

COMPLIANCE REVIEW REPORT
OF THE
MIAMI DADE TRANSIT
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

April 2010

Prepared for the
Federal Transit Administration
Office of Civil Rights

by

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SECTION 1 - GENERAL INFORMATION

Grant Recipient: Miami Dade Transit (MDT)
701 NW 1 Court Suite 1700
Miami, FL 33136

City/State: Miami, FL

Grantee Number: 1089

Executive Official: Harpal Kapoor
MDT Director

On Site Liaison: Erigene Belony
Manager, Office of Civil Rights
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Site visit Dates: February 10–12, 2009

Compliance Review Team
Members: Sandra Swiacki, Lead Reviewer
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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., (15), October 1, 2008 and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.”

Miami Dade Transit (MDT) 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 MDT'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 Miami Dade Transit's (MDT) "Disadvantaged Business Program Plan" is necessary.

The primary purpose of the compliance review is to determine the extent to which Miami Dade Transit (MDT) has met its DBE program goals and objectives, as represented to FTA in its Disadvantaged Business Enterprise Program Plan. This compliance review is intended to be a fact-finding process to: (1) examine MDT'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 on 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 MDT 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 MDT’s Disadvantaged Business Enterprise 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 MDT’s Disadvantaged Business Enterprise Program Plan from a variety of sources – DBE program managers, other MDT management personnel, DBEs, and prime contractors.

SECTION 4 – BACKGROUND INFORMATION

Transit service in Miami-Dade is provided by the County. Within the county, Miami Dade Transit (MDT) is responsible for providing transit, with the Miami-Dade County Commission being the policy board for the operation. The MDT Director has been delegated the responsibility of managing the department, with the County Manager responsible for overall management of the County.

In November 2002, County residents approved the People's Transportation Plan (PTP) which included a half-cent sales surtax for transportation. The funds provided by this tax allowed MDT to substantially expand its services during the past six years. This expansion has included the addition of more than 10 bus routes and increased frequencies on a number of routes. Metrobus now provides over 32 million annual revenue miles with a fleet of almost 1,000 buses. Between FY 2002 and 2008, bus ridership increased 35%, Metrorail ridership increased 34% and Metromover ridership went up 83%. In addition, a new Metrorail station, the Palmetto Station, opened in 2003.

MDT operates 95 bus routes, a 22-mile heavy rail system (Metrorail) with 22 stations, and a 4.4-mile people mover system (Metromover), a double loop system in downtown Miami with 21 stations. In addition, MDT contracts for the provision of ADA-compliant paratransit services, which is known locally as Special Transportation Service (STS).

MDT has four bus maintenance facilities: Northeast, Central, Coral Way and Northwest. Metrorail has two facilities, with the main one on NW 72" Avenue and a second one on Dadeland Boulevard. The Metromover maintenance facility is in downtown Miami. In addition to these bus and rail facilities, MDT has seven Metrorail garages, 12 Metrorail surface parking lots and 11 other Park & Ride facilities throughout the transit system, as well as a number of joint development projects at Metrorail stations.

Through 2008, MDT has increased service, opened the Palmetto Metrorail station, implemented a comprehensive paratransit software program, installed hundreds of bus shelters and thousands of new bus stop signs and deployed new IT services to enhance customer convenience. In December 2007, MDT opened the final 6.5-mile segment of the South Miami-Dade Busway, which connects south Miami-Dade County to the Metrorail system. At 20 miles, it is now the longest Bus Rapid Transit corridor in the United States, stretching from Dadeland to Florida City.

In 2008, MDT replaced its original 12 Metromover cars with new state-of-the art vehicles featuring a sturdier design to withstand Miami's subtropical environment, a modern sloped front-end design, improved air conditioning system and a self-diagnostic system to detect mechanical issues before they lead to failures.

MDT is in the process of implementing a new Automated Fare Collection System which will improve passenger convenience, reduce fare evasion and provide for better ridership tracking

through the use of a reloadable EASY Card for fare payment on the Metrobus and Metrorail systems. The system will be fully implemented by summer 2009.

MDT has completed the final design of the MIC-Earlington Heights Connector, a 2.4-mile Metrorail extension from the Earlington Heights Metrorail station to the Miami Intermodal Center at Miami International Airport. This \$360.4 million rail extension will provide an essential rapid transit link for the millions of visitors, residents and employees who travel to and from the airport every year. This extension is expected to open for revenue service in 2012.

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. A signed policy statement expressing a commitment to use DBEs in all aspects of contracting to the maximum extent feasible must be signed, dated and distributed [49 CFR 26.23].
2. 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].
3. Efforts made to use DBE financial institutions, by the recipient as well as prime contractors, if such institutions exist [49 CFR 26.27].
4. 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].
5. The recipient must determine if overconcentration exists and address this problem if necessary [49 CFR 26.33].
6. Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35].
7. 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].
8. 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].
9. 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].
10. 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].
11. 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].

12. In establishing an overall goal, the recipient must provide for public participation and then provide information on this goal to the public through published notices [49 CFR 26.45].

Methodology

The initial step in the scope of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a desk 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 MDT by FTA's Office of Civil Rights. The agenda letter notified MDT of the planned site visit, requested preliminary documents, and informed MDT of additional documents needed and areas that would be covered during the on-site portion of the review. It also informed MDT 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 MDT staff and the review team.

Subsequent to the entrance conference, a review was conducted of MDT's DBE plan and other documents submitted to the review team by the DBE Liaison Officer. Interviews were then conducted with MDT regarding DBE program administration, record keeping and monitoring. These interviews included staff from procurement, engineering, finance and project management. A sample of contracts were 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 MDT 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 MDT.

Following the site visit, a draft report was compiled. MDT provided responses to the draft report on July 10, 2009. Those responses and analysis of how they address deficiencies is included in this report.

SECTION 6 – ISSUES AND RECOMMENDATIONS

1. 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 recipient's organization and to the DBE and non-DBE business communities.

Discussion: During this DBE Compliance Review, deficiencies were found with requirements for a policy statement. MDT included a policy statement in their 1999 DBE Program Plan. The policy statement incorporates the objectives of 49 CFR Part 26 and assigns responsibility for the program to the Director of MDT and the DBE Liaison Officer. The DBE policy is also posted on MDT's website. However, neither policy is signed or dated. The only policy that appears to be signed and dated is the assurance of non-discrimination signed by Danny Alvarez, a prior MDT Director, on August 6, 1999. Furthermore, there was no evidence provided to the review team that the policy has been circulated throughout the organization and to DBE and non-DBE business communities.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must submit to the Region IV Civil Rights Officer evidence of a signed and dated policy statement that expresses MDT's commitment to the DBE program, states its objectives and outlines its responsibilities for implementation. Additionally, MDT is to provide evidence that the most recent statement was distributed throughout the organization and to the DBE and non-DBE business communities.

Grantee Response:

Policy Statement and Assurance of non-discrimination was drafted and executed by the Transit Director on March 4, 2009. On March 13, 2009, the document was executed by the County Manager. On May 18, 2009, the document was disseminated to the DBE and Non-DBE business Community. On July 2, 2009, MDT published the policy throughout Transit. MDT published the policy via email to all MDT employees with an email address, and for employees without emails through the Mandatory Training Classes and Tool Box Safety Meetings. Additionally, a distribution was made to the Unions, and a copy of the policy shall be made part of the curriculum for all operators, maintenance staff and instructors. See Attachment #1.

FTA Response:

FTA concurs with MDT's response. This deficiency is now closed.

2. 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 requirement for the DBE Liaison Officer. In MDT's 1999 DBE Program Plan, the DBE and Contract Compliance Supervisor was noted as the DBE Liaison Officer with responsibility for implementing all aspects of MDT's DBE Program. An organizational chart in the DBE Program Plan indicates that the Supervisor reports directly to the Chief, Office of Fair Employment and Labor Practices, with a dotted-line reporting to the Chief Executive Officer.

During the compliance review, Cathy Lewis, was identified as MDT's DBE Liaison Officer. Ms. Lewis holds the position of Chief, Office of Civil Rights, an executive level position reporting directly to the Chief Executive Officer. The position provides strategic management and departmental oversight regarding the critical attainment of MDT's organizational goals and objectives relative to Labor Relations; Discipline; Fair Employment Practices; Disadvantaged Business Enterprises; and Americans with Disabilities Act. However, the role of the DBE Liaison Officer and the allocation of resources for program implementation could not be fully determined during the compliance review, as the incumbent of the position was not a participant in interviews conducted with review staff. The responsibility for providing information about the program during the compliance review, as well as its daily operations, appears delegated to Erigene Belony, Manager, Office of Civil Rights who reports to Cathy Lewis, Chief of the Civil Rights Office.

According to a position questionnaire provided at the site visit, Mr. Belony is responsible for coordinating the administrative functions associated with MDT's DBE Program. This includes developing annual goals for approval, managing the design and implementation of programs to monitor progress of compliance activities, and developing reports. In addition to his duties related to the DBE Program, Mr. Belony is also responsible for ensuring MDT's compliance with the County's Responsible Wage Ordinance and the Davis Bacon Act. Additionally, 45% of his time is allocated to compliance activities related to the Americans with Disabilities Act. This includes ensuring accessibility to MDT's facilities, vehicles, services, programs, and employment opportunities. Mr. Belony currently has two positions reporting to him to assist in the administration of these programs – an ADA Administrator and a Transit Compliance Officer. Based on the broad scope of duties and responsibilities for both the Chief and Manager within the Office of Civil Rights, it is not evident that MDT has sufficient resources in place to properly administer an effective DBE Program.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must submit to the Region IV Civil Rights Officer evidence that it has designated a DBE Liaison Officer who has full responsibility for program implementation, direct and independent access to the Chief Executive Officer concerning DBE program matters, and adequate resources to implement the DBE Program.

Grantee Response:

The Chief of the Office of Civil Rights and Labor Relations is MDT's designated DBE Liaison Officer. This position is a direct report to the MDT Director. The DBE Transit Administrative Policy and Procedures (TAPP) have been revised to reaffirm the Chief's full authority and responsibilities relative to the DBE Program Plan.

Additionally, MDT is negotiating the final terms and conditions of a Memorandum of Understanding (MOU) with the County's Department of Small Business Development designed to augment MDT's existing staff and resources to advance the DBE Program goals and objectives. The proposed MOU and organizational chart are attached. See Attachment #2.

FTA Response: FTA does not consider this deficiency to be closed. While the Transit Administrative Policy and Procedures (TAPP) was recently revised to indicate that the Chief, Office of Civil Rights and Labor Relations has oversight and implementation responsibilities for the DBE Program, it does not appear that the roles and responsibilities specified in the TAPP are fully inclusive and consistent with those outlined in the Memorandum of Understanding (MOU). MDT should provide the final and signed MOU with the County's Department of Small Business Development and operational procedures which facilitate the implementation of the MOU referenced in the agreement to the Region IV Civil Rights Officer for review and approval.

3. 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 for financial institutions. MDT identified three minority financial institutions in Miami Dade County – the Continental National Bank of Miami, the Interamerican Bank and One United Bank. MDT is currently utilizing One United Bank for financial services. One United Bank is an internet bank, headquartered in Massachusetts with offices in California and Florida.

4. 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. MDT currently utilizes Florida's Unified Certification Program (UCP) as its DBE directory. The directory, maintained by the Florida Department of Transportation, is located at <https://www.dot.state.fl.us/equalopportunity/>. A link to this directory is also included on MDT's website. The review team viewed the web-based directory during the site visit.

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. It was additionally noted that the directory includes firms that are certified as Small, Minority and Woman Business Enterprises. However, there is a field that clearly indicates whether each firm has the federal DBE certification required for FTA-funded projects. The DBE Directory is also made available by contacting the Miami Dade's Department of Business Development. It was stated that Florida Department of Transportation's procedures are to update the electronic version of the directory with any additions, deletions or other changes on a 24 hour basis.

5. 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. According to MDT's 1999 DBE Program Plan, MDT will review its DBE contractors and subcontractors periodically to determine whether DBE firms are overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work. However, there was no evidence that any review has been conducted examining overconcentration in the program.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must provide to the Region IV Civil Rights Officer evidence that an overconcentration analysis has been conducted and if appropriate, recommend actions to address issues of overconcentration as stated in their Program Plan.

Grantee's Response:

MDT elected to conduct an internal availability study with emphasis on weighted estimates of four-digit Standard Industry Classification Codes (SIC) or six-digit North American Industry Classification System (NAICS) code availability for specialty trades. The objective is to determine whether or not DBE utilization exceeds availability; if overconcentration exists, then MDT will undertake a corrective action plan. MDT recognizes the importance of ensuring that DBE participation expands across varied industries, as opposed to overconcentration in just a few. If DBE participation is significantly higher than estimated availability in specific categories, and significantly lower in others, MDT will encourage primes to obtain more DBE participation in the underutilized areas and reduce emphasis on participation in overconcentrated areas.

To initiate the requisite corrective actions, MDT will immediately schedule a single-scope audit through MDT's Quality Assurance (QA) unit to begin the study. Q/A will also develop a means by which MDT will maintain the information current, once the study is completed.

MDT will submit a more detailed plan including the results of the study on or before August 19, 2009. Further, MDT requests that it be permitted to report on this item as part of a voluntary compliance (VC) plan.

FTA's Response:

FTA concurs with the MDT's response. MDT should forward the detailed plan and results of the study to the FTA Region IV Office by August 19, 2009.

6. 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). Miami Dade Transit does not currently have a formal Business Development Program in place. However, MDT participates in a number of outreach programs to provide information to various organizations regarding contracting opportunities and how to do business with MDT.

MDT also developed a formal Mentor Protégé Program. The immediate objectives of the program are to provide DBE firms with assistance that will increase their ability to compete in transit related developments and construction projects and to increase the capacity and number of DBE firms in non-traditional transit construction areas. The program provides assistance in business planning, financial counseling, record keeping, bonding, equipment utilization and capital formation. The program was submitted to the FTA for approval and is pending implementation.

7. 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, a deficiency was found with the requirements for calculation of goal. The review team examined the FY 2009 goal submission provided by MDT.

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. MDT used a weighting method by groups of NAICS codes to determine the relative availability of DBEs, giving more weight to those fields in which the greatest amount of money is to be expended. MDT reviewed their past contracting activity and determined that the majority of their contractors were drawn from Miami-Dade County. MDT divided the total number of DBE firms in the respective NAICS codes in the DBE Directory that are deemed ready, willing, and able, by the total number of firms in Miami-Dade County that provides services under the same NAICS, as published by the Census Bureau's County Business Pattern (CBP) Database. For the FY 2009 goal, this assessment yielded a Step One DBE availability of 15%.

Step 2: Adjusting the Base Figure

The regulation indicates that once the Step One figure is calculated, all of the evidence available in your jurisdiction must be examined to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal. MDT elected to adjust their Step One base figure based on past participation of DBEs on their DOT-assisted contracts for Fiscal Years 2002 through 2007. These figures included 14%, 18%, 22%, 23%, 28%, and 35%. To arrive at the median participation, MDT excluded the outliers, averaged the two middle numbers, and divided their sum to arrive at 23%. Adding the median participation of 23% to the current Step One base figure of 15% divided by two resulted in the overall goal of 19%.

MDT's 1999 DBE Program Plan indicates that it will include with its overall goal submission a description of the methodology used to establish the goal, including the base figure and the evidence with which it was calculated, and the adjustments, if any, MDT made to the base figure and the evidence relied on for the adjustments. During the compliance review, the team requested but was not provided the details to support and verify the FY 2009 goal methodology submitted to the FTA and described above. At a minimum, this includes the specific scopes of work, NAICS codes, weights, and dollar values of contracts to be expended on federally funded contracts in the upcoming year.

Corrective Action and Schedule: By August 1, 2009, MDT must submit its DBE goal methodology for FY 2010 including detailed information with which it was calculated to the Region IV Civil Rights Officer.

Grantee's Response:

Pursuant to 49 CFR Part 26, MDT used the base goal from another DOT recipient within the same normal market area (BCT). The race neutral participation was adjusted based on past performances. All data used in connection with the goal setting methodology will be submitted to FTA on or before August 1, 2009, as required. The goal was published and will be adjusted based on input, counsel and comment from the community.

FTA's Response: FTA concurs with MDT's response. This deficiency will be closed pending review of the FY2010 DBE goal methodology and supporting documentation that was submitted to the Region IV Civil Rights Officer on August 1, 2009.

B) 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, no deficiencies were found with the requirement for transit vehicle manufacturer. The review team examined the documentation for the purchase of small transit buses in December of 2005. MDT provided a signed copy of the TVM certification from Optima Bus Corporation for this procurement. The certification appropriately cited 49 CFR Part 26.49. It was also noted that MDT secured a copy of Optima's annual goal submission to the FTA for the file.

C) 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, no deficiencies were found with the requirements for race neutral participation. MDT reported that it strives to meet the maximum feasible portion of their goal by using race neutral means. In their DBE Program and goal methodology, MDT details the methods they would use to achieve this. This includes providing technical assistance to DBEs for capital and bonding, encouraging prime contractors to disseminate subcontract information in geographical areas that have been neglected, structuring solicitations to facilitate participation of DBEs, and inclusion of DBEs on mailing lists for bidders. Additionally, MDT is involved in various events during the year to promote networking and highlight contracting opportunities. For FY 2009, MDT's race neutral participation based on their past race neutral performance was projected at 2%.

D) 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, no deficiencies were found with the requirements for race conscious participation. MDT's procedures for setting DBE goals on its federally funded projects are described in the DBE Program Plan. Pending solicitations are reviewed by the Manager of Civil Rights to determine the elements of work and the estimated cost associated with the project. The availability of DBEs to perform that work is also determined by reviewing their DBE Directory. The recommended contract goal is then forwarded to Harpal Kapoor, MDT's Director, for approval and inclusion in the bid documents. During the site visit, the process for establishing contracts goals was confirmed for the Construction of the SW 344th Street Park and Ride Facility by the review team.

E) 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. The procedures for awarding contracts with contract-specific goals were noted in MDT's 1999 DBE Program Plan and solicitation documents. The procedures note that the bidder, as part of its proposal, must include an executed Certificate of Assurance that the DBE goal established for the project will be met. As a condition of responsiveness, proposers also need to include a letter of certification for each proposed DBE firm showing that the firm possesses a current valid DBE certification, a Schedule for DBE Participation specifying the price to be paid to each

DBE contractor, a completed and signed Letter of Intent, a DBE Contractor Identification Statement and completed Bidders List Form. The procedures also require that a bidder must meet the goal or demonstrate good faith efforts to meet the goal in order to be awarded a contract.

During the compliance review, the review team requested evidence of their adherence to the above procedures. MDT provided the team with documentation for the Office of Capital Improvement (OCI) Project No. EO7-MDT-02, Orange Line Phase I, Miami Intermodal Center/Earlington Heights Connector. There was a 20% DBE participation goal established for the project. Four bidders responded to the solicitation. One of the firms, [REDACTED], was rejected by MDT's Office of Civil Rights for failing to provide their executed Certificate of Assurance at the time of their bid.

F) 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 1999 DBE Program Plan references the regulations for counting DBE participation on contracts. The review team examined several contracts to see evidence of MDT's collection of data for counting DBE participation. However, the team could not verify the method MDT uses for determining appropriate credit for DBE participation.

Contract TA00-BWX, Final Design of the Busway Extension to Florida City

The DBE goal established for this project was 20%. [REDACTED], the prime contractor, provided their Schedule for Participation (*Revised 9-10-99*) identifying [REDACTED], a DBE to participate on the contract. According to the schedule, [REDACTED] was to provide surveying services at the agreed price of 8%. No dollar value was indicated on the schedule.

Contract TR05-BWX-2R, Construction of the Busway Extension to Florida City (Segment II)

The DBE goal established for this project was 15%. [REDACTED], the prime contractor, provided their Schedule for Participation (*Revised 10-2004*) identifying [REDACTED], a DBE to participate on the contract. According to the schedule, [REDACTED] was to provide signalization and lighting/electrical. Where requested on the schedule to provide the percentage of total bid/proposal amount committed to this DBE, the prime contractor indicated 100%.

Contract TR04-PTP1, Program Management Consulting Services for the Implementation of the People's Transportation Plan

The DBE goal established for this project was 25%. [REDACTED], the prime contractor, provided their Letter of Intent to utilize [REDACTED], a DBE on the project. [REDACTED] was to provide program management transportation support services and civil, structural engineering and

construction management. For the dollar amount requested on the form, 13% was indicated.

Lastly, MDT provided the review team with a sample Schedule for Participation (*Revised 4/2//06*). It was noted that the prime contractor is instructed to name the DBE firm, the type of work to be performed, and percentage of total bid committed on the schedule. No dollar or contract values are required on the form.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must provide written procedures to the Region IV Civil Rights Officer to ensure all appropriate information is captured for counting DBE participation prior to contract award. A revised DBE Schedule of Participation should also be included with the procedures.

Grantee's Response:

The Schedule for Participation was revised in June 2009, and has been approved. The Transit Administrative Policy and Procedure (TAPP) has been revised to reemphasize the DBE compliance review already made part of the DBE Program Plan. These changes take effect immediately. See Attachment 3.

FTA's Response:

FTA concurs with MDT's response. To ensure accurate counting, FTA also recommends that MDT modify the DBE Schedule for Participation to include the contractor's overall summary of DBE commitment by percentage and dollar value.

G) 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 MDT was found during the site visit.

8. 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. MDT's DBE Program Plan, dated 1999, contains the required contract assurance clause as prescribed by the DOT regulations. However, it does not appear that contractors doing business with MDT consistently communicate the clause to its subcontractors.

During the site visit, the review team examined sample contracts with the prime contractor and their DBE subcontractors for the Busway Extension - Design and the Busway Construction of Segment II with DBE Goals of 20% and 15%, respectively. The prime contractor on the Busway Extension - Design was [REDACTED] ([REDACTED]). The prime contractor on the Busway Construction of Segment II was [REDACTED] ([REDACTED]).

On the Busway Extension - [REDACTED] [REDACTED] retained seven DBE subcontractors. The review team examined the subcontract agreement between [REDACTED] and [REDACTED] ([REDACTED]). The amount of the contract between MDT and [REDACTED] approximated \$5M and the subcontractor agreement with [REDACTED] approximated \$50,000. The contract clause in MDT's DBE Program Plan was not evident in the contract with [REDACTED]. Further, [REDACTED] did not include the respective contract assurance clause in its agreement with [REDACTED] as prescribed by Part 26.13.

On the Busway Construction of Segment II, [REDACTED] retained three DBE subcontractors. The review team examined the DBE subcontract agreement between [REDACTED] and [REDACTED] ([REDACTED]). The value of the contract between MDT and [REDACTED] approximated \$37.4M, and the subcontractor agreement with [REDACTED] approximated \$5.4M. In reviewing the prime contract with MDT, the boilerplate DBE language prescribed by MDT's DBE Program Plan was included. However, the specific language was not included verbatim in the agreement between [REDACTED] and [REDACTED]. The subcontract between [REDACTED] and [REDACTED] includes a provision contained in Paragraph III (a) that incorporates all provisions of the prime contract between MDT and [REDACTED] into the subcontract between [REDACTED] and [REDACTED].

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must submit to the Region IV Civil Rights Officer documentation that it has implemented procedures to ensure that the clause addressing contract assurance is included in the contracts with its prime contractors and their DBE subcontractors working on FTA-assisted projects.

Grantee's Response:

The Transit Administrative Policy and Procedures (Tapp) has been revised to include the requisite DBE compliance review already part of the DBE Program Plan. Specifically, MDT will review all subcontracts to ensure that the contract assurance clauses are made part of all subcontracts subject to federal funding. Moreover, the contract assurance clause is included in all Affirmative Action Clauses made part of all MDT contracts with the prime contractors. These changes take effect immediately. See Attachment 4.

Additionally, the Contract Assurance Clause has been disseminated externally. Further, MDT published the contract assurance clause to all MDT employees with an email address, and for employees without emails through the Mandatory Training Classes and Tool Box Safety Meetings. Additionally, a distribution was made to the Labor Unions, and a copy of the assurance clause shall be made part of the curriculum for all operators, maintenance staff and instructors. See Attachment # 1.

FTA's Response:

FTA concurs with MDT's response. This deficiency is now closed.

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 a specific number of 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 a specific number of 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

In MDT's DBE Program Plan, MDT advises that the prompt payment policy will be included in all DOT-assisted prime contracts. MDT's policy stipulates that, "Prime contractors shall pay subcontractors for satisfactory performance of their contracts no later than 30 days after receipt of a proper invoice." This policy is based on a Miami-Dade County Ordinance and is acceptable, as it exceeds the requirements of the regulations in that it requires prime contractors to pay subcontractors within 30 days after receipt of a proper invoice rather than within a specific number of days after the prime contractor receives payment from MDT.

In the contracts reviewed during the site visit, the prompt payment clause included in the DBE Program Plan was not included in the prime contract with [REDACTED] but was included in the prime contract with [REDACTED]. [REDACTED]'s subcontract with [REDACTED] stated that [REDACTED] would pay [REDACTED] within five days of [REDACTED]'s receipt of payment for its services from MDT. [REDACTED]'s payment provision in the [REDACTED] subcontract does not meet the prompt payment requirements in MDT's DBE Program Plan. [REDACTED] included in its agreement with [REDACTED] a payment clause that requires [REDACTED] to pay [REDACTED] within ten (10) days after receipt of payment from MDT. In addition, the payment clause states that [REDACTED] shall not be obligated to pay [REDACTED] unless [REDACTED] has been paid by MDT. While the prompt payment policies specified in the MDT contract with [REDACTED] meets the prompt payment requirement of MDT's DBE Program Plan, it does not appear that this requirement was included in the subcontract agreements reviewed.

Return of Retainage

In June 2003, USDOT issued a Final Rule on DBE that contained new requirements for prompt return of retainage. According to the Final Rule, 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.

MDT's DBE Program Plan includes a policy for the return of retainage. The policy stipulates that, "The prime contractor shall return retainage to subcontractors within a

specific number of days after the subcontractor's work is satisfactorily completed". For the projects reviewed, it would appear that retention was withheld from the prime contractors and that the prime contractors withheld retention from the DBE subcontractors.

The contract between MDT and [REDACTED] was signed in 2001. Therefore, this contract was executed prior to the USDOT's issuance of the Final Rule in June 2003 that contained new requirements for prompt return of retainage to DBEs. [REDACTED] withheld approximately 5% retainage from [REDACTED]. In the agreement with [REDACTED] for the Busway Extension - Design, MDT did not include language as reflected in its DBE Program Plan. The MDT contract with [REDACTED] called for release of 50% of retainage upon completion of contract documents ready for bidding. The remaining retainage was to be released upon award of the implementation contract or 12 months whichever occurs earlier. There was no provision in the subcontract between [REDACTED] and [REDACTED] for withholding any retainage. It was reported by [REDACTED] during an interview held for this review that [REDACTED] notified [REDACTED] that it would be withholding retainage after the first payment was made from [REDACTED] to [REDACTED].

[REDACTED] withheld retainage of approximately 10% from [REDACTED]. [REDACTED]'s work under their subcontract with [REDACTED] was not complete at the time of the site visit. The [REDACTED] subcontract with [REDACTED] indicated that "final payment shall be made upon issuance of a certificate from the Architect/Engineer that the work has been done to his satisfaction. This condition shall be precedent to the right of the Subcontractor to receive final payment." Since Paragraph II of the subcontract agreement describes "The Work" solely as the work to be completed by [REDACTED] it can be assumed that the subcontract agreement provides for final payment to [REDACTED] in conformance with the MDT requirement. However, there is no language apparent within the subcontract that provides for release of retainage (the final payment) to [REDACTED] within a specific number of days upon successful completion of [REDACTED]'s work. MDT was not able to demonstrate how it intends to enforce its retention policy by implementing a process for the periodic review and acceptance of work so that retainage could be phased back to the prime and then subcontractor, once its work is satisfactorily completed.

For information on monitoring of subcontractor payments, see discussion in Item 11, Record Keeping and Enforcements of this section.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must submit to the Region IV Civil Rights Officer documentation that it has implemented the requirements of Part 26.29 as noted in the June 2003 Final Rule. Additionally, MDT should provide documentation that it has implemented procedures to ensure that the clauses addressing prompt payment and prompt return of retainage included in the prime contracts are consistently included in agreements with subcontractors participating on FTA-assisted projects.

Grantee Response:

The TAPP has been revised to include the DBE compliance review already part of the DBE Program Plan. Prompt payment has always been and remains a priority for the DBE Program. OCR/LR has met with the relevant management staff to reaffirm MDT's

commitment to the DBE prompt payment requirements. Additionally, MDT will ensure the requisite tracking and compliance.

Additionally, the TAPP has been revised to clearly delineate the steps for a compliance review, which includes a review of all proposed subcontracts to ensure that the required contract provisions are included. MDT will review all subcontracts to ensure that the prompt payment clauses are made part of all subcontracts subject to federal funding. Moreover, the prompt payment and retainage clauses are included in all Affirmative Action Clauses made part of all MDT contracts with the prime contractors. These changes take effect immediately.

MDT will submit a more detailed plan including the results of the internal meeting with management staff, on or before August 19, 2009.

FTA's Response: FTA partially concurs with MDT's response. MDT should provide to the Region IV Civil Rights Officer the detailed plan including the results of the internal meeting with management staff for review and approval by August 19, 2009. For return of retainage, the plan should specify the provisions and process for MDT's periodic review and acceptance of work.

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, no deficiencies were found with the requirement for legal remedies. In its DBE Program Plan, MDT indicates that all contracts between MDT and a contractor shall contain an appropriate provision to the effect that failure by the contractors to comply with the DBE Program shall constitute a breach of the contract exposing the contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds until such time as the contractor complies with the DBE requirements. This language was included in the boilerplate and was found in the contracts that MDT entered into with [REDACTED] on the Busway Extension - Design and [REDACTED] on the Busway Construction of Segment II.

9. 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 requirement for certification standards. Miami Dade Transit does not certify firms as Disadvantaged Business Enterprises. Currently there are 43 members in the State of

Florida's Unified Certification Program. Fourteen of those members conduct certifications for the State of Florida.

10. 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, no deficiencies were found with the requirement for certification procedures. Miami Dade Transit does not perform DBE certifications. Currently there are 43 members in the State of Florida's Unified Certification Program. Fourteen of those members conduct certifications for the State of Florida. MDT provided a copy of their Memorandum of Agreement with the Florida Department of Transportation dated February 20, 2002.

11. 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.

Bidders List

MDT's 1999 DBE Program Plan states that it would require all prime contractors bidding on DOT-assisted contracts to provide information required by the bidders list at the time of their bids. The information is collected on "Form for Bidders List Data Base." Hard copies of the form are then forwarded to the Civil Rights Officer for goal-setting purposes. However, it does not appear that this process is currently in operation. The last collected bidders list information provided to the review team was dated July of 2005.

Monitoring

The 1999 Program Plan and a supplement that was provided to the review team outline MDT's procedures for monitoring compliance with the DBE Program. At bid submittal, MDT initially conducts a technical review of all bids to ensure the compliance with the DBE requirements stipulated in the bid solicitation. The requirements include a Certificate of Assurance that the bidder will meet the established DBE contract goal; a Schedule for Participation listing those subcontracts which will be awarded to DBEs specifying the price to be paid and the scope of work to be performed; a Letter of Intent indicating the DBEs readiness to perform the work described for the amounts stated in

the Schedule of Participation; and lastly, a signed DBE Contractor Identification Statement for each proposed DBE contractor.

After contract award, MDT requires its contractors to submit a quarterly report of all payments showing participation by DBEs listed on the contractor's Schedule of Participation. The contractor is required to submit supporting documents, either cancelled checks made to the DBE or notarized affidavits from the DBEs certifying the amounts received. The DBE report data is entered into a database and the payment history is monitored to ensure compliance with the DBE contract goal. The procedures also provide for site inspections to verify that the DBE contractors identified as performing work on MDT contracts are actually doing the work.

Although these appear to be effective tools in monitoring DBE participation as detailed in the contract terms and goal attainment, the reviewers were unable to ascertain how MDT utilizes this information to ensure compliance with the DBE prompt payment and retainage requirements. In addition, as discussed in *Item 8, Required Contract Provisions*, it does not appear that as part of its monitoring efforts, MDT has developed and implemented a process whereby the Civil Rights Officer or designee reviews the contract files of the DBE subcontractors or prime contractors performing work on federally assisted projects to ensure that the DBE requirements are included.

The review team examined the payment history of the prime and DBE on the Busway Extension to Florida City Segment II to determine how prompt payment requirements delineated in the agreement were adhered to and monitored by MDT. The review team first examined contract, subcontract, and payment information for [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]), the prime and DBE subcontractor on the Busway Extension to Florida City Segment II. [REDACTED] was retained for general engineering services on this project. [REDACTED] was retained to provide surveying services. According to the contract between MDT and [REDACTED], there was no provision specified for the payment of subcontractors. The DBE's subcontract agreement states that they would be paid within five days of prime's receipt of payments from MDT. The review team examined all the payments [REDACTED] made to the DBE firm, [REDACTED]. [REDACTED] paid [REDACTED] five of the eight invoices on the same day as receipt of payment from MDT. Three of the invoices were paid 7, 10 and 35 days after receipt of payment from MDT which does not comply with the terms of the subcontract that stipulates payment to the subcontract within five days. Furthermore, [REDACTED] was paid on an average of approximately 206 days from the date of his invoice which does not comply with MDT's prompt payment provisions that stipulates that subcontractors are to be paid no later than 30 days after receipt of a proper invoice.

A summary of the payment information is as follows:

DBE Sub	Invoice	Date	Amount		Amount	Payment Receipt	Payment Sent	Days Past	Days Past*
	5645	9/27/01	\$9,232.00	M-4497	\$42,184.61	1/31/02	2/07/02	7	120
	5994	4/26/02	11,341.00	M-4619	158,602.50	7/30/02	7/30/02	0	90
	6355	1/25/03	14,583.75	M-4869	222,420.20	12/19/03	12/19/03	0	330
	6356	1/25/03	3,071.00	M-4869	“	12/19/03	12/19/03	0	330
	6357	1/25/03	3,201.00	M-4869	“	12/19/03	12/19/03	0	330
	6402	4/15/03	6,127.00	M-4898	146,993.91	12/19/03	12/19/03	0	240
	6441	3/5/04	1,969.00	M-5105	20,866.24	5/17/04	6/21/04	35	90
	52	1/31/08	2,014.64	M-6510 Plus Retainage	231,663.39 (113,025.78 +118,637.61)	5/23/08	6/02/08	10	120

*Based on MDT's prompt payment policy

Reporting

At the time of the site visit, MDT was submitting a modified version of the semi-annual DBE report to the FTA providing data about the DBE program. MDT provided the review team with several semi-annual reports and supporting documentation. Based on the review, it appears that some of the information regarding DBE participation is not accurate.

For the report covering the period April 1, 2008 through September 30, 2008, MDT indicated that it awarded a total of 10 contracts to DBEs in the total amount of \$3,380,115. In Section 11, DBE Awards or Commitments by Ethnicity and Gender, the total dollar amount indicated by MDT was \$3,357,426. It appears that \$22,689 paid to DBEs on a race neutral basis was not included in the ethnic/gender breakdown. For the report covering the period April 1, 2007 through September 30, 2008, MDT indicated that it awarded a total of 34 contracts to DBEs in the total amount of \$4,319,368. In Section 11, DBE Awards or Commitments by Ethnicity and Gender, the total dollars indicated by MDT was \$1,707,766 and the total number of DBE contracts was reflected as seven. Furthermore, it does not appear that MDT has an adequate process in place to capture all appropriate contract information at the time of award and or commitment as required for reporting purposes. Based on the documentation provided to the review team, it appears that MDT uses payment information to determine the dollar values for the awarded contracts.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, MDT must submit to the Region IV Civil Rights Officer the following information:

- Procedures and timeline for compiling a bidders list that can be used as more refined data in the annual goal-setting process.
- Procedures for improving monitoring efforts of work committed to DBEs. These should address review and documentation of payment information collected from contractors and DBEs; and review of the agreements of those

prime contractors and their DBE subcontractors performing work on federally assisted projects.

- Procedures for accurate and complete collection and reporting of data for semi-annual reports that address the issues noted above.

Grantee's Response:

Bidders List

The TAPP has been revised to include the DBE compliance review already part of the DBE Program Plan. DBE document and payroll report collected shall be kept in accordance with MDT's records management policy and corresponding Administrative Order. The TAPP has been further revised to clearly delineate the steps for a compliance review, and for the requests, submission and retention of records attesting to work committed to DBE firms. See Attachment 4.

Additionally, MDT shall maintain a bidder's list in a readily accessible format, including but not limited to an electronic database. These records shall be maintained in a fashion which is readily accessible to MDT and/or FTA for a minimum of five years following the completion of each project, provided that the project is not subject to litigation. If the project or any part thereof becomes subject to any litigation, the records shall be maintained for the pendency of the action. MDT is currently exploring the acquisition of data management software to track DBE participation and maintain a bidder's list.

MDT will submit a more detailed plan including the acquisition of the computer software for data management on or before August 19, 2009. Based on the above, MDT respectfully requests that it be permitted to report on this item as part of a voluntary compliance (VC) plan.

FTA's Response: FTA concurs with MDT's response. MDT should provide the detailed plan including the acquisition of the computer software for data management to the Region IV Civil Rights Officer by August 19, 2009.

Monitoring and Reporting to DOT

The TAPP has been revised to include the DBE compliance review already part of the DBE Program Plan. DBE document and semi-annual report collected shall be kept in accordance with MDT's records management policy and corresponding Administrative Order, with all supporting documents made part of the final records. The TAPP has been revised to clearly delineate the requirements that these records are kept pursuant to Miami-Dade County (MDC) Administrative Order and MDT record management Policy.

Additionally, MDT is currently exploring the acquisition of data management software to track DBE participation. The contemplated software application would automate the reporting and tracking requirements of the program by providing for the tracking of DBE commitment and goals tracking, work force analysis, automatic subcontractor verification of payments, including prompt payments of subcontractors. Moreover, the applications are able to track

construction projects, service, supply and professional service contracts, and ensure labor compliance and prevailing wages under the Davis-Bacon Act. Lastly, the software will generate reports by the automatic gathering of data, and continuous data backup will ensure a zero loss of data.

All final products reports and other documents shall be archived in all manners consistent with the TAPP and controlling Administrative Order. Additionally, the final reports, which include submissions to FTA and all other documents subject to a public information request shall be maintained on MDT's Electronic Document Management System (EDMS), which involves digitizing records for retrieval, availability and storage.

MDT will submit a more detailed plan including the acquisition of the computer software for data management on or before August 19, 2009. Based on the above, MDT requests it be permitted to report on this item as part of a voluntary compliance (VC) plan.

FTA's Response: FTA concurs with MDT's response. MDT should provide the detailed plan including the acquisition of the computer software for data management to the Region IV Civil Rights Officer by August 19, 2009.

12. Public Participation and Outreach

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. MDT's public participation includes notification of their DBE goal methodology to the various local chambers of commerce. MDT also participates at the Annual Procurement Workshop for Small and Minority Businesses and the Business Expo sponsored by the Florida Regional Business Council. The review team was provided with letters and correspondence confirming these activities. However, since these outreach efforts happen after the goal setting process has been completed, it does not demonstrate consultation with minority, women's and general contractor groups, community organizations and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and their efforts to establish a level playing field for the participation of DBEs.

MDT publishes its DBE goals for public comment. It posts a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at MDT's principal office. Comments on the

goals are accepted for 45 days from the date of the notice. MDT publishes its overall goal on its website. Notices are also published in general circulation and minority focused media in different languages – English, Spanish and Creole. The publications included The Miami Herald, the Le Floridien, and the Diario Las Americas. Proofs of publication were provided to the review team.

Corrective Action and Schedule: Within 60 days of the issuance of the final report, submit to the FTA Region IV Civil Rights Officer documentation of a consultative process that will be utilized to gather input prior to the formalization and submission of the goal to the FTA. Additionally, MDT will provide an assurance and schedule for completing this and the comment period for public notice in advance of August 1st of each year.

Grantee's Response:

Overview: MDT has elected to make use of an advisory committee to meet this requirement. While the advisory committee will be a standing committee comprised of the membership listed below, the annually scheduled meeting will be noticed to the public at large and inviting their participation. MDT will combine the use of the advisory committee with input and comments from the contractors and subcontractors at large via publication, surveys, and public meetings.

Schedule: The annually scheduled meeting shall be held between May 1st, and June 1st of each year.

Process: The proposed process for the public consultation involves a scheduled face-to-face conference or meeting with the named membership or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information or advice before a decision is made.

Membership: The listed membership are groups within MDT's market area that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process. MDT has made contact with these groups and they have expressed an interest in participating in the consultation process.

Members: The proposed members for the advisory committee for the consultation process are: (1) the Women Chamber of Commerce, (2) the Minority Chamber of Commerce, (3) the Miami Dade Chamber of Commerce, (4) Florida Regional Minority Business Council, (5) Miami-Dade College, and (6) Contactor's Resource Center.

MDT will submit a formalized detailed plan including the committee creation documents and official invitation letter to the members on or before July 1, 2010. Based on the above, MDT respectfully requests that it be permitted to report on this item as part of a voluntary compliance (VC) plan.

FTA's Response: FTA concurs with MDT's response. MDT should provide the formalized detailed plan for the consultative process to the Region IV Civil Rights Officer for review and approval by July 1, 2010.

SECTION 7 – SUMMARY OF FINDINGS

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Current Status
1. Policy Statement	26.23	D	Update and dissemination of policy statement	Submit a signed and dated policy statement and evidence that the policy statement was circulated throughout the organization and to the DBE and non-DBE business communities.	Closed
2. DBE Liaison Officer	26.25	D	Designation of DBE Liaison Officer, adequate resources, and access to CEO	Provide evidence that it has designated a DBE Liaison Officer who has full responsibility for program implementation, independent access to the CEO and adequate resources to implement the DBE program.	Progress made. Submit final MOU and operational procedures.
3. Financial Institutions	26.27	ND			
4. DBE Directory	26.31	ND			
5. Overconcentration	26.33	D		Provide evidence that an overconcentration analysis has been conducted and if appropriate, recommend actions to address it.	Progress made. Submit detailed plan and study results by 7/01/10.
6. Business Development Programs	26.35	ND			
7. Determining / Meeting Goals					
A) Calculation	26.45	D	Supporting data for goal calculation	Submit the DBE goal methodology for FY 2010 including evidence with which it was calculated.	Progress made. To be closed through FTA acceptance of FY2010 goal submission.
B) TVM	26.49	ND			
C) Race Neutral	26.51	ND			
D) Race Conscious	26.51	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Current Status
E) Good Faith Efforts	26.53	ND			
7. Determining / Meeting Goals continued...					
F) Counting DBE Participation	26.55	D	Data collection for counting DBE participation	Submit procedure to ensure all appropriate information is captured for counting DBE participation prior to contract award. A revised DBE Schedule of Participation should also be included with the procedures.	Closed
G) Quotas	26.43	ND			
8. Required Contract Provisions	26.13	D	Contract assurance clause not included in agreement	Submit documentation that MDT has implemented procedures to ensure that the clause addressing contract assurance is included in the contracts with its prime contractors and their DBE subcontractors working on FTA-assisted projects.	Closed
A) Contract Assurance					
B) Prompt Payment	26.29	D	Prompt payment and return of retainage clause not included in agreement No provision for periodic review and acceptance of work Contract clauses inconsistent with DBE Program Plan	Submit documentation that MDT has implemented the requirements of Part 26.29 as noted in the June 2003 Final Rule. Additionally, provide documentation that it has implemented procedures to ensure that the clauses addressing prompt payment and prompt return of retainage included in the prime contracts are consistently included in agreements with subcontractors participating on FTA-assisted projects.	Progress made. Submit plan for phased acceptance of work by 7/01/10.
C) Legal Remedies	26.37	ND			

Requirement of 49 CFR Part 26	Ref.	Site visit Finding	Description of Deficiencies	Corrective Action(s)	Current Status
9. Certification Standards	26.67	ND			
10. Certification Procedures	26.83	ND			
11. Record Keeping and Enforcements A) Bidders List	26.11	D	Data collection for bidders list	Provide evidence of procedures and timeline for compiling a bidders list that can be used as more refined data in the annual goal-setting process.	Progress made. Provide detailed plan by 7/01/10.
B) Monitoring	26.37, 26.55	D	Monitoring of work performed by DBEs and subcontract agreements.	Submit procedures for improving monitoring efforts of work committed to DBEs. These should address review and documentation of payment information collected from contractors and DBEs; and review of the agreements of those prime contractors and their DBE subcontractors performing work on federally assisted projects.	Progress made. Provide detailed plan by 7/01/10.
C) Reporting to DOT	26.11	D	Accurate reporting to FTA	Provide procedures for accurate and complete collection and reporting of data for semi-annual reports.	Progress made. Provide detailed plan by 7/01/10.
12. Public Participation and Outreach	26.45	D	Consultative Process and Public Notice	Submit documentation of a consultative process that will be utilized to gather input prior to the formalization and submission of the goal to the FTA. Additionally, MDT will provide an assurance and schedule for completing this and the comment period for public notice in advance of August 1 st of each year.	Progress made. Provide formalized plan by 7/01/10.

Findings at the time of the site visit: ND = No deficiencies found; D = Deficiency; NA = Not Applicable; NR = Not Reviewed

SECTION 8 - LIST OF ATTENDEES

NAME	ORGANIZATION	TITLE	PHONE #	Email
Cathy Lewis	Miami Dade Transit	Chief, Office of Civil Rights and Labor Relations	786-469-5487	clewis@miamidade.gov
Dunbar Cornelle	Miami-Dade Transit	Civil Rights Staff	786-469-5479	dunbarc@miamidade.gov
Erigene Belony	Miami-Dade Transit	Civil Rights Manager	786-469-5481 305-788-1886	ebelony@miamidade.gov
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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