



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

Guidance for FTA Tier II Recipients on Implementing the Disadvantaged Business Enterprise (DBE) Program Final Rule Published April 9, 2024

Purpose

This document provides guidance to Federal Transit Administration (FTA) Tier II Recipients (Tier 2s) on how to comply with the Disadvantaged Business Enterprise (DBE) Final Rule published on April 9, 2024. This guidance is intended to assist recipients with transitioning to the new rule requirements; the U.S. Department of Transportation (USDOT) intends to release additional guidance to further assist recipients and transit vehicle manufacturers with DBE program implementation and operations.¹

Applicability

This guidance applies to recipients of FTA planning, capital, or operating assistance. This guidance provides information relevant to FTA Tier II Recipients, which are defined as “FTA recipient[s] to whom [part 26] applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.” (49 CFR § 26.5)

Background

On April 9, 2024, USDOT published a Final Rule to update the DBE program requirements found at 49 CFR part 26. The Final Rule creates a tiered system for FTA recipients. Pursuant to 49 CFR § 26.21(a)(2)(ii), FTA Tier II Recipients (Tier 2s) must comply with five specific provisions of part 26:

- (A) Keep and report information on FTA-funded contract activities as required by § 26.11
- (B) Utilize the contract assurances in § 26.13
- (C) Develop and distribute a policy statement as required by § 26.23
- (D) Develop and implement a small business element as prescribed by § 26.39, and

¹ The contents of the document do not have the force and effect of law and are not meant to bind the public in any way, and the document is intended only to provide information to the public regarding existing requirements under the law or agency policies.

(E) Follow all requirements related to FTA-assisted transit vehicle procurements in § 26.49

Importantly, Tier 2s are not required to submit a DBE program plan or DBE goal methodology to FTA for review and approval.

Effective Date

The effective date for Tier 2s to implement their DBE programs (i.e., the five provisions listed above) is October 9, 2024. 49 CFR § 26.21(a)(2)(ii). Tier 2s are strongly encouraged to use the time before the FTA Tier II requirements take effect to develop their DBE programs.

Recipients that have DBE program plans on file with FTA that are now Tier 2s may begin implementing their Tier 2 program immediately and are not required to submit any material related to their program plan or goal methodology for the remainder of Federal fiscal year 2024 (such recipients are still required to submit the Uniform Reports due June 1, 2024, and December 1, 2024).

Reporting Requirements – § 26.11

Section 26.11 requires recipients to submit the Uniform Report of DBE Commitments / Awards and Payments and their Bidders List.

Uniform Report

Tier 2s are not required to submit a semi-annual report, only an annual report.

Tier 2s are required to submit an annual Uniform Report by December 1 of each year. USDOT will provide an updated Uniform Report that includes all required fields. FTA recipients will be issued blank Uniform Reports via TrAMS approximately two months before the due date. The first Uniform Report will be due December 1, 2025, and will cover the contracts awarded in Federal fiscal year 2025.

If FTA finds an error in the Uniform Report, FTA will contact the recipient to correct the report. Failure to correct the report in the manner instructed by FTA will be considered noncompliance.

On the Uniform Report, FTA recipients indicate whether any FTA-assisted contracts were awarded in the Federal fiscal year. Recipients that have not awarded any FTA-assisted contracts and do not have any open FTA-funded contracts are not required to complete the remainder of the Uniform Report. If a recipient has open FTA-funded contracts awarded in a previous Federal fiscal year, the recipient is required to complete the Uniform Report, even if the recipient did not award an FTA-assisted contract during the reporting period.

Bidders List

Tier 2s are required to submit their bidders lists pursuant to § 26.11(c). Recipients that do not award any FTA-assisted contracts in a Federal fiscal year are not required to submit a bidders list (including recipients that issued a public solicitation but did not award a contract and recipients with open contracts awarded in previous years).

USDOT will provide further instruction on how to submit the bidders list to a dedicated system (i.e., a system other than TrAMS). Tier 2s are encouraged to begin developing policies and procedures on how to collect the information required by § 26.11(c), and to begin collecting such information.

Contract Assurances – § 26.13

In every FTA-assisted contract, the contract assurances found in § 26.13 must appear verbatim. FTA encourages Tier 2s to develop quality assurance and control mechanisms to ensure that the clauses are included in all FTA-assisted contracts and that breaches are dealt with accordingly.

Policy Statement – § 26.23

The policy statement for a Tier 2 should be tailored to the organization's program and should state that the recipient is a Tier 2. Section 26.1 should be reviewed before developing the policy statement.

FTA does not expect Tier 2s to expend significant resources distributing their policy statements. Generally, an internal email, website posting, and email to all DBEs certified in the state's DBE directory is sufficient.

Small Business Element – § 26.39

Tier 2s are not required to submit their small business element to FTA for review. If subject to an oversight review that includes review of DBE compliance, such as a Triennial Review, FTA will request a Tier 2's small business element for review.

FTA expects Tier 2s to review their current FTA-assisted procurement practices and determine whether there are barriers for small businesses. If there are barriers, Tier 2s are required to address them. FTA understands that not all barriers can be removed, or that the cost of removal may far outweigh the benefit. Many barriers, though, are unnecessary and can be removed or reduced at little cost and great benefit. Tier 2s are encouraged to review resources provided by USDOT and other authorities on strategies to facilitate contracting with small businesses using the small business element.

Transit Vehicle Procurements – § 26.49

Tier 2s should review their policies to ensure they are awarding FTA-assisted contracts to eligible transit vehicle manufacturers (TVMs) and reporting those awards to FTA timely and accurately.

Tier 2s (and all FTA recipients of planning, capital, or operating assistance) have always been subject to § 26.49. As such, Tier 2s should ensure that all FTA-assisted transit vehicle procurements awarded in Federal fiscal year 2016 and each subsequent year have been reported to FTA. FTA will not issue corrective actions to Tier 2s for missing the 30-day deadline for any transit vehicle procurements that occurred before the date of this guidance. FTA will be providing additional information on how to comply with the transit vehicle procurement requirements.

Goal Methodology and DBE Program Plan

Tier 2s are not required to submit a DBE program plan or DBE goal methodology. FTA will update TrAMS to ensure that submission and approval of a DBE program plan and goal methodology are not preconditions to funding eligibility for Tier 2s.

Goal Methodology

A Tier 2 is only required to develop an overall triennial goal compliant with § 26.45 if it intends to implement a race-conscious component to its program, including utilizing contract goals. Tier 2s that operate completely race-neutral programs may develop a DBE goal voluntarily and should be guided by § 26.45. (FTA recommends setting the goal on a triennial basis, though any period is acceptable.) Generally, Tier 2s are not required to submit their DBE goal methodology to FTA for review and approval. During oversight reviews FTA will evaluate the goal methodologies of Tier 2s with race-conscious contracting practices; FTA will also review Uniform Reports and may request Tier 2s with race-conscious DBE participation to submit their goal methodologies for review. Tier 2s that do develop a DBE goal are encouraged to contact FTA for technical assistance, whether they are required to establish a goal due to the race-conscious components of their DBE program or establish a goal voluntarily.

Program Plan

FTA expects Tier 2s to memorialize the policies and procedures needed to ensure compliance with 49 CFR part 26. Whether a Tier 2 chooses to develop a standalone document or incorporate such policies and procedures into broader documents is the Tier 2's decision. Tier 2s are not required to submit their documented DBE policies and procedures to FTA for review and approval. FTA will review Tier 2s' DBE policies as part of FTA's general oversight activities and in response to issues identified through reports submitted by Tier 2s and complaints filed by the public. FTA intends to provide resources to Tier 2s to help them develop their DBE policies and procedures.

Requirements Table for Tier 2s

49 CFR part 26	Applicable to Tier 2s?	Submit to FTA?
26.11	Yes	Yes
26.13	Yes	No
26.21(b)(1)	No	No
26.23	Yes	No
26.45	It depends <ul style="list-style-type: none">• Yes if race/gender-conscious component• No if exclusively race/gender neutral	No
26.49	Yes	Yes

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

Issued: April 25, 2024