

FTA's Top DBE Findings From Oversight Reviews

AASHTO
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What is Program Oversight?

FTA is responsible for conducting oversight activities to help ensure that recipients of Chapter 53 grants use the funds in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements.

We do this through Comprehensive Reviews (Triennial & State Management) which:

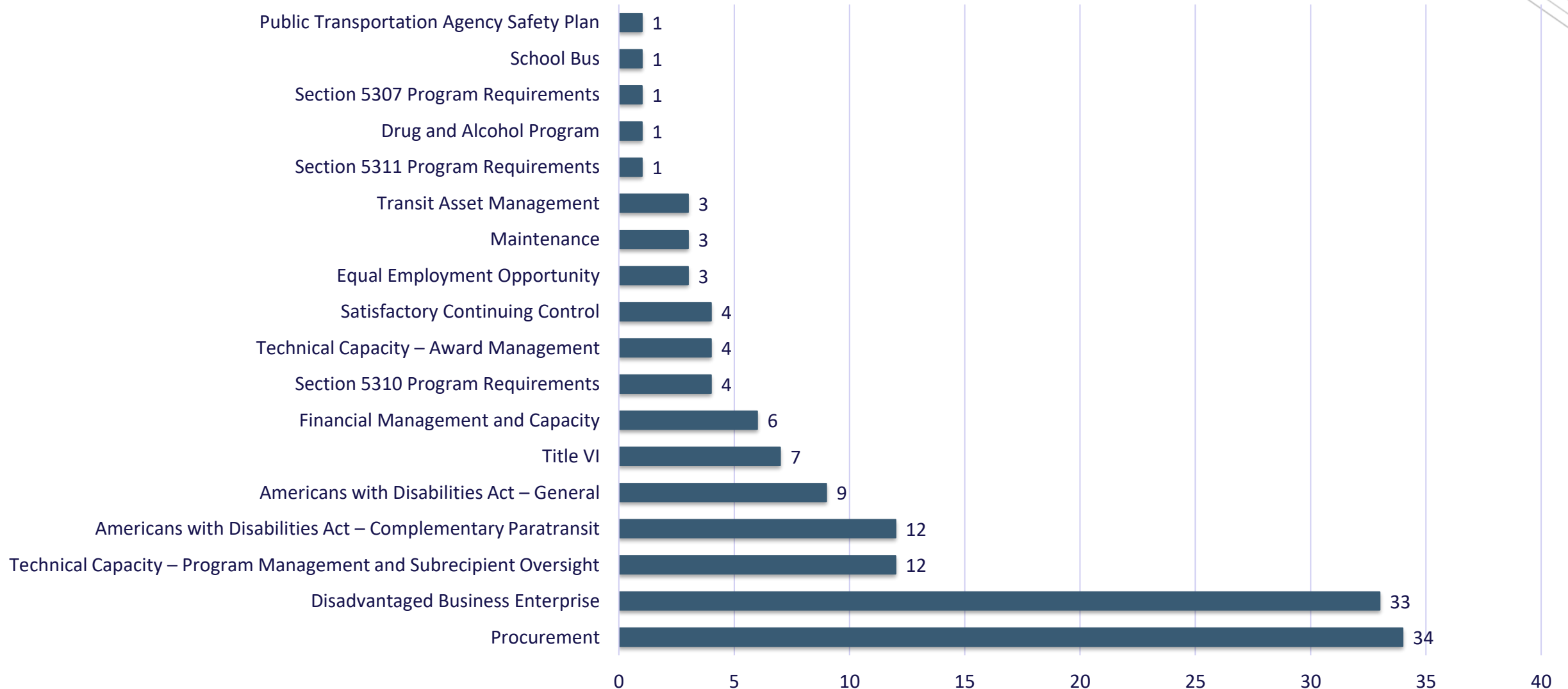
- Occur every three years
- Forward-looking instead of reactive
- Assess management practices and program implementation

Specialized Reviews (Financial, Procurement, & Civil Rights):

- Occur at FTA's discretion
- Focus on specific areas of Federal compliance



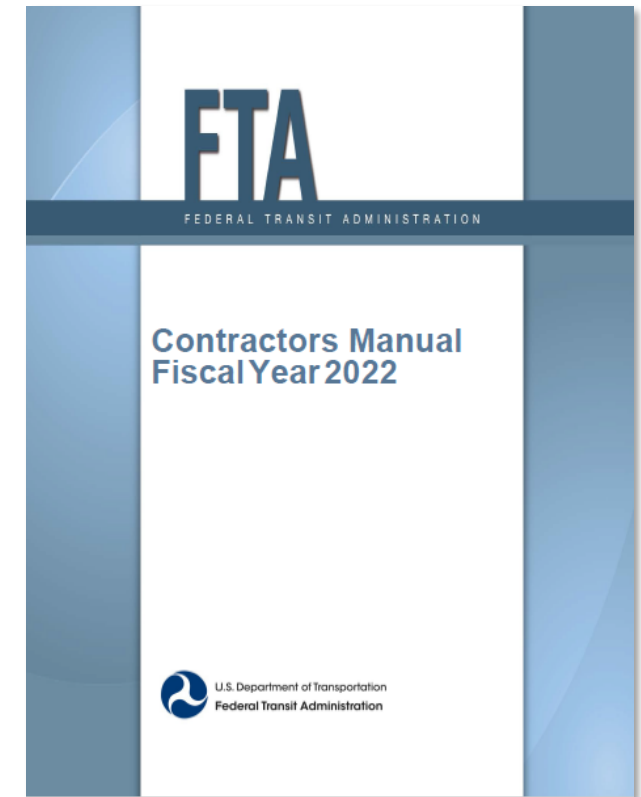
FY22 SMR: Findings by Review Area



FTA's Comprehensive Review Manual

Each overarching question has six basic parts

- 1. Basic Requirement:** High-level, clear statement of what a recipient is required to do
- 2. Applicability:** Recipients to whom the requirement applies
- 3. Explanation:** Detailed description of the basic requirement
- 4. Indicators of Compliance:** How reviewers will assess compliance with the basic requirement
- 5. Determination:** Based on result of indicators
- 6. Governing Directives:** Citation from law, regulation, agreement, or other guidance forming the basis of a potential finding



 [Contractors Manual FY2022](#)

Highlights of Top DBE Deficiencies



DBE: Top Finding Areas

Reporting

- Timely Semi-Annual Reports
- Accurate and Complete Semi-Annual Reports
- TVM Reporting

Shortfall Analysis

Monitoring and Oversight

- Monitoring Responsibilities
- Prompt Payment
- Subrecipient oversight



Disadvantaged Business Enterprise

PURPOSE OF DISADVANTAGED BUSINESS ENTERPRISE 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.



Spotlight on DBE Reporting

Reporting

- Timely Semi-Annual Reports (49 CFR 26.11 and Appendix B)
- Complete and Accurate reporting (49 CFR 26.11 and Appendix B)
- TVM Reporting (49 CFR 26.49)



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

Review Guide Question:	DBE4 – Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually by the required due dates of June 1 and December 1?
Indicators of Compliance:	a. Did the recipient submit semi-annual reports in the TrAMS reporting module on time?
Drivers of Deficiency:	<ul style="list-style-type: none">• Difficulty in aggregating both State data and subrecipient data• Staff turnover

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What can recipients do to prevent this deficiency?

Develop Procedures and Timelines

- Develop and implement procedures and timelines for collecting internal procurement and payment activity for the report.
- Build time into the process to review and aggregate subrecipient data into the overall reports.

Upskill Subrecipients

- Implement training and timelines for subrecipients' completion of reports.



Disadvantaged Business Enterprise

DBE5-1: DBE Uniform Reports Contain Inaccuracies and/or are Missing Required Information

Review Guide Question:	DBE5 – Are the semi-annual Uniform Reports of DBE Awards or Commitments and Payments completed accurately?
Indicators of Compliance:	a. Does a review of FTA information and selected FTA-funded procurements indicate that the recipient is completing the reports accurately?
Drivers of Deficiency:	<ul style="list-style-type: none">• Lack of understanding on how the form should be completed• DBE office completes reports without the input of procurement and/or finance• Subrecipient activity is not accurately incorporated

DBE Reporting Form

Awards/Commitments this Reporting Period

		A	B	C	D	E	F	G	H	I
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
		8	Prime contracts awarded this period							
9	Subcontracts awarded/committed this period									
10	TOTAL									

B	BREAKDOWN BY ETHNICITY & GENDER	Contracts Awarded to DBEs this Period					
		Total to DBE (dollar amount)			Total to DBE (number)		
		A	B	C	D	E	F
		Women	Men	Total	Women	Men	Total
11	Black American						
12	Hispanic American						
13	Native American						
14	Asian-Pacific American						
15	Subcontinent Asian Americans						
16	Non-Minority						
17	TOTAL						

Payments Made this Period

		A	B	C	D	E	F
C	PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
		18	Prime and sub contracts currently in progress				

		A	B	C	D
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)
		19	Race Conscious		
20	Race Neutral				
21	Totals				
22	Submitted By:	24. Signature:			25. Phone Number:

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What can recipients do to prevent this deficiency?

Utilize Training and Additional Resources

- Leverage [FTA](#) and [NTI](#) training materials on how to complete and interpret the results of the reports.

Communicate with Procurement Office

- Engage with procurement office on completion of Section A of the report, both the form and the provided instructions.



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DBE11-1: Unreported transit vehicle purchases

Review Guide Question:	DBE11 – Did the recipient properly report all FTA-funded transit vehicle manufacturer (TVM) awards?
Indicators 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?
Drivers of Deficiency:	<ul style="list-style-type: none">• Lack of understanding on how/when the report should be completed• Subrecipient vehicle procurements are not being reported• Options are not being reported

TVM Reporting

Vehicle Award Report

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

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

*** 1. Recipient Name**

*** 2. Recipient ID #**

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

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

*** 5. Contract Award Dollar Amount (No commas, No dollar signs)**

*** 6. Contract Award Date**

Please enter a valid date

Date

*** 7. Provide recipient point of contact**

Name

Phone Number

Email Address

8. Additional Information (Optional)

NOTE:

Before selecting Done, please print a copy of this report for your agency's records.

Done

 <https://www.surveymonkey.com/r/vehicleawardreportsurvey>

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What can recipients do to prevent this deficiency?

Understand the reporting requirement

- 49 CFR 26.49 requires reporting of TVM awards within 30 days of award.
- Options must also be reported when exercised.

Communicate with Procurement and Subrecipients

- Develop internal procedures/checklists with procurement for reporting base awards and options.
- Determine best method to ensure reporting of subrecipient TVM procurements.



Spotlight on Shortfall Analysis

When awards and commitments are less than the overall DBE goal in any fiscal year (49 CFR 26.47)

- Shortfall Analysis
- Corrective Action Plan

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DBE6-1: DBE Goal Achievement Analysis and Corrective Action Plan not Completed

Review Guide Question:	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?
Indicators of Compliance:	<ol style="list-style-type: none">a. Was the recipient required to conduct a shortfall analysis 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 the required elements?

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DBE6-1: DBE Goal Achievement Analysis and Corrective Action Plan not Completed

Drivers of Deficiency:

- Recipients do not meet their overall DBE goal, and:
 - Do not realize that they have to complete a shortfall analysis, and/or
 - Do not know what numbers on their reports to analyze
- The analysis and corrective action plan are not sufficient
 - Too much narrative, not enough facts, data, and dates
- 'Top 50' recipients do not submit analysis to FTA or submit it late



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What can recipients do to prevent this deficiency?

Ensure Timely Completion of Report

- Complete the last DBE report of the fiscal year early (the last report is due December 1 and the shortfall analysis is due December 29).

Utilize Training and Additional Resources

- Check [FTA's website](#) for “Top 50” determinations.
- Use training modules on [FTA's DBE website](#).



Spotlight on Monitoring

Monitoring
responsibilities
(49 CFR 26.37)

Prompt payment
monitoring (49
CFR 26.29)

Subrecipient
oversight



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DBE12-1: Insufficient documentation of monitoring DBE compliance of contractors

Review Guide Question:	DBE12 – Does the recipient monitor the performance of contractors and enforce contractual requirements consistent with its approved DBE Program?
Indicators of Compliance:	a. For contracts where DBE attainment is claimed, does the recipient monitor contractors and in accordance with its DBE program to ensure that DBE obligations are fulfilled and apply appropriate remedies when necessary?
Drivers of Deficiency:	<ul style="list-style-type: none">• Monitoring is not conducted for all FTA-funded procurements• Documentation of monitoring or applying remedies is lacking

Disadvantaged Business Enterprise

What can recipients do to prevent this deficiency?

Conduct monitoring

- Monitor all, not just a sample, of FTA-funded procurements.
- Consider conducting this monitoring in conjunction with other required project monitoring.

Document monitoring

- Document when monitoring was conducted.
- Include documentation of monitoring with other project monitoring records.

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DBE12-4: Recipient not ensuring prompt payment

Review Guide Question:	DBE12 – Does the recipient monitor the performance of contractors and enforce contractual requirements consistent with its approved DBE Program?
Indicators of Compliance:	d. For all FTA-funded, non-TVM contracts, does the recipient implement the prompt payment and return of retainage monitoring and enforcement mechanisms described in its approved DBE program?
Drivers of Deficiency:	<ul style="list-style-type: none">• Monitoring for prompt payment is not conducted for all FTA-funded procurements• Documentation of prompt payment monitoring is lacking and/or differs from DBE Program

Disadvantaged Business Enterprise

What can recipients do to prevent this deficiency?

Conduct monitoring

- Monitor all, not just a sample, of FTA-funded procurements.
- Consider conducting this monitoring in conjunction with other required project monitoring.

Document monitoring

- Document when monitoring was conducted.
- Include documentation of monitoring with other project monitoring records.

Disadvantaged Business Enterprise

DBE14-1: Insufficient oversight of subrecipients for DBE requirements

Review Guide Question:	DBE14 – Does the recipient perform oversight of its subrecipients for compliance with the DBE regulation?
Indicators of Compliance:	a. How does the recipient monitor subrecipients for 1) Reporting 2) Contract goal-setting 3) Good faith efforts 4) Performance of contractors and DBEs?
Drivers of Deficiency:	<ul style="list-style-type: none">• Recipients have subrecipients• Oversight procedures are not current• Oversight activities not consistently documented• Follow-up of oversight findings does not occur• Existing complications when subrecipients are also direct FTA recipients

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What can recipients do to prevent this deficiency?

Develop a Comprehensive, Standardized Approach

- Include oversight procedures for items reviewed by FTA in Question DBE-14 of the Contractors Manual.
- When regulations change, review and revise oversight guides.

Monitor all Oversight Activities

- Document oversight activities and corrective measures.
- Follow up with subrecipients on identified deficiencies.



Questions

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[TRANSIT.DOT.GOV](https://www.transit.dot.gov)