

COMPLIANCE REVIEW REPORT
OF THE
Chicago Transit Authority (CTA)
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Final Report

October 2011

Prepared for the
Federal Transit Administration
Office of Civil Rights

by

Milligan & Company, LLC
105 N. 22nd Street, 2nd Floor
Philadelphia, PA 19103

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Section 1 - General Information

Grant Recipient: Chicago Transit Authority
567 Lake Street

City/State: Chicago, IL 60661-1465

Grantee Number: 1182

Executive Official: Terry Peterson
Chairman

Richard L. Rodriguez
President

On Site Liaison: Deanna Zalas
Senior Compliance Officer
312-681-3520

Enrique Orozco
Acting General Manager, Diversity and Small Business
Compliance
312-681-2620

Report Prepared by: MILLIGAN AND CO., LLC
105 N. 22nd Street, 2nd Floor
Philadelphia, PA 19103
(215) 496-9100

Site visit Dates: November 8 - 10, 2010

Compliance Review Team
Members:

Benjamin Sumpter, III, Lead Reviewer
Habibatu Atta
Sandra Swiacki
Kristin Szwajkowski

Section 2 - Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 12 of the Master Agreement, Federal Transit Administration M.A., (17), October 1, 2010 and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

The Chicago Transit Authority (CTA) is a recipient of FTA funding assistance and is therefore subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in CTA's DBE program and were the basis for the selection of compliance elements that were reviewed.

Section 3 – Purpose and Objectives

PURPOSE

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with their responsibilities under 49 CFR Part 26. In keeping with its regulations and guidelines, FTA has determined that a compliance review of the Chicago Transit Authority's (CTA) Disadvantaged Business Enterprise (DBE) program is necessary.

The primary purpose of the compliance review is to determine the extent to which the CTA has implemented 49 CFR Part 26, as represented to FTA in its DBE Program Plan. This compliance review is intended to be a fact-finding process to: (1) examine CTA's Disadvantaged Business Enterprise Program Plan and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

This compliance review is not to directly investigate whether there has been discrimination against disadvantaged businesses by the grant recipient or its subrecipients, nor to adjudicate these issues in behalf of any party.

OBJECTIVES

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

- ensure nondiscrimination in the award and the administration of DOT-assisted contracts in the Department's financial assistance programs;
- create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- help remove barriers to the participation of DBEs in DOT-assisted contracts;
- assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- determine whether CTA is honoring its commitment represented by its certification to FTA that it is complying with its responsibilities under 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in DOT Programs”;
- examine the required components of CTA’s DBE Program Plan against the compliance standards set forth in the regulations and to document the compliance status of each component; and
- gather information and data regarding the operation of CTA’s Disadvantaged Business Enterprise Program Plan from a variety of sources – DBE program managers, other CTA management personnel, DBEs, and prime contractors.

Section 4 – Background Information

The Chicago Transit Authority (CTA) was created in 1945 pursuant to the Metropolitan Transportation Authority Act passed by the Illinois State Legislature. CTA provides bus and rail service in the City of Chicago and 40 adjoining suburban communities. CTA is one of the three service boards of the Regional Transportation Authority (RTA), which was created in 1973 to provide funding for transit operators in the Chicago area. The population of CTA's service area is 3.9 million people.

CTA averages roughly 1.7 million rides per weekday. The agency has 1,190 rapid transit cars and operates rail service with eight lines through 144 stations on 224 miles of track. The trains make over 2,100 trips each day. The bus fleet is comprised of 1,700 buses for fixed-route service. CTA operates a network of 140 bus routes along 2,230 route miles. Twenty five thousand bus trips are made daily. Service is provided 24 hours a day, seven days a week.

Current projects include station renovations for Cermak – Chinatown, Grand/State, North/Clyborn, New Morgan/Lake, and New Oakton. The Cermak-Chinatown Red Line Station is being renovated to include an elevator, a new street level escalator, an upgraded entrance, new and improved farecard readers and gates, and other improvements necessary to comply with ADA guidelines. The Grand/State Red Line Station is being renovated to comply with ADA guidelines. Other technological, security, and equipment improvements are also being made to the station. The North/Clyborn Red Line Station is being renovated, through a partnership with Apple, Inc., to include additional security cameras, additional turnstyles and farecard readers. New Morgan/Lake Green and Pink Line Station will have new platforms, new elevator access to the platforms, a new transfer bridge between both platforms, and new security features. The New Oakton Yellow Line Station is a new station that is being added to the Yellow Line. It will be ADA compliant and include a new platform and new security.

CTA is also currently working on the extension of the Red Line from 95th Street to 130th Street, the Orange Line from Midway International Airport to 76th Street, and the Yellow Line from Dempster Station to Old Orchard Road.

Section 5 – Scope and Methodology

Scope

Implementation of the following twelve required DBE program components specified by the FTA are reviewed in this report.

1. Submission of a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval. [49 CFR 26.21]
2. Issuance of a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts. [49 CFR 26.23].
3. Designation of a liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25].
4. Efforts made to use DBE financial institutions, by the recipient as well as prime contractors, if such institutions exist [49 CFR 26.27].
5. A DBE directory including addresses, phone numbers and types of work performed, must be made available to the public and updated at least annually [49 CFR 26.31].
6. The recipient must determine if overconcentration exists and address this problem if necessary [49 CFR 26.33].
7. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
8. An overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a recipient's DOT-assisted contracts [49 CFR 26.43 – 26.53].
9. All contracts must include a non-discrimination clause, a prompt payment clause and must implement appropriate mechanisms to ensure compliance by all participants [49 CFR 26.13, 26.29, 26.37].
10. A certification process must be intact to determine if a potential DBE is legitimately socially and economically disadvantaged. The potential DBE must submit an application, a personal net worth statement and a statement of disadvantage, along with the proper supporting documentation [49 CFR 26.67].

11. The certification procedure must include document review and an on-site visit and determine eligibility consistent with Subpart D of the regulations [49 CFR 26.83].
12. Implementation of appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

Methodology

The initial step in the scope of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's TEAM System and other sources. Subsequent to this review, potential dates for the site visit were coordinated.

An agenda letter was then compiled and sent to CTA by FTA's Office of Civil Rights. The agenda letter notified CTA of the planned site visit, requested preliminary documents, and informed CTA of additional documents needed and areas that would be covered during the on-site portion of the review. It also informed CTA of staff and other parties that would potentially be interviewed.

The documents received prior to the on-site portion of the review were examined and an itinerary for the site visit was developed. An entrance conference was conducted at the beginning of the Compliance Review with FTA representatives, CTA staff and the review team.

Subsequent to the entrance conference, a review was conducted of CTA's DBE Program Plan and other documents submitted to the review team by the DBE Liaison Officer. Interviews were then conducted with CTA regarding DBE program administration, record keeping and monitoring. These interviews included staff from diversity, procurement, and finance. A sample of contracts were then selected and reviewed for their DBE elements. Additionally, interviews with prime contractors, DBEs and interested parties were performed.

At the end of the review, an exit conference was held with FTA representatives, CTA staff and the review team. A list of attendees is included at the end of this report. At the exit conference, initial findings and corrective actions were discussed with CTA.

Following the site visit, a draft report was compiled. CTA provided comments to the draft report, along with corrective action documentation. Following review of these items, the final report was produced.

Section 6 – Issues and Recommendations

1. DBE Program Plan

Basic Requirement: (49 CFR Part 26.21) Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

Discussion: During this review, deficiencies were found with requirements for a Program Plan. It was undetermined when the DBE Program Plan provided by CTA was drafted. The Program Plan either contained outdated language or incorrect references to the DBE program requirements. There were several instances where CTA had modified the process described in the Program Plan, but never amended the plan. These instances will be described in the applicable sections of this report.

Corrective Action and Schedule: Within 30 days of receipt of this report, submit to the Region V Civil Rights Officer a corrective action plan and schedule for submission of a revised DBE program.

CTA Response: CTA considers this item closed. The DBE Program Plan has been updated to reflect CTA's current program. The draft DBE Program Plan is dated. A copy of the draft DBE Program Plan is attached.

FTA Response: FTA has reviewed the draft plan. In other sections of this report, there have been notations of items that may require revisions to this plan. Submit the approved revised DBE Program Plan by December 1, 2011, to FTA's Office of Civil Rights. This deficiency will be closed after FTA's review and acceptance of this information.

2. DBE Policy Statement

Basic Requirement: (49 CFR Part 26.23) Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

Discussion: During this review, deficiencies were found with requirements for a policy statement. CTA provided a copy of the DBE policy statement letter signed by the former chairman in 2006. The policy statement is not signed by the current top official for CTA. Additionally, CTA was unable to provide evidence that the DBE policy statement had been distributed internally and externally in the business community CTA serves.

Corrective Action and Schedule: Within 30 days of receipt of this report, submit to the Region V Civil Rights Officer an updated DBE policy statement and where it is circulated in the CTA and to DBE and non-DBE business communities.

CTA Response: CTA considers this item closed. The DBE Policy Statement has been updated and executed by CTA's President reflecting the current date. The new Policy Statement will be distributed to CTA staff and posted on CTA's website, and will be distributed to the DBE Technical Assistance Agencies. A copy of the Policy Statement is attached.

As an additional response, on August 1, 2011, CTA also provided a DBE Policy statement signed by the new President of the agency, Forrest Claypool, on June 30, 2011.

FTA Response: FTA has reviewed the policy statement provided. The policy statement issued in 2006 was found on CTA's website, but the 2011 policy statement could not be located on CTA's website. By December 1, 2011, submit to FTA's Office of Civil Rights evidence that the policy statement has been distributed internally and to Technical Assistance Agencies, as well as the website location of the new policy statement. This deficiency will be closed after FTA's review and acceptance of this information.

3. DBE Liaison Officer

Basic Requirement: (49 CFR Part 26.25) Recipients must have a designated DBE liaison officer who has direct and independent access to the CEO. This liaison officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for the DBE Liaison Officer (DBELO). The CTA DBE Program Plan identifies the General Manager of Diversity and Small Business Compliance as the DBELO. The plan does not identify the name or contact information for the position named. The person serving in this position has changed several times since 2009. Ms. Marya Garcia Guzman succeeded Ms. Pamela J. Beavers in the spring of 2009 and as of November 2010, Mr. Enrique Orozco was named Acting General Manager, Diversity and Small Business Compliance.

The regulation requires the DBELO to have direct and independent access to the CEO regarding DBE matters. The review team requested an organizational chart and documentation supporting the DBELO's independent access to the CEO. CTA provided an organizational chart showing the General Manager, Diversity and Small Business Compliance as a subordinate to the Vice President Purchasing with a dotted line access to the President of CTA. Mr. Orozco had only been in the DBELO capacity for one week at the time of this review's site visit and had not had any meetings with the President. CTA provided calendar appointments from the previous DBELO, Ms. Garcia Guzman, and bi-monthly meetings with CTA's Chief of Staff. However, no records of meetings with the President were provided to the review team to support the DBELO's independent and direct access to the President of CTA for DBE matters.

Another requirement is for the DBELO to have adequate staff to administer the DBE program. The certification unit had five (5) staff members in the department until 2010. There are currently two certification specialists and a coordinator to review file

recommendations. Certification letters are signed by the DBELO, Enrique Orozco. CTA has one DBE Compliance Coordinator with responsibilities for monitoring all FTA funded CTA contracts for DBE compliance. Based on the findings in this and other areas of this review, it appears that CTA is not applying adequate resources to fully and properly implement the DBE program. CTA must review the additional details discussed in the applicable sections of this report to analyze whether resources in these areas are adequate, or if further resources are needed.

CTA recently reorganized the Diversity & Small Business Compliance Department from directly under the Administrative Officer to the Purchasing Department. Possible conflicts of interest with the reorganization of the Diversity Department under Procurement could exist in areas such as evaluating good faith efforts and timing of procurements being finalized. CTA must institute measures to mitigate any potential conflicts, including reporting relationships.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for ensuring that:

- the current DBELO is named with contact information in CTA's DBE Program Plan,
- the DBELO has direct and independent access to CTA's President, in form and in substance,
- the adequacy of resources in the certification and compliance areas of the Diversity Department have been reviewed in light of the deficiencies in those areas and corrected where necessary, and
- Safeguards are in place to prevent and/or adequately address any identified or potential conflicts of interest

CTA Response: CTA supports the requirement that the DBELO have direct and independent access to the President and maintains a dual reporting to both the Chief Executive Officer and the Vice President of Purchasing. The DBELO has the ability to schedule independent meetings with the President, the President's Chief of Staff and the Chief Administrative Officer. Furthermore, the DBELO is an engaged participant in monthly transit board preparatory meetings with both the President and Chairman. Finally, the DBELO will continue to have monthly meetings with the President's Chief of Staff. The updated draft Program Plan formalizes this process.

CTA is currently benchmarking its staffing levels for the DBE department against other large transit agencies in order to better determine appropriate staffing levels. This process will be completed by May 1, 2011. CTA also began making efforts to resolve the staffing issue by meeting with both the Human Resources and Budget Departments on April 7, 2011, to discuss this matter. Furthermore, CTA understands the importance of training existing DBE Department personnel. CTA has been in contact with the National Training Institute "NTI" regarding scheduling applicable training courses in Chicago in 2011.

The safeguards are documented by the fact that Purchasing is not at all involved in good faith efforts assessments. Only DBE staff reviews documents related and relative to good faith efforts assessments and DBE staff makes independent assessments regarding good

faith efforts based on the documents that are submitted and reviewed. The timing for procurements and their completion are dictated by agency and user department needs, not Purchasing. Therefore, no conflict of interest exists in this regard. The updated draft DBE Program Plan formalizes these safeguards and contains a methodology for the CEO to resolve any issues wherein the Vice President of Purchasing and the DBELO are in potential conflict.

FTA Response: FTA acknowledges that the DBELO is now named, with contact information in the CTA's revised draft DBE Program Plan. FTA also acknowledges that CTA arranged with NTI to host the DBE workshop August 1-3, 2011. Submit the following to FTA's Office of Civil Rights by December 1, 2011:

- Identification of where in the revised DBE Program Plan the following have been formalized:
 - preparatory meetings with the President and Chairman of the Board, and
 - monthly meetings with the CTA President's Chief of Staff, including how this demonstrates direct and independent access to the CEO

If these items are not in the current plan, ensure that revisions are made and appropriate staff are informed prior to finalizing the current DBE Program Plan.

- Results of staffing analysis, along with any revisions to the DBE Program Plan that any staff changes or augmentation will necessitate
- Clarification of Purchasing Department's role in good faith efforts in light of the following:
 - CTA's statement that the Purchasing Department is not at all involved in good faith efforts determinations is refuted by the fact that the DBE roles are performed by the Purchasing and Small Business Compliance Department which is within the Purchasing Department.
 - Item #9 under the DBELO responsibilities (page 9 of the DBE Program Plan) states that the DBELO will consult with "...CTA's Purchasing department to determine contractor compliance with good faith efforts."
 - In the draft DBE Program Plan (page 13), it notes the Senior Officer of Diversity as the reconsideration official, but this position does not appear on the organization charts provided with the response to the draft report.
- Documentation of the methodology used for the CEO to resolve any issues wherein the Vice President of Purchasing and the DBELO are in potential conflict.

These deficiencies will be closed after FTA's review and acceptance of this information.

4. Financial Institutions

Basic Requirement: (49 CFR Part 26.27) Recipients must investigate the existence of DBE financial institutions and make efforts to utilize them. Recipients must encourage prime contractors to use these DBE financial institutions.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for financial institutions. CTA's Department of Budget & Capital Finance provided a listing of DBE financial institutions to the review team. The listing included

institutions that CTA has done business with over the years, to include deposits with multiple DBE institutions.

5. DBE Directory

Basic Requirement: (49 CFR Part 26.31) A DBE directory must be available to interested parties including addresses, phone numbers and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for a DBE directory. CTA is part of the Illinois Unified Certification Program (IUCP) and the directory of DBE firms is hosted by Illinois Department of Transportation. The directory includes the information required by the regulations. It lists the firm's name, mailing address, telephone number, and the type of work the firm has been certified to perform as a DBE. In addition to the web-based electronic version, the directory is available in hard copy format upon request. The directory is updated weekly and as changes occurs.

6. Overconcentration

Basic Requirement: (49 CFR Part 26.33) The recipient must determine if overconcentration of DBE firms exists and address the problem, if necessary.

Discussion: During this DBE Compliance Review, a deficiency was found with the requirement for overconcentration. The DBE Program Plan did not discuss how CTA would address overconcentration. The current DBELO was unsure if an overconcentration analysis had been completed and was unable to provide any evidence of any past review.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for conducting an overconcentration analysis.

CTA Response: In December 2010, CTA began utilizing "B2GNOW" (Business to Government Now-web based diversity software). B2GNOW can produce participation reports that allow for an analysis of potential DBE overconcentration. By December 31, 2011, the DBLO will complete an overconcentration analysis and, if necessary, provide a plan and schedule for remediation. This will be an annual process and is formalized in the updated draft DBE Program Plan.

FTA Response: By December 1, 2011, submit to FTA's Office of Civil Rights, a revision to the DBE Program Plan that includes the information noted in the corrective action response detailing when and how this activity will be performed. This deficiency will be closed after FTA's review and acceptance of this information.

7. Business Development Programs

Basic Requirement: (49 CFR Part 26.35) The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion: During this DBE Compliance Review, no deficiencies were found in the area of Business Development Programs (BDP). The FY 2007 goal methodology described that CTA retained the services of a consultant, Midwest Technology Access Group, Inc., to assess the CTA Business Development Program, which was targeted to more than 200 firms in the greater Chicago Area. The consultant reviewed CTA's past successes and was to devise a plan to enhance them. The consultant focused on provision of training to the 200 firms, which included instruction in marketing, the development of a business plan and preparation of bids.

Subsequent goal methodology submissions did not include the continuance of the BDP; however, CTA continues to participate in a number of programs to provide information to various organizations regarding contracting opportunities and how to do business with CTA including attendance at various procurement fairs and technical assistance events.

8. Determining/ Meeting Goals

A. Calculation

Basic Requirement: (49 CFR Part 26.45) To begin the goal setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is achieved, all other relative evidence must be considered in an adjustment of this figure to match the needs of the specific DBE community.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for calculation of goal. In preparation for the compliance review, annual goal submissions from FY 2008 through FY 2011 were requested. CTA provided a draft FY 2009 goal methodology submitted on September 15, 2008 and a final FY 2009 goal methodology submitted on June 18, 2009. During the onsite review, the review team requested goals submittals for FY 2008, FY 2007 and FY 2006 to increase the sample size.

Mr. Dorval R. Carter, Jr., Executive Vice President Operations & Support signed all the goal submission letters and referenced Pam Beavers as General Manager, Diversity & Small Business Programs in them, except when Mayra Garcia Guzman was identified as General Manager, Diversity in the June 18, 2009 letter. Mr. Carter, Ms. Beavers and Ms. Garcia Guzman were not employed by CTA at the time of the compliance review. The current General Manager for Diversity had not been a part of the goal setting process and was not able to describe previous goal submissions.

USDOT changed the goal methodology submissions from an annual to a triennial cycle. Based on the current schedule determined by FTA, CTA's next goal submission is due by August 1, 2012 and will be for the three-year period covering FYs 2013-2015. The FY

2010 goal was to be valid until 2012; however, CTA did not submit a goal for FY 2010. There was no explanation given as to why CTA did not submit a goal for FY 2010, which was due by August 1, 2009. FTA will determine if CTA's submission schedule will be moved up a year to August 1, 2011, since a goal methodology was not submitted for FY 2010

Step 1: Determining the Base Figure

The base figure is determined by the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts. For fiscal years 2009, 2008, 2007 and 2006, CTA has used relatively the same verbiage and data in their goal methodology to arrive at a 30% overall goal. In the FY 2009, 2008 and 2007 goal methodologies, CTA indicated every year that there were 598,175 firms operating in the Chicago Region. CTA estimated that of this amount, there was a total DBE availability of 265,937 firms in the Chicago Region. CTA described their predominant market area in which goods and services are purchased from vendors in the Chicago metropolitan statistical area (MSA), as a six-county region. Specifically, the 2000 Decennial Census of Population Use Microdata Samples was used to estimate total firm availability in the Chicago Region.

The FY 2006 – 2009 goal methodologies stated that the base figure analysis were derived from a report prepared by a consultant CTA employed, Dr. Timothy Bates, who holds a Ph.D. in quantitative social science. Dr. Bates prepared a report entitled "*Utilizing Year 2000 Decennial Census of Population Microdata Samples (PUMS) to measure Availability of CTA Vendors in the Chicago Region.*" The availability measure drawn from PUMS data was 30.8 percent. The review team secured a copy of a revised 2007 availability study by Dr. Bates entitled "*Availability and Utilization of Minority and Women-Owned Businesses in Industries where the CTA is Spending its Procurement Dollars Derived from Federally Assisted Contracts*" and could not readily find evidence to support the stated DBE availability of 265,937 firms in the Chicago region.

CTA also referenced a 2001 vendor survey, which they used as a second availability measure that suggested DBE availability was 30.9 percent among vendor-list firms ready and willing to sell their products to the CTA. CTA concluded that rounding up to 31 percent availability or down to 30 percent availability when setting DBE goals was consistent with the data examined.

Step 2: Adjusting the Base Figure

Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal. For FYs 2009 and 2008, CTA used two elements for determining adjustments, the first analysis involved review of past DBE performance in CTA contracting activity; the second involved a review of anticipated DBE DOT-assisted contracting opportunities with CTA. CTA reported in both fiscal year (2008 and 2009) methodologies that past participation for FY2005; 27.7% and FY2006; 30.2% was attained. These figures represented an average of 29.3% for the two years. CTA determined that this figure supported a DBE goal of 30%. The review team did not have participation reports from FY 2006 and FY 2005 to substantiate these numbers; however,

CTA should have used more current reports to support past participation when considering any adjustments to the FY 2009 base figure.

The second analysis involved review of projected expenditures for FY 2008 and FY 2009. This section included narrative information about CTA comparing dollar amounts and types of contract to determine specific industry sectors. However, the anticipated expenditures were left blank in the FY 2008 and FY 2009 goal methodologies. Therefore, the review team could not ascertain how this incomplete information assisted CTA in making an adjustment determination for these two fiscal years.

It is also noted that the goal submissions reviewed were submitted after the August 1st deadline, sometimes as late as September, with the “final” goal for FY2009 submitted in June 2010.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for completing the following:

- timely submission of the next goal methodology by August 1, 2011,
- fully described Step One analysis to include detailed information indentifying source of origin for numerator and denominator and mathematical equations to support how CTA arrived at its base figure, and
- mathematical calculations demonstrating how information in the Step 2 adjustment results in the overall goal, including use of more current data if past participation is used as an adjustment.

CTA Response: On March 23, 2011, CTA representatives met with Marisol R. Simon, Regional Administrator of the U.S. Department of Transportation Federal Transit Administration Office; Rhonda Reed, Deputy Regional Administrator of the U.S. Department of Transportation Federal Transit Administration Office; Erick Allen, Regional Civil Rights Officer of the U.S. Department of Transportation Federal Transit Administration Office; and Ryan S. Inman, DBE Technical Lead of the Federal Transit Administration Office of Civil Rights to discuss CTA's annual DBE goal and its methodology. The group discussed CTA potentially requesting an extension for setting its methodology and DBE goal. As such, at this time, CTA requests an extension to set its agency goal. CTA will submit its proposed goal setting methodology (including both Step One and Step Two analysis) to the FTA by August 1, 2011. Following approval of the methodology by FTA, CTA will pursue setting the goal and publishing the goal to obtain public comment. By November 1, 2011, CTA will submit a DBE goal to the FTA.

In a subsequent letter dated August 1, 2011, CTA communicated that due to staffing and other changes at the agency, they would not be able to meet the August 1, 2011, and November 1, 2011, submission dates noted above. In that letter, CTA noted that it was requesting to use an interim goal of 24%, but did not propose an anticipated timeframe for completing goal-setting activities.

FTA Response: To prevent further delay of CTA’s three-year goal submission, by November 15, 2011, submit a schedule that outlines the following milestone events. (As noted below, this will also require receipt of the three-year goal by December 15, 2011):

- Collect data on projected contracting opportunities for the upcoming period

- Identify data sources for the availability of ready, willing and able DBEs and non-DBEs
- Completion of Step One of goal setting process
- Identification of data sources for and completion of Step Two (adjustments to Step One, if necessary)
- Identification of data sources for race neutral and race conscious portions of goal
- Submission to FTA of outline of revised methodology
- Consultation with interested parties
- Advertisement of goal
- Final submission to FTA (by **December 15, 2011**)

This deficiency will be closed upon receipt and acceptance of the submitted goal methodology by FTA's Office of Civil Rights.

B. Public Participation

Basic Requirement: (49 CFR Part 26.45) In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A published notice announcing the overall goal must be available for 30 days. The public must be notified that the recipient is accepting comments on the goal for 45 days following the date of the notice.

Discussion: During this DBE Compliance Review, deficiencies were found with the FTA requirement for Public Participation and Outreach. No evidence of a consultative process was found for CTA's FY 2008 and FY 2009 goal submissions. As stated in the previous section, no goal was submitted for FY 2010. In review of previous goal submissions, the review team found that FY 2006 and FY 2007 included documentation regarding CTA efforts to solicit feedback in regards to the annual goals. Letters were sent out to approximately 15 minority and DBE technical assistance agencies. The letters were sent in mid to late June of each year and requested the organizations to provide CTA information regarding availability, discrimination and CTA's efforts to create a level playing field for DBEs. The organizations were given approximately one week to provide any information that could be used to assist CTA in the goal setting process.

A more effective process could include allowing the organizations to inspect the methodology CTA used to arrive at its goal and create a forum for feedback. This consultative process should take place before advertisement of the goal. This will allow the organizations to review the same data and allow CTA to use the most refined data based on comments received. CTA then can advertise the goal to the general public and business community by June 15th preceding the August 1st submission deadline.

Documentation of goal advertisement in minority based news periodicals and other mediums were part of the FY 2006 and FY 2007 submissions. However, advertisement information was not found in packets from FY 2008 and FY 2009 goal submissions.

Corrective Action and Schedule: Within 30 days of the receipt of the draft report, submit to the FTA Region V Civil Rights Officer a schedule and plan for ensuring that for goal-

submittal years, the consultative process occurs before goals are advertised for public comment, such that goals can be published by June 15th.

CTA Response: On March 23, 2011, CTA representatives met with Marisol R. Simon, Regional Administrator of the U.S. Department of Transportation Federal Transit Administration Office; Rhonda Reed, Deputy Regional Administrator of the U.S. Department of Transportation Federal Transit Administration Office; Erick Allen, Regional Civil Rights Officer of the U.S. Department of Transportation Federal Transit Administration Office; and Ryan S. Inman, DBE Technical Lead of the Federal Transit Administration Office of Civil Rights to discuss CTA's annual DBE goal and its methodology. The group discussed CTA potentially requesting an extension for setting its methodology and DBE goal. As such, at this time, CTA requests an extension to set its agency goal. CTA will submit its proposed goal setting methodology (including both Step One and Step Two analysis) to the FTA by August 1, 2011. Following approval of the methodology by FTA, CTA will pursue setting the goal and publishing the goal to obtain public comment. By November 1, 2011, CTA will submit a DBE goal to the FTA. Lastly, CTA will heed FTA's guidance regarding Public Participation in the goal setting process.

In a subsequent letter dated August 1, 2011, CTA communicated that due to staffing and other changes at the agency, they would not be able to meet the August 1, 2011 and November 1, 2011 submission dates noted above. In that letter, CTA noted that it was requesting to use an interim goal of 24%, but did not propose an anticipated timeframe for completing goal-setting activities.

FTA Response: In addition to the corrective actions noted for goal setting above, by November 15, 2011, submit detailed information to FTA's Office of Civil Rights describing how and when the consultative process will be achieved. This deficiency will be closed after FTA's review and acceptance of this information.

C. Transit Vehicle Manufacturer (TVM)

Basic Requirement: (49 CFR Part 26.49) The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations.

Discussion: During this DBE Compliance review, deficiencies were found with the requirement for transit vehicle manufacturers. The CTA procurement representatives indicated they collect FTA goal acceptance letters in addition to the TVM certifications in the solicitation packages. CTA provided copies of FTA goal acceptance letters for New Flyer Industries for 2003 and 2004. The review team also requested a copy of the TVM certification used in solicitation packages. CTA provided an insert of *DBE Approval Certification* for a 40-foot low floor transit bus procurement (Contract C02FR1265), (RFP CTA 77550-03). The certification was dated April 21, 2004, and referenced that the Offeror had complied with 49 CFR 23.67 requirements.

Corrective Action and Schedule: Within 30 days of the receipt of the draft report, submit to the FTA Region V Civil Rights Officer a schedule and plan for ensuring that the certification provided by CTA to TVMs to complete for vehicle procurements includes

the appropriate reference to 49 CFR Part 26.49. This plan should also include procedures for cross-checking collected TVM certifications with FTA's list of certified TVMs on the dates bids are due. TVMs not in compliance with the DBE regulation may not bid on or be awarded FTA funded TVM contracts.

CTA Response: CTA has reviewed TVM certificates to ensure they include the appropriate reference to 49 CFR Part 26.49. In addition, by May 1, 2011, CTA Purchasing will issue direction to its staff regarding cross-checking collected TVM certifications with FTA's list of certified TVMs when bids are being evaluated.

In a subsequent letter dated August 1, 2011, CTA communicated that it had met the deadline related to TVM certifications.

FTA Response: FTA acknowledges that CTA has reviewed its TVM certifications to ensure that they are up to date. By December 1, 2011, submit documentation to FTA's Office of Civil Rights documenting that Purchasing Department's directive has been issued. This deficiency will be closed upon review and acceptance of the information by FTA's Office of Civil Rights. It is additionally suggested that CTA update the TVM section of its DBE Program Plan to incorporate this directive.

D. Race Neutral DBE Participation

Basic Requirement: (49 CFR Part 26.51) The recipient must meet the maximum feasible portion of the overall goal by using race neutral means of facilitating DBE participation. Examples of how to reach this goal amount are listed in the regulations.

Discussion: During this DBE Compliance Review, a deficiency was found in the area of race neutral participation. CTA's past goal submissions from FY 2006 to FY 2009 all have been 30% with 2% race neutral projections each year. CTA used the same language to explain how the 2% was determined. "CTA considered the results of the PUMS study and examined the DBE participation rate on past CTA contracting activity and the opportunities for future participation on DOT-assisted contracts." There was no mathematical and/or other evidentiary support for a 2% race neutral projection each year for the four goal submissions reviewed.

Additionally, CTA should review the information in the semi-annual reporting forms for accuracy when examining the DBE participation rate on past contracting activity. The reporting forms had a number of completion errors based largely on misinterpretation of the reporting instructions. (See section 12.C. Record Keeping and Enforcements-Reporting).

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for accomplishing the following:

- use of mathematical analysis for RN projections, and
- verification process of correct data if CTA will be using past participation in projection of future RN portion of goal submissions.

CTA Response: A race neutral analysis and projection will be included as part of the required methodology and goal setting process. See previous responses regarding CTA's proposed schedule for setting an agency goal.

FTA Response: FTA acknowledges CTA's response and has requested incorporation of a step in the goal setting process to address the information on race neutral projections of overall goals. This deficiency will be closed in conjunction with the closure of the goal-setting deficiencies.

E. Race Conscious DBE Participation

Basic Requirement: (49 CFR Part 26.51) The recipient must project a percentage of its overall goal that will be met through race conscious means. These contracts may have varying DBE goals, and be made on an individual basis, depending on conclusions of the studies performed.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for race conscious participation overall and contract goals. CTA's projection for their overall goal has been 28% race conscious for the past four overall goal submissions. The methodology of how they arrive at this figure is unsupported in the goal methodologies submitted. CTA describes that each contract expected to carry a goal will be analyzed and assigned a specific goal based on subcontracting opportunities, the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. The contract-specific goals will be set with the intention that the contract-specific percentages over the course of the applicable fiscal year will cumulatively result in meeting the 28% race-conscious projection.

The CTA DBE Program Plan outlines the process for contract-specific goal determination. The methodology described includes the DBE staff consulting with the assigned project manager and procurement officer for a specific contract to review the scope of work and determine the level and type of subcontracting opportunities available. The DBE staff would then conduct an analysis of DBE availability for identified subcontracting opportunities and, if applicable or necessary, contact other transit, state and local agencies to determine their past experience on similar procurements. The DBE staff would then determine the number of ready, willing and able DBEs in the market from the DBE Directory.

The review team requested documentation to support the contract-specific goal setting process outlined in the DBE Program Plan. The current DBE Liaison had been in the position for one week prior to the compliance review and was unable to fully describe or provide documentation demonstrating CTA's actual contract goal setting process. The review team did find a January 22, 2009, memo in a compliance file from Terrance Faust, Sr. Procurement Administrator of Purchasing to Pamela Beavers, General Manager, DBE/EEO requesting a contract specific goal for the Dearborn Subway Track Renewal (C09FR100841885). However, only the scope of work for the contract was attached to the memo and not the DBE staff's analysis to support the determined contract specific goal.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for accomplishing the following:

- use of mathematical analysis for RC projection in overall goal submissions, and
- evidence of the process used to set contract-specific goals and supporting documentation that the process was implemented.

CTA Response: A race conscious analysis and projection will be included as part of the required methodology and goal setting process. See previous responses regarding CTA's proposed schedule for setting an agency goal.

FTA Response: FTA acknowledges CTA's response and has requested incorporation of a step in the goal setting process to address the information on race conscious projections of overall goals. This part of the deficiency will be closed in conjunction with the FTA's closure of the overall goal-setting deficiencies.

The response does not address the part of the deficiency related to the setting of contract-specific goals. By December 1, 2011, submit to FTA's Office of Civil Rights evidence of the process used to set contract-specific goals and supporting documentation that the process is implemented. This part of the deficiency will be closed after FTA's review and acceptance of this information.

F. Good Faith Efforts

Basic Requirement: (49 CFR Part 26.53) The recipient may only award contracts, with DBE goals, to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. The bidders must provide documentation of these efforts for review by the recipient.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for good faith efforts. However, advisory comments were noted regarding the good faith efforts and reconsideration process outlined in CTA's DBE Program Plan. CTA requires all good faith evidence documentation to be submitted at the time of bid. CTA lists acceptable actions when determining good faith efforts of the bidder. One listed action is for advertisement in general circulation media, trade association publication, and DBE-focused media for at least twenty days before bids are due. CTA does state that if 20 days are not available, publication for a shorter reasonable time is acceptable. The review team examined three contracts that had 20 to 21 days for offerors to submit bids. It is recommended that CTA work with their Procurement department to ascertain typical timeframes from bid advertisement to bid opening to determine if a more realistic good faith efforts consideration item should be incorporated into the DBE Program Plan.

CTA has a section in the DBE Program Plan that outlines good faith efforts reconsideration procedures. However, no reconsideration official is designated or specified in the Program Plan. It is recommended that CTA name a reconsideration official in its DBE Program Plan and ensure that this official is aware of the requirements for this function.

CTA Response: In accordance with FTA procurement regulations 4220.1F (VI 3(c)(2), "bidders are allowed sufficient time to prepare bids before the date of bid opening." CTA's minimum bid period will remain 21 days. In instances where a shortened bid period is required, DBE will work with Purchasing to communicate any bidder's concern regarding good faith efforts analysis. Effective December 2010, CTA identified a person to serve as its reconsideration official.

FTA Response: FTA acknowledges CTA's response to these recommendations. Review of the response to the corrective actions related to the position and identity of the reconsideration official under *Item 3 DBE Liaison Officer* section of this report (due December 1, 2011) will be addressed in that section of the report.

G. Counting DBE Participation

Basic Requirement: (49 CFR Part 26.55) The recipient must count only the value of work actually performed by the DBE toward actual DBE goals.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for counting DBE participation. The CTA DBE Program Plan outlines an accurate process for counting DBE participation on projects. However, the review team found discrepancies on how the counting process is currently implemented at CTA. The CTA Coordinator for DBE Compliance is responsible for tracking commitments and change orders for every contract with a DBE goal. A spreadsheet is maintained by the Coordinator outlining the appropriate counting credit given, based on certified area of work and commercially useful function requirements. On a separate spreadsheet, the DBELO tracks payments to prime and DBEs based on the audit reports obtained from the prime contractors. The two spreadsheets are independent of each other and the DBELO's spreadsheet does not take into account the counting rules as described in 49 CFR Part 26 and CTA's Program Plan.

The review team received a spreadsheet, in preparation for the review, prepared by the DBELO entitled *Internal DBE Payment Status Report*. The report indicated that CzechMate Lumber Corp. had been paid \$7,939,528 to date. However, compliance reports from the Coordinator indicate that CzechMate participation is to be counted at 60% of this amount, recognizing that they are a regular dealer. The report continues that after further investigation, CzechMate was found not to be a regular dealer and only the fees and commission should be counted towards DBE goal achievement, rather than the regular dealer percentage of 60%. Based on this, the Coordinator reduced DBE achievement to 3% of the contract value. This information is not computed on the DBELO's payment spreadsheet, which is used for semi-annual reporting. The DBELO explained that current gaps in the spreadsheets and processes will be alleviated once CTA switches to an automated tracking database.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for instituting a mechanism to appropriately count and monitor DBE participation on FTA funded projects.

CTA Response: CTA considers this item closed. In December 2010, CTA began utilizing "B2GNOW" (Business to Government Now - web based diversity software). B2GNOW tracks DBE participation on FTA funded projects in accordance with FTA regulations.

FTA Response: FTA acknowledges CTA's efforts in addressing this deficiency and the inclusion of this process in its revised DBE Program Plan. By December 1, 2011, provide FTA's Office of Civil Rights with documentation (such as reports, implemented procedures) demonstrating how this software is being utilized to document accurate counting and monitoring. This deficiency is will be closed after FTA's review and acceptance of the information provided.

H. Quotas

Basic Requirements: (49 CFR Part 26.43) The recipient is not permitted to use quotas or set-aside contracts.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirement for quotas. No evidence of the use of quotas or set-aside contracts by CTA was found during the site visit.

9. Required Contract Provisions

A. Contract Assurance

Basic Requirements: (49 CFR Part 26.13) Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include a non-discrimination clause detailed by the regulations.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for Contract Assurances. The CTA DBE Program Plan does not reference the required contract assurance language of 26.13. The DBE Program Plan states that each contract CTA signs with a contractor and each subcontract the prime contractor signs with a subcontractor must include non-discrimination language.

The review team examined several contracts let by CTA over the past few years. Each of the prime contracts reviewed included DBE Special Conditions that contained the correct contract assurance language of 26.13. These included PB Americas for contract C09FT100835510, AGAE Contractors for contract BF09FR00817, and Cummins NPower for contract CO8FR100812738. However, there was no evidence that the nondiscrimination clause was passed on to all of the subcontractors. Only the subcontract with EJM Engineering contained the appropriate contract assurance clause.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for ensuring that the appropriate language of 26.13 has been included in the DBE Program Plan and that these assurances are included in all contracts, purchase orders, and subcontracts.

CTA Response: The draft DBE Program Plan has been updated to include contract assurance language per requirements of 49CFR - Part 26.13. The prime contractor, not CTA, is responsible for the language in the subcontract. Nevertheless, CTA will review all subcontracts to ensure that the appropriate language is included.

FTA Response: FTA acknowledges the inclusion of this information in the revised DBE Program Plan. By December 1, 2011, submit to FTA's Office of Civil Rights information detailing the implemented process and resources for verifying information in subcontracts in light of concerns presented earlier on resources. This deficiency will be closed after FTA's review and acceptance of this documentation.

B. Prompt Payment

Basic Requirements: (49 CFR Part 26.29) The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for Prompt Payment and Return of Retainage.

Prompt Payment

CTA's DBE Program Plan advises that the policies concerning prompt payment are applicable to all prime contractors entering into subcontractor agreements. According to the DBE Program Plan, each prime contractor agrees to pay all of its subcontractors, both DBE and non-DBE, no later than seven calendar days after receipt of each payment from CTA. The DBE Special Conditions attached to the prime contracts for PB Americas and AGAE Contractors and the purchase order for Cummins NPower state that subcontractors are to be paid within five days of the receipt of payment from CTA. Of the subcontracts reviewed, only the subcontract with EJM Engineering included prompt payment language.

Return of Retainage

According to 26.29, if an agency chooses to hold retainage from a prime contractor, they must have prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

CTA does not have a return of retainage clause in their DBE Program Plan. The DBE Special Conditions attached to the contracts for PB Americas and AGAE Contractors and the purchase order for Cummins NPower state that any retainage withheld should be returned to the subcontractor within fourteen days and that all subcontracts must state the fourteen-day term. However, no retainage was withheld for any prime or subcontract selected for review during the site visit.

CTA's DBE special conditions' prompt payment and return of retainage language also include penalties for non-compliance. It states, "If the contractor does not pay any subcontractor listed on pay request or return a subcontractor's retainage within the time limits required under the prompt payment provision set forth in Section VIII [sic] hereof, the contractor must pay the subcontractor an additional amount for interest at the lower of one percent (1%) per month or the highest lawful rate on the outstanding balance, for each month, prorated per diem for any partial month, that the contractor fails or refuses to pay the subcontractor. All agreements between the contractor and its subcontractors must provide for interest as set forth herein."

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for:

- inclusion of consistent language regarding prompt payment in the DBE Program Plan and all prime contracts,
- requiring that prompt payment language is included in subcontracts,
- selection and inclusion in the DBE Program Plan and in contract language of one of the options noted in 49 CFR Part 26.29 for prompt return of retainage, and
- an oversight mechanism for monitoring prompt payment and return of retainage

CTA Response: CTA considers this item closed. The draft DBE Program Plan has been updated to include language regarding Prompt Payment and Return of Retainage. CTA's prime contract language has been similarly updated. Moving forward, "B2GNOW" (Business to Government Now - Web Based Diversity Management Software) will aid in the management and monitoring of prompt payment.

FTA Response: FTA acknowledges CTA's efforts to address these deficiencies. By December 1, 2011, provide documentation demonstrating implementation of an oversight mechanism for monitoring prompt payment and return of retainage. Based on the language in the DBE Program Plan regarding retainage, it appears that CTA will not be withholding retainage on any of its contracts and that it has selected the option of not withholding retainage as an agency, allowing the prime contractor to withhold retainage from subcontractors, but requiring that they return retainage with 14 business days after the subcontractors' work is completed. By December 1, 2011, submit to FTA' Office of Civil Rights an acknowledgement of CTA's policy with regard to withholding and return of retainage. This deficiency will be closed upon FTA's review and acceptance of this information.

C. Legal Remedies

Basic Requirements: (49 CFR Part 26.37) Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state and local law.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirement for legal remedies. In its DBE Program Plan, the CTA DBELO has the discretion to recommend that the CTA Purchasing Agent impose suitable sanctions on the contractor if the contractor is found to be in non-compliance with the DBE requirements. Sanctions can include, but are not limited to, withholding payment, suspension and/or termination of the contract, debarring or suspending contractor from entering into future

contracts with CTA. Any contractor failing to pay or return retainage to a subcontractor within the time limits required by the prompt payment provisions must pay interest to the subcontractor.

Although the above sanctions were found in the DBE Special Conditions attached to each prime contract, CTA does not have any record of action taken for non-compliance with its DBE requirements. During the review, the team examined contract CO9FR100841885 involving the Kiewit-Reyes Joint Venture. Based on the involvement of the U.S. DOT Office of the Inspector General, CTA adjusted the participation levels of several DBEs working on the project including the Reyes Group. However, there was no evidence that CTA examined other projects involving these DBEs. The Reyes Group in particular has several active projects with CTA. These include CO3FR1661, B07FR03456, C05FR100275210 and C09FR100839433.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for evaluating other FTA funded contracts involving Kiewit-Reyes to determine whether sanctions should be implemented for non-compliance. Also, include a policy and procedure detailing how and when legal remedies will be used for issues of DBE noncompliance.

CTA Response: CTA requests that the reference to the involvement of the U.S. DOT Office of the Inspector General be removed from the discussion regarding this finding as it is not directly related to the stated deficiency. CTA is currently reviewing projects involving Kiewit-Reyes Joint Venture. CTA will complete this review by June 1, 2011. The draft DBE Program Plan has been updated to include appropriate remedial actions for non-compliance with DBE requirements.

In a letter dated August 1, 2011, CTA communicated that they had met the requirements for complying with the Legal Remedies corrective actions.

FTA Response: FTA acknowledges inclusion of remedy language in CTA's revised DBE Program Plan. By December 1, 2011, provide to FTA's Office of Civil Rights a report detailing the results of the analysis of CTA's FTA-funded projects involving Kiewit-Reyes Joint Venture. This deficiency will be closed upon FTA's review and acceptance of this information.

10. Certification Standards

Basic Requirements: (49 CFR Part 26.67) The recipient must have a certification process intact to determine if a potential DBE firm is legitimately socially and economically disadvantaged according to the regulations. The DBE applicant must submit the required application and a signed and notarized statement of personal net worth with appropriate supporting documentation.

Discussion: During this DBE Compliance Review, no deficiencies were found with the requirements for certification standards. However, an advisory comment was provided regarding categorizing types of work in the UCP directory. CTA and the Illinois UCP do

not categorize businesses according to the applicable North American Industrial Classification System (NAICS) in the internal or external database. The review team inquired about the certification status of Reyes Group due to size standards concerns. This DBE was certified by the Illinois DOT, so the CTA certifier reviewed the internal database for the type of work described in the narrative portion of the database. There were no NAICS codes listed to enable the CTA certifier to ascertain the applicable codes used by Illinois DOT for verification of compliance with size standards. The new Final Rule requires that, at a minimum, UCPs list each type of work for which a firm is eligible to be certified by using the most specific NAICS code(s) available to describe each type of work. UCPs may still use other descriptive systems already in place or which they choose to use in the future; however, every DBE certification must now include at least one specific, relevant NAICS code. Per the Final Rule, changes to the directory to meet this requirement must be completed by August 28, 2011.

CTA Response: In December 2010, CTA began utilizing B2GNOW// (Business to Government Now-web based diversity software). B2GNOW will maintain the proper NAICS coding for each DBE firm based on its DBE certified area of specialty (ies) and the proper NAICS code(s) will be included in CTA's internal and external (website) directories.

FTA Response: FTA acknowledges CTA's response to this advisory comment.

11. Certification Procedures

Basic Requirements: (49 CFR Part 26.83) The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

Discussion: During this DBE Compliance Review, deficiencies were found with the requirements for certification procedures.

The Illinois Unified Certification Program (IUCP) consists of five certifying members. These include Illinois DOT (IDOT), Metra, City of Chicago, Pace and CTA. The IUCP has been operational since September 2003. Applicants can apply to whichever agency they wish; however, applications can be transferred to another certifying member. The UCP directory is maintained by IDOT and is updated weekly by the IUCP certifiers.

CTA certification representatives told the review team that certification department personnel were reduced in 2010 from five to two individuals. The representatives also indicated that they are not able to comply with requirement to make certification determinations within 90 days of receiving all the information requested. CTA was advised to review the efficiency of the certification department and its ability to meet DBE certification requirements.

CTA's process consists of a five-year certification term, with a continued eligibility review at year five. A *Continued DBE Eligibility Affidavit* was provided to the review

team to detail the eligibility review process. CTA usually conducts on-site visits every five to six years. The on-site review process for new applicants consists of interviewing the principal officers of the firm and conducting a walk-through at the applicant’s office. The two certifiers indicated that they were not familiar with the requirement to conduct job site visits if feasible.

CTA certifiers indicated during the review that they collect personal financial statements for all minority and woman owners. The review team advised that the regulations require that only owners claiming disadvantaged need to submit a personal financial statement. CTA should also provide more analytical documentation regarding personal financial statements from individuals with net worths close to the threshold.

CTA certifiers described their removal process of sending a proposed removal of certification to the DBE with an opportunity for an informal hearing. A final removal letter subsequent to the hearing or timeframe of the proposal letter is sent to the DBE advising them that their firm’s certification has been removed. The files reviewed substantiated the process described by the CTA certifiers. For informal hearings, the hearing official was the CTA EEO Officer, Leonard Burton. However, the hearing officer is currently the DBELO who also signs the proposal and final removal letters. This process does not conform to the separation of function requirements regarding informal hearing for removal of DBE certification.

The review team requested the following four certification files to review for adherence to eight certification elements and CTA’s standards and procedures:

Name	Listed in Directory	Accurate NAICS	Onsite Visit	PNW	Tax Returns	Annual Affidavit	Size Standards	Removal Process
Alko Automotive	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Christy Webber	No (denial)	Yes	No	Yes	Yes	N/A	No (reason for denial)	N/A
Czechmate Lumber	No (removal)	Yes	Yes	Yes	Yes	Yes	No (reason for removal)	Yes
L&M Welding	No (removal)		Yes	Yes	Yes	Yes	Yes	Yes

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for ensuring that:

- adequate resources are devoted to the certification process so that the 90-day timeframe in the regulation for making determinations is met,
- the conduct of local area job-site visits is included in the procedures and conducted when applicable,
- PNW statements are only collected from individuals claiming disadvantage as a standard procedure,
- procedures are developed and implemented for analysis documentation of PNW calculations and exclusions, and

- the informal removal hearing process conforms to the separation of functions requirements.

CTA Response:

- Every attempt is made to meet the 90 day certification review requirement. Further, to the DBELO's knowledge, only two files have not complied with the 90 day certification period requirement.
- CTA requests reconsideration of job site visit finding. Necessary on-site reviews are conducted prior to certifying all DBE applicants. The DBELO will ensure that all DBE Department personnel are aware of all requirements for DBE certification.
- CTA requests reconsideration of personal net worth statement findings. CTA seeks personal financial statements from all who seek DBE certification, including firms that are woman and/or minority owned. The DBELO will ensure that all DBE Department personnel are aware of all requirements for DBE certification.
- CTA considers informal removal hearing finding closed. In November 2010, the DBELO identified a new DBE Hearing Official. The draft DBE Program Plan has been updated to reflect this change.

FTA Response: FTA acknowledges information provided on these certification deficiencies. Provide the following to FTA's Office of Civil Rights by December 1, 2011:

- Along with the staffing analysis corrective action from *Item # 3 DBE Liaison Officer* section of the report above, provide information demonstrating that the 90-day time frame for making certification decisions will be met, and that the additional time-sensitive requirements of the new Final Rule regarding certification (which include notifying applicants that their package is complete and timeframes for interstate certification) are achievable.
- Documentation demonstrating that CTA has implemented a process to ensure that job site visits occur.
- Documentation that personal net worth statements are only being collected from appropriate persons and to support determinations with analytical information.

These deficiencies will be closed upon FTA's review and acceptance of this information.

12. Record Keeping and Enforcements

Basic Requirement: (49 CFR Part 26.11, 26.55) The recipient must provide data about its DBE program to the FTA on a regular basis. This information must include monitoring of DBE participation on projects through payments made to DBE firms for work performed. The recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion: During this DBE Compliance Review, deficiencies were found with the FTA requirement for Record Keeping and Enforcements.

A. Bidders List

CTA does not maintain a bidders list. The Purchasing Department maintains a vendor registration system for firms interested in participating on their contracts. The review team examined the system and it included the firm's name, address, and other contact information. CTA staff indicated they will explore adding DBE status, age of firm and annual gross receipts fields to the system to comply with bidders list requirements.

B. Monitoring

CTA's monitoring and enforcement mechanisms include packages sent to primes regarding DBE, EEO, Affirmative Action, Davis Bacon, and Prompt Payment requirements. The bidder is required to execute written subcontracts or purchase orders with the DBE subcontractors included in the bid within seven days of contract award. The prime uploads the DBE subcontracts and purchase/material orders to the ProjectNet system in a private correspondence folder.

The prime is also required to provide a Prompt Payment Affidavit with all official payment requests submitted to CTA's Purchasing/Warehousing Quality Assurance group. The prime must also mail a copy of the signed Prompt Payment Affidavit along with proof of payment documentation, along with a summary report to the General Manager, Diversity & Small Business Compliance Program Department.

CTA's DBE/EEO Programs/Contract Compliance Department provided forms titled Job Site Monitoring Subcontractor Questionnaire and a Job Site Monitoring Employee Questionnaire. The forms detail the subcontractor's and employee's duties on the project and require the signature of the questionnaire participant. CTA did not provide any completed Questionnaire forms for any current projects. Ms. Christine Murphy is the Coordinator for DBE compliance and is responsible for the DBE monitoring on CTA projects. The review team questioned if one compliance individual for the amount of FTA-funded contracting CTA performs is adequate to meet the monitoring requirements of the DBE regulations. (See also discussion of resources in Section 3, DBE Liaison Officer).

The DBE regulations in 26.37 (c) requires a mechanism to 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 reports of DBE participation to the Department (FTA), both commitments and attainments must be displayed. CTA collects payment audit forms from the primes when requested. The frequency of collection of the audit forms are not at a specified time frame, which does not allow for maintaining a running tally of actual DBE attainments. Payments on the audit forms to the DBEs are then transferred to a spreadsheet indicating actual payments made to DBE firms. Commitments are tracked in a separate spreadsheet at the beginning of the project and when change orders occur. Because these two spreadsheets are not synchronized, commitments to DBEs (taking into consideration counting rules) do not reflect on attainment reports. Therefore, attainment reports to the FTA do not appear to be accurate. (See section 8G, Counting DBE Participation).

C. Reporting

The review team examined CTA's semi-annual reports for FY 2007, FY 2008, FY 2009, and first half of 2010. Mr. Enrique Orozco, Acting General Manager and CTA's current DBELO has completed the semi-annual report forms for the past few years. Prior to the review, CTA provided signed copies of one report for each fiscal year. During the review, Mr. Orozco indicated that cumulative reports were submitted to the FTA rather than two reports per fiscal year. He did provide the review team unsigned reports for each half of the fiscal years reviewed. Mr. Orozco stated he correctly sent the first semi-annual FY 2010 report to FTA.

The following areas were identified with CTA as areas that need to be correctly reported on their semi-annual reports:

- **Federal share** for all dollars reported. Mr. Orozco indicated that he reports 100% of contract and payment dollars on the semi-annual reports rather than only the federal share.
- **Row 7, Annual DBE Goal.** On all the semi-annual reports, the overall goal was identified as 30% with a 20% race conscious (RC) and 10% race neutral (RN) projection. The goal methodologies during these periods indicated a 28% RC and a 2% RN projection.
- **Row 7.5 on CTA's form** does not exist on the USDOT form. CTA created this line to show percentage of total dollars committed/awarded. This percentage number should be in the Total cell for column I, which is identified as row 9.5 on CTA reports.
- **Row 8, Prime contracts awarded this period.** Cells 8E and 8F were blacked out on the semi-annual reports. This was corrected in the FY 2010 first report.
- **Row 9, Subcontracts committed/awarded this period.** Cells 9A and 9C; 9B and 9D both have the same numbers in the semi-annual reports. This was because CTA was not including non-DBE subcontractors also in cells 9A and 9B in reports. Additionally, cell 9F + 9H should equal 9D. The same is true for Line 8 and the Total line below Line 9.

Corrective Action and Schedule: Within 30 days of receipt of the draft report, submit to the Region V Civil Rights Officer a plan and schedule for ensuring that:

- a bidders list meeting the requirements of 26.11 is collected and utilized in goal setting,
- running tallies of attainments and commitments are accurately tracked,
- effective monitoring mechanisms and resources are in place to monitor work performed on FTA funded CTA contracts,
- procedures are implemented for accurate and complete collection and reporting of data for semi-annual reports to FTA, and
- sufficient resources are in place to properly execute oversight and monitoring functions.

CTA Response:

- By no later than June 1, 2011, the DBELO will ensure that a bidders list is created to include DBE status, age of firm, and annual gross receipts in compliance with 49CFR- Part 26.11.

- CTA is currently benchmarking its staffing levels for the DBE department against other large transit agencies in order to better determine appropriate staffing levels. This process will be completed by May 1, 2011. CTA also began making efforts to resolve the staffing issue by coordinating a meeting with both the Human Resources and Budget Departments on April 7, 2011 to discuss this matter.
- CTA considers this item closed. In December 2010, CTA began utilizing "B2GNOW" (Business to Government Now - web based diversity software). B2GNOW creates reports which keep a running tally of actual DBE attainments.
- CTA considers this item closed. In December 2010, CTA began utilizing "B2GNOW" (Business to Government Now - web based diversity software). B2GNOW has produced an accurate report of the Semi-Annual Report of Commitments and Awards. That report for Federal Fiscal Year 2010 was submitted to the Federal Transit Administration on December 1, 2010.

In a subsequent letter dated August 1, 2011, CTA communicated that the bidders list corrective action has been addressed.

FTA Response: FTA acknowledges the information provided by CTA regarding these deficiencies. By December 1, 2011, submit the following to FTA's Office of Civil Rights:

- A copy of the bidders list, along with information of how it is being created, maintained and utilized in overall agency goal-setting
- Information on resources (in addition to B2GNOW software) being utilized for monitoring projects.
- All outstanding semi-annual and ARRA quarterly DBE reports. Please also note all future report submissions are to be via FTA's TEAM DBE reporting system.
- Sample report and instructions from B2GNOW demonstrating how the running tally is being kept for a sample project.

These deficiencies will be closed after FTA's review and acceptance of this information.

13. January 2011 DBE Program Rulemaking

On January 28, 2011, USDOT issued a new "Final Rule" for its DBE program. Subject areas affected by the new provisions include, but are not limited to: DBE terminations; Personal Net Worth; interstate certification and other certification issues; accountability and DBE goal submission; DBE program oversight; and small business provisions. For the convenience of CTA staff, a copy of the Federal Register notice has been included with this report.

With the notable exception of some of the certification-related provisions, the new rules became effective on February 28, 2011. That being the case, certain areas identified in this report will be affected by the changes. While none of the rule changes will result in a finding for the purposes of this review, FTA does hope to use the opportunity presented by the timing of the new rule to provide technical assistance and guidance as CTA develops and implements any new policies and procedures required to ensure full compliance with the new provisions. Ultimately, FTA expects that any new or amended

requirement will be incorporated into CTA's DBE program plan by the time the compliance review process is complete.

Section 7 – Summary of Findings

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action:	Response Date
1. Program Plan	26.21	D	Plan not reflective of actual process No date on plan	Submit revised approved DBE program plan that include items addressed in other areas of this report.	December 1, 2011
2. Policy Statement	26.23	D	Latest policy statement from 2006 signed by former chairman No record of internal/external circulation Not signed by president	Submit evidence that the policy statement has been distributed internally and to Technical Assistance Agencies, as well as the website location of the new policy statement.	December 1, 2011
3. DBE Liaison Officer	26.25	D	Need to specify a point of contact for DBELO, only names the position Lack of adequate staff in certification and compliance monitoring No documentation of direct/independent access to President	Submit clarification to DBE program plan. Provide results of staffing analysis, along with any revisions to the DBE Program Plan that any staff changes or augmentation will necessitate, clarification of Purchasing Department's role in good faith efforts, procedures to mitigate conflicts between DBELO and Purchasing.	December 1, 2011
4. Financial Institutions	26.27	ND			
5. DBE Directory	26.31	ND			
6. Overconcentration	26.33	D	No record of over concentration review	Submit a revision to the DBE Program Plan that includes the overconcentration analysis information detailing when and how this activity will be performed.	December 1, 2011
7. Business Development Programs	26.35	ND			
8. Determining / Meeting Goals					
A. Calculation	26.45	D	No FY2010 goal submission; same goal for the four fiscal years reviewed; unsupported	Submit a schedule that outlines the milestone events in the overall goal. Submit three year goal.	November 15, 2011 December

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action:	Response Date
			methodology		15, 2011
B. Public Participation	26.45 g (1)	D	No record of consultative process for FY2009 submission	Submit detailed information to FTA's Office of Civil Rights describing how and when the consultative process will be achieved.	November 15, 2011
C. TVM	26.49	D	Incorrect reference to 49 CFR Part 23 in TVM certification	Submit documentation to FTA's Office of Civil Rights documenting that Purchasing Department's TVM directive has been issued.	December 1, 2011
D. Race Neutral	26.51	D	Not using maximum feasible portion of overall goal through race neutral means Over 90% of overall goal is through race conscious measures for past four year fiscal years	This deficiency will be closed in conjunction with the closure of the goal-setting deficiencies	December 15, 2011
E. Race Conscious	26.51	D	No explanation of race-conscious projection for overall goal. No rationale to explain how contract specific goals are determined	Demonstrate use of mathematical analysis for RC projection in overall goal submissions. This deficiency will be closed in conjunction with the closure of the goal-setting deficiencies Submit evidence of the process used to set contract-specific goals and supporting documentation that the process is implemented	December 15, 2011 December 1, 2011
F. Good Faith Efforts	26.53	AC	AC-Need to designate a GFE reconsideration person and put safeguards in place to address any conflicts of interests AC-Review 20 day prior to bid due date requirement for prime to solicit DBEs. The contracts reviewed had approx 20+ bid open time period		

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action:	Response Date
G. Counting DBE Participation	26.55	D	Commitment and attainment information is not integrated, resulting in incorrect DBE credit given in attainment reports	Provide FTA's Office of Civil Rights with documentation (such as reports, implemented procedures) demonstrating how new software is being utilized to document accurate counting and monitoring.	December 1, 2011
H. Quotas	26.43	ND			
9. Required Contract Provisions					
A. Contract Assurance	26.13	D	Incorrect nondiscrimination clause in Program Plan Nondiscrimination clauses not included in subcontract agreements	Submit information detailing the implemented process and resources for verifying information in subcontracts in light of concerns presented earlier on resources.	December 1, 2011
B. Prompt Payment	26.29	D	Program plan and DBE special conditions have different prompt payment terms No reference to number of days for return of retention in Program Plan	Submit documentation of implementation of an oversight mechanism for monitoring prompt payment and return of retainage. Submit an acknowledgement of CTA's policy with regard to withholding and return of retainage.	December 1, 2011 December 1, 2011
C. Legal Remedies	26.37	D	No record of action taken for non compliance in DBE program Re-evaluate Kiewit-Reyes previous contracts for noncompliance	Provide to FTA' Office of Civil Rights a report detailing the results of the analysis of CTA's FTA-funded projects involving Kiewit-Reyes Joint Venture.	December 1, 2011
10. Certification Standards	26.67	AC	AC-Need to include NAICS codes for firms in IL UCP internal/external directory		
11. Certification Procedures	26.83	D	No separation of functions for removals	Provide: information demonstrating that time-	December 1, 2011

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action:	Response Date
			<p>No jobsite visits</p> <p>Better documentation on PNW determination when applicant extremely close to threshold</p> <p>Need to collect PNW only from owners claiming disadvantage</p>	<p>sensitive milestones for certification decisions will be met, documentation demonstrating an implemented process to ensure that job site visits occur, and documentation that personal net worth statements are only being collected from appropriate persons and to support determinations with analytical information.</p>	
12. Record Keeping and Enforcements A. Bidders List	26.11	D	No bidders list collected	Submit a copy of the bidders list, along with information of how it is being created, maintained and utilized in overall agency goal-setting.	December 1, 2011
B. Monitoring	26.37, 26.55	D	<p>Not keeping running tally of attainments and commitments</p> <p>Improvement needed on frequency of monitoring mechanisms</p>	<p>Submit sample report and instructions from B2GNOW demonstrating how the running tally is being kept for a sample project</p> <p>Submit information on resources (in addition to B2GNOW software) being utilized for monitoring projects.</p>	<p>December 1, 2011</p> <p>December 1, 2011</p>
C. Reporting	26.11	D	<p>Not reporting only federal share</p> <p>Inaccurate calculations on reporting form</p>	Submit all outstanding semi-annual and ARRA quarterly DBE reports. All future report submissions are to be via FTA's TEAM DBE reporting system.	December 1, 2011

Findings at the time of the site visit: ND = No deficiencies found; D = Deficiency; NA = Not Applicable; AC = Advisory
Comment

SECTION 8 - LIST OF ATTENDEES

Name	Organization	Title	Phone	Email
CTA:				
Dennis Mondero	CTA	Senior Vice President, Chief Administrative Officer	312-681-2800	dmondero@transitchicago.com
Peter Ousley	CTA	Chief of Staff	312-681-5010	pousley@transitchicago.com
Amy S. Kovalan	CTA - Safety, Security and Risk Compliance	Chief Safety and Security Officer, Senior Vice President	312-681-2830	akovalan@transitchicago.com
Paul A. Volpe	CTA - Budget & Capital Finance	Vice President, Budget & Capital Finance	312-681-7568	pvolpe@transitchicago.com
Michael Connelly	CTA - Budget and Capital Finance	General Manager, Capital Grants (Acting Vice President, Planning)	312-681-3452	mconnelly@transitchicago.com
Ernest Payne	CTA - Budget & Capital Finance	Manager, Program Funding	312-681-3454	epayne@transitchicago.com
Donald Gismondi	CTA – Budget & Capital Finance	General Manager	312-681-3452	dgismondi@transitchicago.com
Marina Popovic	CTA - Purchasing	Vice President	312-681-2400	mpopovic@transitchicago.com
Robert Conlin	CTA - Purchasing	General Manager	312-681-2420	rconlin@transitchicago.com
Enrique Orozco	CTA - Diversity and Small Business Compliance	Acting General Manager	312-681-2620	eorozco@transitchicago.com
Deanna Zalas	CTA	Senior Compliance Officer	312-681-3520	dzalas@transitchicago.com
Brad Jansen	CTA - Law		312-681-2950	bjansen@transitchicago.com
Kevin Loughlin	CTA - Law	Acting Deputy General Counsel	312-681-2939	kloughlin@transitchicago.com
Derrick G. Robinson	CTA - Diversity & Small Business Compliance Programs	Senior Small Business Development Officer	312-681-2630	drobinson@transitchicago.com
Shavon Moore	CTA - Diversity & Small Business Compliance Programs	Small Business Development Officer	312-681-2616	smmoore@transitchicago.com
FTA:				
Ryan Inman	FTA - Office of Civil Rights	EEO Specialist, DBE Technical Lead	202-366-5017	ryan.inman@dot.gov
FTA				

(via conference call):				
Dwight Sinks	FTA - Region V	Regional Civil Rights Officer	312- 353-3770	dwight.sinks@dot.gov
Cecelia Comito	FTA – Region V	Regional Counsel	312- 353-4118	cecelia.comito@dor.gov
Duana Love, P.E.	FTA – Region V	Engineer, Office of Program Management & Oversight	312- 353-3882	duana.love@dot.gov
Prime Contractor Representatives:				
Karen Y. Hall	PB Americas, Inc.	Certified Senior Project Manager	312-803-6483	hallka@pbworld.com
Kenneth J. Davis, P.E.	PB Americas, Inc.	Senior Supervising Construction Manager, Project Manager	312-315-3558	davidsonk@pbworld.com
Robert C. Miezio	AGAE Contractors, Inc.	Vice President	773-777-2240	rmiezio@agacontracting.com
Pam Vermilye	Cummins NPower	Manager, Municipal Properties	708-482-2876	pam.vermilye@cummins.com
Betty Flynn	Cummins NPower	Office Manager	708-482-2893	Bettyann.h.flynn@cummins.com
DBE Subcontractor Representatives:				
Luis Salas	L & M Welding	President	773-237-8500	lsalas.l-m_welding@sbcglobal.net
Joan Berry (by phone)	EJM Engineering Inc.		773-547-1177	
Interested Parties:				
Beth Doria	Federation of Women Contractors	Executive Director	312-360-1122	fwcchicago@aol.com
Florence B. Cox	Black Contractors United	Executive Director	773-483-4000	flocox_bcu.yahoo.com
Milligan & Co., LLC:				
Benjamin Sumpter	Milligan & Co., LLC	Lead Reviewer	215-496-9100	bsumpter@milligancpa.com
Habibatu Atta	Milligan & Co., LLC	Reviewer	215-496-9100	hatta@milligancpa.com
Sandra Swiacki	Milligan & Co., LLC	Reviewer	215-496-9100	sswiacki@milligancpa.com
Kristin Sz wajkowski	Milligan & Co., LLC	Reviewer	215-496-9100	kszwajkowski@comcast.net