior written consent from the recipient.

Details on what constitutes good cause is contained in 49 CFR 26.53(f). A recipient's written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the recipient) in writing of its intent to request substitution or termination and allows the DBE five days to respond. Recipients must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The contractor must submit documentation requested by the recipient for these efforts within seven days, which may be extended for an additional seven days if necessary at the request of the contractor. The recipient provides a written determination to the contractor stating whether or not good faith efforts have been demonstrated. Unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The recipient should demonstrate that it provides oversight of subrecipients to ensure inclusion of required contract clauses and monitoring of contractors for adherence to commitments.

INDICATORS OF COMPLIANCE

- a. Does the recipient monitor contractors and subrecipients in accordance with its DBE program to ensure that DBE obligations are fulfilled and apply appropriate remedies when necessary?*
- b. Does the recipient monitor projects to ensure that DBEs are actually performing the work committed to at the time of contract award?*
- c. Does the recipient complete a written certification of monitoring activities?*
- d. Does the recipient implement the prompt payment monitoring and enforcement mechanisms described in its approved DBE program?*
- e. For contracts with a DBE commitment, does the recipient implement correct procedures for providing written consent to contractors requesting termination or substitution of a DBE after contract award?*

DETERMINING COMPLIANCE

Review the recipient's approved DBE program in TrAMS for described methods of monitoring and enforcing DBE commitments, and of applying remedies. On-site, conduct interviews, and request and review evidence of the recipient actively monitoring projects with DBE goals as described in its DBE program. If necessitated, verify that the recipient implemented remedies stated in its DBE program on contracts.

Verify that prior to awarding a contract with a DBE goal to a contractor, the recipient collects from the awardee:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount of the participation for each DBE firm participating
- Written documentation of the bidder/offeror's commitment to use the DBE subcontractor whose participation was submitted to meet a contract goal
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment

Verify if recipient documented efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the dollar amount and types of work detailed.

Review the recipient's DBE program to identify the methods that the recipient states it will use to monitor that DBEs are actually performing the stated work on contracts. During the site visit, interview the recipient and review documentation to verify monitoring activities/reports for selected procurements. Monitoring is important for both race-conscious and race-neutral contracts to ensure accurate counting for required semi-annual reports.

Review the recipient's DBE program for any monitoring certification template that may be noted. During the site visit, review contract files or DBE files to verify that the recipient is completing written certifications for recent contracts with DBE contract goals.

Review the recipient's approved DBE program in TrAMS for methods of prompt payment monitoring and enforcement. During the review of the procurement section, note what prompt payment and return of retainage clauses are included in FTA-funded procurements. On-site, request and review evidence of the recipient actively monitoring implementation of prompt payment from prime contractors to subcontractors for progress and retainage payments, as well as appropriate enforcement actions when applicable.

During the site visit, ask the recipient if any DBEs have been terminated or substituted on contracts with DBE goals. Review documentation related to removals of DBEs on contracts with DBE contract goals to determine if the following process was followed:

- The prime contractor notified the DBE (with a copy of the notice to the recipient) in writing of its intent to request substitution or termination and allowed the DBE five days to respond
- The recipient granted the request for substitution or termination
- The recipient required the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE
- The contractor submitted documentation requested by the recipient for these efforts within seven days, which may be extended for an additional seven days consistently, if necessary, at the request of the contractor.
- The recipient provided a written determination to the contractor stating whether or not good faith efforts had been demonstrated.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have documentation of monitoring contractors and subrecipients and enforcing contract requirements to ensure that DBE commitments are met.

DEFICIENCY CODE DBE12-1: Insufficient documentation of monitoring DBE compliance of contractors and/or subrecipients

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures for contractors and subrecipients along with evidence of implementation.

The recipient is deficient if it does not have documentation of monitoring that DBEs are actually performing work as detailed in contract documents.

DEFICIENCY CODE DBE12-2: Insufficient documentation of monitoring DBE work

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation that it has updated its DBE program to include a monitoring process and/or evidence of how it has implemented the monitoring process to ensure that DBEs are actually performing the stated work.

The recipient is deficient if it does not have documentation of written certifications of monitoring.

DEFICIENCY CODE DBE12-3: Insufficient documentation of written certifications of DBE monitoring

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it has implemented a process for making written certifications of monitoring.

The recipient is deficient if it does not have and/or has not implemented an active monitoring and enforcement process for compliance with prompt payment.

DEFICIENCY CODE DBE12-4: Recipient not ensuring prompt payment

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation of a monitoring and enforcement process to ensure prompt payment and/or evidence of its next three efforts to ensure compliance with prompt payment and return of retainage requirements.

The recipient is deficient if it does not have documentation that, for contracts with a DBE goal, it is correctly implementing the required procedures for providing written consent to contractors requesting termination/substitution of a DBE after contract award.

DEFICIENCY CODE DBE12-5: Recipient does not implement DBE termination/substitution provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO procedures for ensuring good cause and due process provisions for termination or substitution of DBEs.

GOVERNING DIRECTIVES

49 CFR 26.37 (b)

“Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (*e.g.*, close-out reviews for a contract).”

49 CFR 26.29 (d)

“Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.”

49 CFR 26.53 (f)(1)(i)

“You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is 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.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

(5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.”

DBE13. Does the recipient implement DBE certification standards and procedures in accordance with the DBE regulation?

BASIC REQUIREMENT

If recipients certify DBEs as a part of its state's UCP, is it using the correct forms, evaluating personal net worth of the owner(s), conducting site visits, and entering complete information into the UCP directory?

APPLICABILITY

All recipients of FTA funds that certify DBEs

EXPLANATION

The correct instructions, form, and document checklist to be used for DBE certification are located at US DOT's website. A revised certification application form and a new personal net worth (PNW) form was provided in the DBE Final Rule, which became effective November 3, 2014. Certifying recipients are to use these documents unmodified unless such modifications were approved by US DOT. Recipients are not to request PNW forms from owners that are not claiming social and economic disadvantage, nor should they request PNW forms from persons who are not listed as comprising 51 percent or more of the ownership percentage of the applicant firm.

An on-site visit to the firm's principal place of business must be conducted. On-site visits to job sites must be conducted if there are such sites on which the firm is working at the time of the eligibility investigation in the recipient's local area. If the DBE is located out of state, the recipient must obtain evidence that a certification site visit was conducted prior to the initial certification.

The UCP DBE directory must list each type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work.

INDICATORS OF COMPLIANCE

- a. *Does the recipient use the Uniform Certification Application Form issued by the US DOT in October 2014, including the instructions and document checklist?*

- b. *Does the recipient use the required personal net worth (PNW) form issued by the US DOT in October 2014? If supplemental forms are used, were they approved by the concerned operating administration?*
- c. *Prior to making an initial (not interstate) certification, does the recipient conduct site visits to the applicant firm's principal place of business and to a jobsite (if jobsite is in local area)?*
- d. *If the recipient enters information directly into the UCP directory, does it include the North American Industry Classification System (NAICS) codes of DBEs in the UCP directory?*

DETERMINING COMPLIANCE

Review the recipient's and/or its state's UCP website to:

- Verify that the application form in Appendix F of 49 CFR part 26 is being used for initial (not interstate) certifications. During the site visit, review two certification files submitted and reviewed within the past year to verify that the correct application form was used.
- Verify that the PNW form in Appendix G of 49 CFR part 26 is being used for initial (not interstate) certifications. During the site visit, review two certification files submitted and reviewed within the past year to verify that the correct PNW form was used.

During the site visit, review two recently completed certification files to verify that onsite visits were conducted.

Review the UCP directory to determine if NAICS codes are included in the directory. Each state's UCP directory is available online. If the recipient enters information into the directory, during the site visit, review two recently completed certification files to verify that the recipient entered the correct NAICS codes into the UCP directory. This is done by locating the firms' information in the directory and verifying that NAICS codes have been included in the firms' descriptions.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not require the use of the correct DBE application form.

DEFICIENCY CODE DBE13-1: Recipient does not use correct DBE certification form

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it is using the correct certification forms.

The recipient is deficient if it does not require the use of the correct PNW form.

DEFICIENCY CODE DBE13-2: Recipient does not use correct DBE PNW form

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it is using the correct PNW forms.

The recipient is deficient if it does not conduct on-site visits prior to determining DBE eligibility and certification of applicants.

DEFICIENCY CODE DBE13-3: Recipient does not conduct on-site visits

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it documents the conduct of on-site visits to applicants prior to making a determination of DBE eligibility.

The recipient is deficient if it enters information directly into the UCP directory and does not include correct NAICS codes into the UCP directory.

DEFICIENCY CODE DBE13-4: DBE directory does not include correct NAICS codes

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it is correctly entering NAICS code information into the UCP directory.

GOVERNING DIRECTIVES

49 CFR 26.83 (c) (2)

“You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.”

49 CFR 26.67(a) (2) (ii)

“You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm.”

49 CFR 26.83(c) (1) (i)

“Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area.”

49 CFR 26.31 (b)

“You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.”

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including Disadvantaged Business Enterprise reviews, UCP reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of DBE?
2. Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?
3. If conducted, has a recent (since the last Comprehensive Review) Procurement System Review identified any issues related to DBE in the “Other Matters” section?
4. If the recipient has entered into a DBE conciliation agreement with the FTA, what progress has been made towards satisfying the terms of that agreement?
5. Did the recipient experience difficulty resolving or closing any DBE oversight review, investigation, or audit deficiencies or findings (e.g., late or insufficient submissions)? Are any deficiencies or findings currently open?
6. Are any issues related to DBE indicated in the recipient Oversight Assessment Tool (OAT)?
7. Have DBE complaints been filed with FTA against the recipient? If yes, have all such complaints been resolved?

8. Has the recipient or FTA received any bid protests related to DBE issues?
9. Does the recipient have a zero percent DBE goal?
10. Does the recipient appear to have adequate resources and provide sufficient training to manage the DBE program?
11. Does the DBELO appear to have sufficient coordination with the recipient's procurement department on issues such as contract goal-setting, race-neutral measures, inclusion of required contract clauses, and contract administration?
12. Does the recipient include, monitor, and enforce prompt payment clauses in FTA-funded procurements? Have DBE subcontractors notified the recipient about issues with prompt payment or return of retainage?
13. Has the recipient been notified by a DBE subcontractor that it was not receiving work committed to it?
14. Does the recipient appear to have sufficient monitoring and enforcement mechanisms in place for DBE requirements?
15. Did background research or site visit observations reveal any potential issues or concerns about the recipient's DBE program or its implementation not covered previously in this section?

REFERENCES

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"

USEFUL WEBLINKS

1. FTA DBE Website
2. Official Questions and Answers for DBE Program Regulation (49 CFR Part 26)

EXHIBIT 9.1 DBE THREE-YEAR GOAL ATTAINMENT

Note: This table is to be completed by the reviewer.

Fiscal Year 20XX Goal:		1	2	3
Fiscal Year 20XX RC Goal:				(1+2)
	DBE Uniform Report	June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE Prime Contractors (<i>Line 8C</i>)			
B.	Total dollars awarded to DBE Subcontractors (<i>Line 9C</i>)			
C.	Total dollars awarded to DBEs (A3+B3)			
D.	Total prime contract dollars awarded (<i>Line 8A</i>)			
E.	Total Race Conscious contracting dollars awarded to DBEs (<i>Line 9E</i>)			
F.	Annual Percentage of awards using Race Conscious goals (E3/D3)			
G.	Annual Percentage Awarded (C3/D3)			
Fiscal Year 20XX Goal:		1	2	3
Fiscal Year 20XX RC Goal:				(1+2)
	DBE Uniform Report	June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE Prime Contractors (<i>Line 8C</i>)			
B.	Total dollars awarded to DBE Subcontractors (<i>Line 9C</i>)			
C.	Total dollars awarded to DBEs (A3+B3)			
D.	Total prime contract dollars awarded (<i>Line 8A</i>)			
E.	Total Race Conscious contracting dollars awarded to DBEs (<i>Line 9E</i>)			

EXHIBIT 9.1 DBE THREE-YEAR GOAL ATTAINMENT

Note: This table is to be completed by the reviewer.

F.	Annual Percentage Awarded (C3/D3)			
G.	Annual Percentage Awarded (C3/D3)			
Fiscal Year 20XX Goal:		1	2	3
Fiscal Year 20XX RC Goal:				(1+2)
	DBE Uniform Report	June 1	Dec. 1	Totals
A.	Total dollars awarded to DBE Prime Contractors (Line 8C)			
B.	Total dollars awarded to DBE Subcontractors (Line 9C)			
C.	Total dollars awarded to DBEs (A3+B3)			
D.	Total prime contract dollars awarded (Line 8A)			
E.	Total Race Conscious contracting dollars awarded to DBEs (Line 9E)			
F.	Annual Percentage Awarded (C3/D3)			
G.	Annual Percentage Awarded (C3/D3)			