

# FTA

FEDERAL TRANSIT ADMINISTRATION

## City of Tracy, California Disadvantaged Business Enterprise (DBE) Program Compliance Review

Final Report  
February 2018



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

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## Executive Summary

Objective and Methodology – This report details the findings of a Compliance Review of the City of Tracy’s (COTC) Disadvantaged Business Enterprise (DBE) program implementation. The compliance review team (1) examined this agency’s DBE program procedures, management structures, actions, and documentation; (2) collected documents and information from the Federal Transit Administration (FTA) and COTC; and (3) interviewed COTC officials, DBE firm representatives, prime contractor representatives, and community-based organizations that advocate on behalf of minority- and woman-owned businesses. The two-day review included interviews, assessments of data collection systems, and review of program and contract documents.

### COTC’s DBE Program includes the following positive program elements –

#### Positive Program Elements

- **DBE Goal Methodology** –COTC followed the DOT recommended methodology for calculating its overall DBE participation goals.

### The Program has the following administrative deficiencies –

#### Administrative Deficiencies

- **DBE Policy Statement** – COTC’s DBE Policy Statement was not signed by its current City Manager. COTC did not distribute its DBE Policy Statement as it stated it would.
- **Provisions for Protecting Against Termination for Convenience** – COTC’s provisions were lacking.

### The Program has the following substantive deficiencies –

#### Substantive Deficiencies

- **DBE Program Plan** – COTC’s DBE Program Plan was out of date and did not reflect actual practice.
- **Disadvantaged Business Enterprise Liaison Officer (DBELO)** – COTC’s DBELO designation was inadequate for its FTA DBE program.
- **Goal Calculation** – COTC did not consider all potential FTA-funded contracting opportunities in its FY2017-FY2019 goal methodology.
- **Public Participation** – COTC did not adequately consult with the minority- and woman-owned business community when developing its FY2017-FY2019 DBE goals.
- **Race-Neutral Measures** – COTC’s race-neutral measures were lacking.
- **Small Business Element** – COTC had not developed and implemented the required Small Business Element.
- **Counting DBE Participation** – COTC did not implement its procedures for counting DBE participation.
- **Shortfall Analysis and Corrective Action Plan** – COTC did not conduct shortfall analyses and prepare Corrective Action Plans for shortfalls in FY2015, FY2016, and FY2017.
- **Transit Vehicle Manufacturers** – COTC did not have procedures in place to confirm transit vehicle manufacturer (TVM) eligibility prior to contract award, or procedures to report TVM awards to FTA within 30 days after awarding a TVM contract.
- **Record Keeping and Enforcements** – COTC did not submit semi-annual reports or maintain a bidders list, as required.

At the time of the site visit, COTC's FTA DBE program lacked proactive management and involvement on the part of COTC staff, which, among other factors, contributed to COTC reporting no DBE participation on FTA-funded projects from FY2015 – FY2017. In addition to COTC DBE program review and assessment, the review team placed an emphasis on providing COTC with technical assistance in key areas, such as identifying and considering all eligible FTA-funded contracting opportunities, improving the use of race-neutral contracting measures, and enhancing public outreach to bring about greater DBE program awareness. During the site visit, COTC staff in attendance were engaged and interested in implementing review team recommendations.

## I. General Information

This chapter provides basic information concerning this Compliance Review of the City of Tracy, California (COTC). Information on COTC, the review team, and the dates of the on-site portion of the review are in the table below.

<b>Grant Recipient:</b>	City of Tracy
<b>City/State:</b>	Tracy, California
<b>Grantee Number:</b>	6200
<b>Executive Official:</b>	Randall Bradley, Acting City Manager
<b>On-site Liaison:</b>	Ed Lovell, Management Analyst II
<b>Report Prepared By:</b>	The DMP Group, LLC
<b>Dates of On-site Visit:</b>	October 10-12, 2017
<b>Compliance Review Team Members:</b>	Donald Lucas, Lead Reviewer Gregory Campbell, Reviewer Khalique Davis, Reviewer

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## 2. Jurisdiction and Authorities

The Secretary of Transportation authorized the Federal Transit Administration (FTA) Office of Civil Rights to conduct Civil Rights Compliance Reviews. FTA conducts compliance reviews to ensure compliance of applicants, recipients, and subrecipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

COTC is the recipient of one or more federal transit grants, loans, and/or contracts that result in contracting opportunities exceeding \$250,000. Hence, COTC is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in COTC's DBE program and were the basis for this compliance review.

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## 3. Purpose and Objectives

### 3.1 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 49 CFR Part 26. FTA has determined that a compliance review of COTC's DBE program is necessary.

The primary purpose of the compliance review is to determine the extent to which COTC has implemented 49 CFR Part 26, as represented in its DBE Program Plan. FTA intends this compliance review to be a fact-finding process to (1) assess COTC's DBE 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 discrimination against individual DBE firms or complainants or to adjudicate these issues on behalf of any party.

### 3.2 Objectives

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

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department narrowly tailors its DBE program in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of federally assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE program.
- 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 COTC is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of COTC's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies and document the compliance status of each component.

- Gather information and data regarding the operation of COTC's DBE Program Plan from a variety of sources, including DBE program managers, other COTC management personnel, DBEs, prime contractors, and other stakeholders.

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## 4. Background Information

The purpose of this chapter is to provide an understanding of the COTC's operations and scale. The subsections below highlight COTC's organizational structure, services, and short-term initiatives; its budget and FTA-assisted projects; and the history of its DBE program.

### 4.1 Introduction to City of Tracy and Organizational Structure

The City of Tracy is governed by a city council comprised of the City's mayor and four council members. The executive functions of the City's government are the responsibility of the City Manager who is responsible for the following eight major government functions: Police Department, Fire Department, Public Works Department, Development Services, Parks and Recreation, Finance Department, Human Resources Department, and Utilities. Each major government function is further divided into several operational divisions and municipal programs. The Transit Division within the Parks and Recreation Department administered the transit program. The heads of the eight departments reported to the City Manager who reported to the city council. Other governmental functions included the City Treasurer, City Attorney, and Boards and Commissions.

COTC provides public fixed-route and paratransit service, known as Tracer and Tracer Paratransit, and subsidizes taxi service to supplement the paratransit service. The City of Tracy contracts with Ride Right, LLC to operate the Tracer and Tracer Paratransit services.

COTC operates six fixed routes, four regular routes and two commuter routes. Regular service operates weekdays from 7:00 a.m. to 8:00 p.m. and Saturdays from 9:00 a.m. to 7:00 p.m. There is no Sunday service. Commuter service operates weekdays from 6:40 a.m. to 8:30 a.m. and 1:25 p.m. to 5:10 p.m. Buses operate on 30- and 60-minute headways, meeting at the Tracy Transit Station. Tracer service connects to regional transit service operated by the San Joaquin Regional Transit District, providing service to Stockton.

The regular adult cash fare is \$1.25 and \$1.00 for students. A half fare of \$0.50 is offered to elderly persons (65+), persons with disabilities, and Medicare cardholders during all hours of service. Children, six and under, ride free. Discounted day and weekly passes and ten-ride tickets are also available.

COTC's paratransit service, called Tracer Paratransit, operates the same days and hours as the fixed-route service. Tracer Paratransit is open to ADA complementary paratransit eligible persons and elderly persons age 65 and older. The fare is \$1.50, with non-ADA same-day service available for a \$0.75 surcharge.

COTC subsidizes the cost of taxi trips taken by paratransit eligible persons during all days and hours when fixed-route and paratransit service do not operate (i.e., nights, Sundays, and holidays). Registered Tracer Paratransit users can purchase \$20 worth of taxi coupons for \$10. Patrons call the taxi operator directly for a ride.

COTC's fixed-route fleet consists of ten buses, six of which are dedicated fixed-route buses, with the other four used interchangeably between fixed-route and paratransit service. Nine buses are required for peak service. In April 2017, COTC placed five new 35-foot diesel buses into service, replacing five of its older buses. The paratransit fleet consists of five dedicated cutaways and minivans. COTC administers Tracer services from the Tracy Transit Station at 50 East 6<sup>th</sup> Street. Vehicles are stored at a city-owned facility at 540 North Tracy Boulevard. FTA-funded facilities and equipment include a compressed natural gas (CNG) fueling station at 520 North Tracy Boulevard and bus shelters located throughout the city.

## 4.2 Budget and FTA-Assisted Projects

COTC's transit operations budgets for FY2016 and FY2017 were \$3,173,300 and \$3,180,310, respectively. Revenues were derived from FTA grant funds, State Transit Assistance funds, farebox revenues, and revenues from sales and use taxes.

At the time of the compliance review, COTC's active FTA grants were as follows:

### COTC Active FTA Grants

Project No.	Brief Description	Original Obligation Date	Last Disbursement Date	Total Obligation Amount	Funds Remaining (%)	Total Undisbursed Amount
6200-2016-1 (In Progress)	Operating Assistance, Rolling Stock, Capital Cost of Third Party Contracting, Planning	-	-	-	-	-
CA-90-Z006-02	Operating Assistance, Rolling Stock, Capital Cost of Third Party Contracting	9/23/2014	9/18/2017	\$2,134,260	0% (Deobligated \$420,000)	\$0
CA-90-Z292-00	Operating Assistance, Rolling Stock, Capital Cost of Third Party Contracting, Equipment	9/17/2015	9/18/2017	\$2,435,097	3%	\$64,551

## 4.3 DBE Program

COTC receives federal financial assistance from the U.S. Department of Transportation (U.S. DOT), and as a condition of receiving this assistance, it is responsible for complying with the regulations set forth in 49 CFR Part 26. Accordingly, COTC developed a DBE Policy Statement that outlined its goals and mission for the program and a DBE Program Plan that described its efforts pursuant to compliance with the regulations. COTC submitted its most recent DBE

Program Plan to FTA on August 21, 2012. COTC's Disadvantaged Business Enterprise Liaison Officer (DBELO) and one other staff were responsible for the administration of its FTA DBE program.

Although COTC hired an outside consultant to develop its DBE Program Plan, COTC's internal staff responsible for the management of its FTA DBE program lacked sufficient understanding of the DBE Program requirements and how to implement the requirements as described in its Plan by its consultant. In addition, COTC had very little past DBE participation on its FTA-funded projects, and therefore it had not practically applied many of the elements of its plan, further contributing to its lack of understanding of the requirements. Guidance was provided throughout the review to help COTC increase DBE participation on its FTA-funded contracting opportunities. Guidance was also provided to help COTC better understand 49 CFR Part 26 requirements, and to tailor its DBE Program Plan such that it both met the requirements and reflected actual practice.

COTC did not conduct a disparity study when formulating its triennial DBE goals. COTC's goals included race-neutral elements only. COTC was a non-certifying participant in the California Unified Certification Program (CUCP) administered by Caltrans.

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## 5. Scope and Methodology

### 5.1 Scope

FTA specifies a review of the implementation of the following DBE program components in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to the COTC DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE 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]
- Efforts made to use DBE financial institutions by COTC as well as by prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers, and types of work performed, made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (or does not) exist and efforts to address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts and proper mechanisms to implement the DBE goal [49 CFR 26.43–26.53]
- A shortfall analysis and corrective action plan when COTC did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include COTC seeking FTA approval to establish a project-specific goal for vehicle purchases [49 CFR 26.49].
- A nondiscrimination and a prompt payment clause included in all FTA-assisted contracts and a prompt payment verification process [49 CFR 26.7, 26.13, and 26.29].
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, and the proper supporting documentation [49 CFR 26.65–26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, an interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies [49 CFR Part 13]. The DBE program must also include monitoring and enforcement

mechanisms to ensure DBEs actually perform the work committed to DBEs at contract award [49 CFR 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11 and 26.55].

## 5.2 Methodology

The initial step of this compliance review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's Transit Award Management System (TrAMS) and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter to COTC that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas to be covered during the on-site visit. The letter also informed COTC of staff and other parties whom the review team would interview.

Before conducting the on-site visit, FTA asked COTC to provide the following documents:

- Most current DBE Program Plan;
- DBE goal methodology submissions;
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years;
- A Memorandum of Understanding or similar documents indicating COTC's participation in the Unified Certification Program (UCP);
- A list of FTA-assisted contracts awarded during the current and previous fiscal years;
- A list of DBE firms that have worked on FTA-assisted projects sponsored by COTC;
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by COTC; and
- Procedures for monitoring all DBE program participants to ensure compliance with the DBE requirements, including but not limited to a prompt payment verification process, a process for ensuring work committed to DBEs is actually performed by DBEs, and any DBE complaints against the agency or its prime contractors during a specified time period.

The review team conducted an opening conference at the beginning of the compliance review with FTA representatives and COTC staff.

Following the opening conference, the review team examined COTC's DBE Program Plan and other documents submitted by COTC's Management Analyst. The team then conducted interviews regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews were conducted with COTC's Management Analyst. The review team selected a sample of contracts and reviewed them for their DBE elements. The review team also conducted interviews with prime contractors, subcontractors, and interested parties.

At the end of the review, FTA representatives, COTC staff, and the review team convened for the exit conference, during which FTA and the review team discussed initial findings and corrective actions with COTC.

Participants in the compliance review are listed below.

### **City of Tracy**

Ed Lovell, Management Analyst II

Zabih Zaca, Senior Civil Engineer and DBELO (Entrance Conference only)

### **Federal Transit Administration**

Anita Heard, Equal Opportunity Specialist, FTA

Lynnette Little, Regional Civil Rights Officer, FTA Region IX

Marisa Appleton, Civil Rights Officer for Oversight, FTA

### **Review Team – The DMP Group, LLC**

Donald Lucas, Lead Reviewer

Gregory Campbell, Reviewer

Khalique Davis, Reviewer

## **5.3 Stakeholder Interviews**

During the DBE compliance review, the review team attempted to contact 12 DBEs, and five minority- and/or woman-owned business advocacy organizations (other interested parties) between October 2, 2017 and October 18, 2017. The following paragraphs summarize the results of the interviews.

### **Disadvantaged Business Enterprises**

The review team conducted interviews with ten of the 12 DBEs contacted. All the DBEs interviewed were listed in the DBE UCP Directory. Only one of the DBEs was familiar with the City of Tracy's DBE program and none of the DBEs had been requested to participate in the development of or comment on the City of Tracy's DBE goal. None learned about contracting opportunities through notices from prime contractors or invitations to and attendance at City events, and none were contacted by the City of Tracy to provide referrals for contracting opportunities. None of the DBEs interviewed participated on FTA-assisted contracts and all of the DBEs noted that the City of Tracy should definitely work to increase the effectiveness of its DBE program and to do more outreach to DBEs to notify them about contracting and subcontracting opportunities.

### **Interested Parties**

The review team made several attempts to contact five interested parties. The parties were either non-responsive or declined to participate.

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## 6. Findings and Advisory Comments

This chapter details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology sections above. Included in each area is an overview of the relevant regulations and a discussion of the regulations as they apply to COTC's DBE program. Each area also includes corrective actions, if needed, and a timetable to correct deficiencies for each of the requirements and subrequirements.

FTA reports findings in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting and are expressed as follows:

- A statement concerning the policy or practice in question at the time of the review,
- A statement concerning the DBE requirements that are unsatisfied or potentially unsatisfied, and
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The purpose of the recommendations is to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

### 6.1 DBE Program Plan

#### Basic Requirement (49 CFR Part 26.21)

Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE program. Recipients do not have to submit regular updates of DBE programs. However, recipients must submit significant changes in the program for approval.

#### Discussion

During this compliance review, deficiencies were found with this requirement. U.S. DOT DBE regulations required COTC to develop and submit a DBE Program Plan that complies with 49 CFR Part 26 requirements, and to update its Plan when it made significant changes to its program. COTC's most recent DBE Program Plan was dated August 21, 2012.

COTC's Plan applied to contracting opportunities funded by the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration (FTA), described as follows by COTC:

*TRACY is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21, Pub. L. 105-178, 112 Stat. 107. The California Department of Transportation (Caltrans) received FHWA permission to adopt their own DBE Program covering all local*

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*agencies In California. Every local agency including TRACY signed and adopted an Implementation Agreement wherein they agreed to abide by all requirements of the Caltrans DBE Program in order to receive FHWA funds. Therefore, document forms and procedures may be slightly different from forms used for the FAA or FTA.*

Although COTC acknowledged the use of different forms used in the administration of its DBE program for FHWA, FAA, and FTA, it did not adequately describe said forms and how and when they were used in its implementation of its FTA DBE Program Plan. Moreover, COTC did not address other differences in the implementation of its DBE program for FHWA, FAA, and FTA, as necessary or practical for FTA purposes (e.g., Small Business Element). COTC must either create an FTA-specific DBE Program Plan, or describe in greater detail how its Plan addresses FTA concerns, by requirement.

With respect to FTA, COTC's DBE Program Plan, in form, included most applicable and required elements, except for the provision for Protecting against Termination for Convenience and Shortfall Analysis and Corrective Action Plan. In substance, COTC's plan, as implemented, lacked compliance with the following required program areas for its FTA DBE program: DBE Policy Statement, DBE Liaison Officer, Overconcentration, DBE Goal Setting (including goal calculation, public participation, and race-neutral measures), Counting DBE participation, Small Business Element, Provisions for Protecting Against Termination for Convenience, Transit Vehicle Manufacturers, Record Keeping and Enforcements. COTC either did not adequately address the requirements in its Plan, or its Plan did not reflect actual practice. Substantive deficiencies are discussed in detail later in this report, by section.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes provisions for Protecting Against Termination of Convenience, provisions for conducting required Shortfall Analyses and Corrective Action Plans, and describes in detail its implementation of the requirements described in 49 CFR Part 26 for the FTA program.

## **6.2 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. Recipients must circulate this policy throughout the recipients' organization and to the DBE and non-DBE business communities.

### **Discussion**

During this compliance review, deficiencies were found with this requirement. COTC's DBE Policy Statement contained all the requirement elements, but was not signed and dated by its current City Manager. The Policy Statement had not been disseminated in accordance with COTC's DBE Program Plan. In its Plan, COTC stated:

*TRACY has disseminated this policy statement to the City of Tracy City Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by*

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*posting this information on our Web Site and by placing this on the Tracy City Council Agenda which is publicly noticed. Additionally, we mailed notices to Minority Business Centers and published the notice in general circulation newspapers within our market area.*

COTC did not post its Policy Statement on its website and COTC could not confirm the inclusion of its statement on a Tracy City Council Agenda. COTC did not provide documentation that the DBE Policy Statement had been distributed throughout the organization, or to Minority Business Centers and DBE and non-DBE business communities as described in its DBE Program Plan. COTC could not confirm that its Policy Statement had been published in general circulation newspapers within the City of Tracy market area.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit the following to the FTA Office of Civil Rights:

- An updated DBE Policy Statement signed by its current City Manager. COTC must include in its updated Policy Statement a description of how it will distribute its statement and only include in its description methods of distribution it will implement.
- Documentation confirming it has distributed its statement, as required by 49 CFR Part 26.23.
- An updated DBE Program Plan that includes its updated Policy Statement.

### **6.3 DBE Liaison Officer**

#### **Basic Requirement (49 CFR Part 26.25)**

Recipients must have a designated DBE Liaison Officer (DBELO) 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 compliance review, deficiencies were found with this requirement. COTC identified Zabih Zaca, Senior Civil Engineer as its FTA DBELO. COTC's DBE Program Plan stated its DBELO's duties and responsibilities included the following:

1. *Gathers and reports statistical data and other information as required by DOT.*
2. *Reviews third party contracts and purchase requisitions for compliance with this program.*
3. *Works with all departments to set overall annual goals.*
4. *Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.*
5. *Identifies contracts and procurements so that DBE goals are included in solicitations.*
6. *Analyzes TRACY's progress toward attainment.*
7. *Participates in pre-bid meetings.*
8. *Advise the CEO/governing body on DBE matters and achievement.*
9. *Participates in pre-bid meetings.*
10. *Provides DBEs with information and assistance in preparing bids.*

11. *Plans and participates in DBE training seminars for staff.*
12. *Provides outreach to DBEs and community organizations to advise them of opportunities.*
13. *Is knowledgeable of Caltrans' UCP database and how to locate and access DBE information.*

In addition to his responsibilities as Senior Civil Engineer, COTC's FTA DBELO also managed COTC's FHWA and FAA DBE Program compliance. COTC's DBELO was not available to be interviewed during this compliance review, however, based on a review of COTC's FTA DBE Program implementation and compliance, the DBELO did not adequately manage COTC's FTA DBE Program. During the site visit, the review team confirmed that the DBELO had not analyzed COTC's progress toward FTA DBE goal attainment, provided DBEs with information and assistance in preparing bids on FTA-funded contracting opportunities, planned and participated in DBE training seminars for staff, or provided outreach to DBEs and community organizations to advise them of FTA-funded contracting opportunities. Accordingly, COTC must identify another staff member with the ability to more effectively fulfill the DBELO responsibilities for its FTA DBE program.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights confirmation that it has designated a new DBELO for its FTA DBE Program.

## **6.4 DBE Financial Institutions**

### **Basic Requirement (49 CFR Part 26.27)**

Recipients must investigate the existence of DBE financial institutions and make efforts to use them. Recipients must also encourage prime contractors to use these DBE financial institutions.

### **Discussion**

During this compliance review, no deficiencies were found with this requirement. FTA issued advisory comments with this requirement. COTC's DBE Program Plan complied with 49 CFR 26.27 in how it described its process for identifying and making a reasonable effort to use and encourage its prime contractors to use DBE financial institutions. In its Plan, COTC described how it searched for minority-owned banks in the Federal Reserve Board's Federal Statistical Release of Minority-Owned Depository Institutions (FSR) report, and identified seven minority-owned banks. During the site visit, the review team informed COTC that since COTC last researched the availability of DBE financial institutions, two of the seven banks listed in its Plan were no longer on the FSR report, and one bank not previously listed by COTC now appeared on the FSR report. The review team advised COTC to periodically check the FSR report to ensure that information in its Plan is current.

The review team further advised COTC to document its efforts to evaluate minority-owned banks for its own use, and to share DBE financial institution information with its prime contractors for their evaluation and possible use.

Finally, COTC's Plan stated, "The DBELO will use these sources to continue to solicit minority-owned banks to participate in the TRACY DBE Program." COTC was advised that 49 CFR Part



26.27 does not require the DBE financial institution to be a certified DBE; rather, it requires COTC to investigate the availability of DBE institutions (certified or not) and make reasonable efforts to use these institutions, as well as encourage prime contractors to do the same.

### **Advisory Comments**

COTC should describe its procedures for periodically checking the FSR report to ensure the list of minority-owned banks in its DBE Program Plan is current. COTC should document its efforts to evaluate and consider the use of minority-owned banks for its own purposes. COTC should document its efforts to share information on DBE financial institutions with its prime contractors and encourage their use of minority-owned banks.

## **6.5 DBE Directory**

### **Basic Requirement (49 CFR Part 26.31)**

A DBE directory must be available to interested parties that includes the addresses, phone numbers, and types of work each DBE is certified to perform. The recipient must update the directory at least annually, and it must be available to contractors and the public upon request.

### **Discussion**

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. In its DBE Program Plan, COTC addressed the DBE Directory requirement as follows:

*The California Department of Transportation (Caltrans) maintains a directory identifying all firms certified to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Caltrans revises the Directory daily. Caltrans makes the Directory available on their website at <http://www.dot.ca.gov/hglbep/ucp.htm>.*

COTC referenced the Caltrans directory (CUCP), but it did not describe how it used the Directory in its Plan.

### **Advisory Comments**

COTC should update its DBE Program Plan with a description of how it uses the CUCP in the administration of its DBE program.

## **6.6 Overconcentration**

### **Basic Requirement (49 CFR Part 26.33)**

Recipients must determine if overconcentration of DBE firms exists and address the problem, if necessary.

## Discussion

During this compliance review, deficiencies were found with this requirement. COTC's 2012 DBE Program Plan did not describe the measures it would take to address overconcentration should it occur. COTC stated that it determined that there was no overconcentration, but it had not conducted an analysis to support their determination.

## Corrective Actions and Schedules

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes its procedures for analyzing and determining if overconcentration exists, and the measures taken to address the occurrence of overconcentration (e.g., use of incentives, technical assistance, business development programs, and mentor-protégé programs).

## 6.7 Business Development Programs

### Basic Requirement (49 CFR Part 26.35)

Recipients 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 compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. COTC had not developed the optional BDP, however, it referenced in its Plan the eventual (i.e., post 2012 DBE Plan approval) implementation of a "Small Business Program" that would function similar to a Small Business Enterprise Support Services (SBSS) program. Rather than implement a SBSS, the review team advised COTC to develop a Small Business Element, as required by 49 CFR Part 26.39. An SBSS is often implemented as a complement to a DBE Support Service Program, and the two programs are often elements of a BDP. Given the limited resources available to COTC and the small size and complexity of its FTA DBE program, the review team recommended COTC implement a Small Business Element per 49 CFR Part 26.39, as it will likely have the greatest immediate impact on the success of COTC's FTA DBE Program. During the site visit, the review team described the differences between an optional SBSS program and the Small Business Element requirement found in 49 CFR Part 26.39.

## Advisory Comments

As an advisory comment, COTC should concentrate its efforts on developing a Small Business Element, as required by 49 CFR Part 26.39. As COTC's DBE program grows, it should consider developing a BDP.

## **6.8 Determining/Meeting Goals**

### **A) Calculation**

#### **Basic Requirement (49 CFR Part 26.45)**

To begin the goal-setting process, recipients must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, recipients must examine all other available evidence to determine whether goals warrant an adjustment. Adjustments are not required and recipients should not make adjustments without supporting evidence.

#### **Discussion**

During this compliance review, deficiencies were found with this requirement. FTA also issued an advisory comment with this requirement. COTC's current DBE goal was due on August 1, 2016, for the triennial period FY2017–FY2019. COTC received an extension from FTA on its goal submission deadline until September 30, 2016, however, COTC submitted its DBE goal methodology late on November 15, 2016. FTA placed COTC's DBE Goal in expired status on September 30, 2016. At the time of the site visit, COTC's DBE goal remained in expired status pending the implementation of corrective actions required by FTA in a letter dated November 25, 2016. In summary, those corrective actions included addressing consultation and public participation concerns, Step 2 goal adjustments based on past participation, and the use of race-conscious goals when unable to achieve goals through race-neutral means. The deficiencies in COTC's DBE Goal Methodology that required these corrective actions were confirmed by the review team.

In addition to the concerns expressed by FTA, during the site visit the review team discussed the fact that COTC was not including all potential FTA-funded contracting opportunities when establishing its Step 1 DBE goal and assisted in identifying additional expenditures eligible for DBE participation (e.g., printing, security, and janitorial and facility maintenance expenditures). COTC can perhaps improve its DBE participation over time by considering all potential FTA-funded contracting opportunities when setting DBE goals, along with improving its outreach to the minority- and woman-owned business community and fully implementing recommended race-neutral goal attainment measures, as discussed in the following sections.

During the site visit, COTC explained that an outside consultant developed its triennial DBE goal. Based on interviews with COTC staff, there appeared to be insufficient understanding on the part of the staff of the DBE goal-setting process, and a lack of staff involvement in the development of FTA DBE goals. Should COTC continue using a consultant to develop its FTA DBE goals, it must ensure its consultant understands and incorporates FTA DBE goal considerations, and ensure that its DBELO and other staff responsible for managing FTA-funded projects understand and are sufficiently involved in the goal-setting process.

#### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail its procedures for evaluating all potential and projected FTA-funded contracting activities when calculating future triennial DBE goals, to include the involvement of or consultation with COTC transit staff familiar with all COTC transit program expenditures.

## **B) Public Participation**

### **Basic Requirement (49 CFR Part 26.45)**

In establishing an overall goal, recipients 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. Recipients must publish a notice announcing the overall goal on the recipients' official websites and may publish the notice in other media outlets with an optional 30-day public comment period.

### **Discussion**

During this compliance review, deficiencies were found with this requirement. COTC's public participation process included publishing its proposed goal as required by 49 CFR Part 26.45(g)(1)(iii) and 26.45(g)(2), and sending its proposed goal to the Tracy Chamber of Commerce, Tracy African American Association, San Joaquin Small Business Development Center, San Joaquin Hispanic Chamber of Commerce, Stockton Builders Exchange, Valley Builders Exchange, and Central Valley Asian-American Chamber of Commerce. COTC's public participation process did not include a consultative process as required by 49 CFR Part 26.45(g)(1)(i), and described as follows:

*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 your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.*

During the site visit, the review team provided technical assistance and best practices on how to engage the DBE business community in a consultative process, including:

- Holding a series of meetings in strategic locations throughout the City of Tracy and surrounding areas (i.e., public libraries, schools, community centers, and transit centers).
- Scheduling meetings at times small business owners can attend.
- Partnering with minority- and woman-owned advocacy groups to market, promote, and hold meetings.
- Communicating meeting locations and times through various mediums (i.e., online; targeted email blasts to DBE advocacy groups, bidders lists, CUCP directory; minority, general circulation, and business newspapers and other publications; and local churches).
- Ensure all meetings are accessible for individuals with disabilities.
- Provide translated information and materials and/or translators at meetings, as needed.

COTC must plan its consultative process far enough in advance of the August 1<sup>st</sup> triennial DBE goal submission deadline to allow time for the incorporation of public input received during the consultative process, as necessary and appropriate.

COTC must document its consultative process and describe its activities and outcomes in all triennial DBE goal submissions.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail its procedures for fulfilling the public participation requirements in 49 CFR Part 26.45(g)(1)(i). COTC's procedures must include recommended consultative process best practices documented in this report.

### **C) Race-Neutral DBE Participation**

#### **Basic Requirement (49 CFR Part 26.51)**

Recipients must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the Small Business Element described in 49 CFR Part 26.39 is a mandatory race-neutral measure. The regulations provide additional examples of how to reach this goal amount.

#### **Discussion**

During this compliance review, deficiencies were found with this requirement. In its 2012 DBE Program Plan, COTC referenced the portion of its triennial DBE goal it would attain through race-neutral means; however, it did not provide information on the race-neutral measures it would implement to achieve its goal. In its FY2017-FY2019 DBE goal methodology, COTC stated the following:

*The U.S. DOT regulations require that race/gender-neutral methods are used to the maximum extent feasible to achieve the DBE overall goal. The City of Tracy will monitor achievement during the year to determine whether the projected DBE participation is on target or midyear corrections are needed to achieve the race/gender-neutral goal. Given the low actual DBE participation achieved using only race/gender-neutral means, the City of Tracy may also set contract-specific DBE goals on FTA-assisted contracts to be awarded in Fiscal Year 2017 through Fiscal Year 2019 to meet the overall goal.*

*Because of the emphasis placed on race/gender-neutral methods, the City will also focus on developing race/gender-neutral methods for facilitating DBE participation. The City will advise prospective contractors of areas for possible subcontracting, and of the availability of ready, willing, and able subcontractors, including DBE firms, to perform such work. The City will monitor its progress during the course of the year and may establish contract-specific goals during the next reporting period if race/gender-neutral methods do not appear sufficient to achieve the overall DBE participation goals for Fiscal Year 2017 through Fiscal Year 2019.*

During the site visit, COTC did not provide documentation confirming the implementation of the race-neutral measures it stated it would implement.

The review team discussed the recommended race-neutral measures described in 49 CFR Part 26.51(b)(1-9) with COTC and provided suggestions on efforts it could undertake to comply with the Part and its own representation in its DBE goal methodology. Accordingly, COTC should include, implement, and document the following race-neutral measures in its FTA DBE program:

- *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 [Small Business Element] of this part.*
- *Providing technical assistance and other services.*
- *Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).*
- *Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractor.*

As referenced above, the review team also informed COTC of the need to develop a Small Business Element per 49 CFR Part 26.39, and in doing so, recommended that COTC implement and document the following strategies:

- *Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).*
- *On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.*
- *To meet the portion of [its] overall goal [it] project[s] to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.*

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit the following to the FTA Office of Civil Rights:

- An updated DBE Program Plan that describes in detail the race-neutral measures it will employ and how it will document related activities.
- A Small Business Element as required by 49 CFR Part 26.39. COTC's Small Business Element can be submitted as part of its updated DBE Program Plan.

### **D) Race-Conscious DBE Participation**

#### **Basic Requirement (49 CFR Part 26.51)**

The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

## Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. COTC did not use race-conscious goals (contract goals) to attain its overall DBE goal, however, in its 2012 DBE Program and FY2017-FY2019 DBE goal methodology, COTC stated it would use contract goals in the event it could not attain its overall DBE goal through race-neutral means. Although 49 CFR Part 26.51 allows for the use of contract goals in such situations, FTA recipients that fall under the jurisdiction of the Ninth Circuit Court of Appeals (including the State of California) must first justify the use of contract goals by referencing data in a disparity study conducted in its jurisdiction that confirms evidence of discrimination.

COTC referenced a 2007 Caltrans disparity study that supported the use of contract goals in Attachment 3 (FY2013-FY2015 DBE Goal Methodology) of its 2012 DBE Program Plan, however, this disparity study is out of date.

COTC's 2012 DBE Program Plan did not include a description of how COTC would monitor and adjust, as needed, its use of contract goals per 49 CFR Part 26.51(f)(1-4).

## Advisory Comments

COTC should update its DBE Program Plan describing all the conditions under which it will use contract goals. COTC should use contract goals to achieve its overall goal if all conditions are met. In addition, it is recommended that COTC update its DBE Program Plan describing how it will narrowly tailor its use of contract goals in the attainment of its overall goals by monitoring and adjusting its use of contract goals per 49 CFR Part 26.51(f)(1-4).

## E) Good Faith Efforts

### Basic Requirement (49 CFR Part 26.53)

Recipients may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFEs) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract, a description of the work each DBE will perform, the dollar amount of DBE participation, written commitment to use the DBE(s) submitted in response to the contract goal, written confirmation from each DBE listed, or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 5 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach it uses in its DBE Program Plan.

## Discussion

During this compliance review, no deficiencies were found with this requirement. In its 2012 DBE Program Plan, COTC documented Good Faith Efforts that complied with 49 CFR Part 26.53 requirements, however, because COTC did not use contract goals, COTC's Good Faith Efforts were not required. COTC's Good Faith Efforts documented in its 2012 DBE Program Plan included the requirement for bidders to submit their Good Faith Efforts as a matter of responsiveness, and to include at the time of bid submission, the following information:

1. *The names, addresses and certification numbers of DBE firms that will participate in the contract;*
2. *A description of the work that each DBE will perform;*
3. *The dollar amount of the participation of each DBE firm participating;*
4. *Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;*
5. *Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and*
6. *If the contract goal is not met, evidence of good faith efforts.*

### **Corrective Actions and Schedules**

FTA requires no corrective actions on the part of COTC for the Good Faith Effort requirement.

### **F) Protecting Against Termination for Convenience**

#### **Basic Requirements (49 CFR Parts 26.53 and 26.13)**

Recipients must implement appropriate mechanisms to ensure prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontractor with its own forces or those of an affiliate, or reducing the scope of DBE contract) without the transit agency's prior written consent. Failure to obtain written consent is a material breach of contract.

### **Discussion**

During this compliance review, deficiencies were found with this requirement. In the Good Faith Efforts section of its 2012 DBE Program Plan, COTC required prime contractors on contracts with contract goals to get prior approval from COTC before substituting a new DBE subcontractor for an existing DBE subcontractor that the prime contractor determined to be underperforming. However, COTC did not require prime contractors to get *written* approval before such substitution, as required by 49 CFR Part 26(f)(1)(i).

Although COTC addressed DBE subcontractor substitutions in its 2012 DBE program Plan, it did not specifically address protections against terminating DBEs for convenience in general (i.e., with or without a DBE substitute or replacement).

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes a section documenting COTC's provisions for protecting against termination for convenience. COTC's provisions must include protections from terminating DBEs for convenience with or without a DBE substitute or replacement. Provisions must also require prime contractors to obtain written approval from FTA before terminating or substituting DBE subcontractors on FTA-funded contracts with contract goals.



## **G) Counting DBE Participation**

### **Basic Requirement (49 CFR Part 26.55)**

Recipients must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. Recipients must review a bidder's submission to ensure the type and amount of participation are consistent with the items of work and quantities in the contract and that the bidder is only counting work performed by the DBE's own forces in accordance with the DBE requirements.

### **Discussion**

During this compliance review, deficiencies were found with this requirement. FTA also issued an advisory comment with this requirement. In the Counting DBE Participation section of its 2012 DBE Program Plan, COTC stated, "We will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55," but did not describe in its DBE Program Plan or during the site visit how it would do so. For example, COTC did not describe the frequency with which, or its method of, collecting and counting DBE participation data.

In the Monitoring and Enforcement Mechanisms section of its 2012 DBE Program Plan, COTC described the measures it would take to ensure the type and amount of participation was consistent with contract terms and that it was only counting work performed by the DBEs' own forces, as follows:

*TRACY will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by having the prime contractor provide documentation of work performed by DBEs including, but not limited to, invoice payments to DBEs by Prime Contractor detailing the type of work performed, date of performance, and payment amount. Our on-site inspector will also ensure that the correct subcontractor is performing the work.*

*TRACY will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.*

During the site visit, COTC did not provide documentation confirming it had implemented the stated monitoring and enforcement mechanism. For example, COTC did not have a process in place to review DBE prime contractor and subcontractor timesheets, invoices and related payments, inspect job site logs and records, or describe what it did to ensure DBEs performed a commercially useful function.

The review team provided technical assistance on how COTC could implement schedules, forms, checklists, and inspections to monitor and accurately count DBE participation.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail how it will meet the requirements found in 49 CFR Part 26.55. COTC must include a description of the frequency, methods, and tools (e.g., forms, checklists, etc.) it will use to collect and accurately count DBE participation data.

## **Advisory Comments**

COTC was advised to consolidate the description of its procedures for counting DBE participation in the “Counting DBE Participation” section of its updated DBE Program Plan.

## **H) Quotas**

### **Basic Requirements (49 CFR Part 26.43)**

Recipients cannot use quotas. Recipients may not use set-aside contracts unless they do not reasonably expect other methods to redress egregious instances of discrimination.

### **Discussion**

During this compliance review, no deficiencies were found with this requirement. In its 2012 DBE Program Plan, COTC stated it did not use quotas in the administration of its DBE program. A review of two recent COTC contracts, along with interviews with COTC staff, confirmed COTC did not use quotas in its contracting practices related to FTA-funded projects.

### **Corrective Actions and Schedules**

FTA requires no corrective actions for the Quotas requirement at this time.

## **6.9 Shortfall Analysis and Corrective Action Plan**

### **Basic Requirement (49 CFR Part 26.47)**

Recipients must conduct a shortfall analysis and implement a corrective action plan in any fiscal year they do not meet their overall DBE goal.

### **Discussion**

During this compliance review, deficiencies were found with this requirement. COTC’s overall DBE goal for the triennial period FY2014-FY2016 was 0.4%. COTC’s overall DBE goal for the triennial period FY2017-FY2019 was 7%. COTC did not meet either of its applicable DBE goals in any year between FY2015-FY2017 and did not conduct the required shortfall analyses and related corrective action plans. Per an FY2015 Triennial Review repeat finding, and as documented in Section 6.14 Record Keeping and Enforcements of this report, COTC was not submitting the required semi-annual Uniform Report of Payments and Commitments for several years. Accordingly, COTC was not tracking DBE goal attainment and conducting shortfall analyses and developing corrective action plans, as necessary. As corrective action, FTA required COTC to submit missing semi-annual reports and submit future semi-annual reports on time. Semi-annual reports submitted by COTC from FY2015-FY2017 all reported no DBE commitments or payments, documenting COTC’s failure to obtain its DBE participation goals for each of those years. COTC did not conduct the required shortfall analyses or develop corrective action plans for these years.

During the site visit, the review team reviewed the shortfall analysis and corrective action plan requirements described in 49 CFR Part 26.47(c)(1-2) with COTC.

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## Corrective Actions and Schedules

Within 60 days of the issuance of the final report, COTC must submit the following to the FTA Office of Civil Rights:

- A Shortfall analysis and corrective action plan for its FY2017 DBE participation goal shortfall. COTC's corrective action plan must include making available for future goal attainment all potential FTA-funding opportunities, improving its outreach to the DBE community, and implementing recommended race-neutral participation measures, including those in its Small Business Element.
- An updated DBE Program Plan that describes in detail its procedures for conducting shortfall analyses and developing corrective action plans, as required by 49 CFR Part 26.47(c)(1-2).

### 6.10 Transit Vehicle Manufacturers (TVMs)

#### Basic Requirement (49 CFR Part 26.49)

Recipients must require that each transit vehicle manufacturer (TVM) certify it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. Recipients should not include vehicle procurements in their DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. Recipients are also required to submit to FTA the name of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding an FTA-assisted vehicle contract.

#### Discussion

During this compliance review, deficiencies were found with this requirement. In its 2012 DBE Program Plan, COTC described the requirements for TVMs to submit and obtain approval for their DBE programs from FTA. COTC did not describe its procedures for confirming TVMs had done so and were eligible to bid on FTA-funded contracts. The review team showed COTC how it could confirm TVMs were eligible by reviewing the list of approved TVMs posted on FTA's website at <http://www.fta.dot.gov/civilrights/12891.html>, prior to contract award. COTC was further advised to print the list of eligible TVMs from the FTA TVM website at the time of confirmation and to keep such documentation in its procurement files, along with any other information or correspondence confirming TVM eligibility.

COTC must also have a process in place to notify FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by the most recent update to 49 CFR Part 26, dated November 3, 2014. For all future TVM purchases, COTC must notify FTA by entering all required information into FTA's online Transit Vehicle Award Reporting Form found at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

In 2017, COTC purchased five new 35-foot diesel buses from Gillig, LLC, but did not provide documentation confirming Gillig, LLC was an approved TVM by FTA. In addition, COTC did not notify FTA within 30 days after making the award to Gillig, LLC, as required. During the site visit, the review team along with COTC staff confirmed Gillig, LLC was on the list of approved TVMs published on FTA's website.

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## Corrective Actions and Schedules

Within 60 days of the issuance of the final report, COTC must submit to the following to the FTA Office of Civil Rights:

- An updated DBE Program Plan that includes procedures for confirming TVM eligibility prior to awarding contracts for transit vehicle purchases. COTC must also include procedures for notifying FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49. Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting Form.
- Notification of its recent award and purchase of its five new buses from Gillig, LLC via FTA's online Transit Vehicle Award Reporting Form found at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

### 6.11 Required Contract Provisions

#### A) Contract Assurance

##### Basic Requirement (49 CFR Part 26.13)

Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include nondiscrimination clauses detailed by the DBE regulations.

##### Discussion

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. U.S. DOT 49 CFR Part 26.13 requires the inclusion of the following clause in all DOT-assisted contracts:

*The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:*

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

COTC did not include the entire assurance in its DBE Program Plan or its contracts reviewed onsite (2011 MV Transit operations contract, 2106 Ride Right, LLC operations contract, and 2016 Gillig, LLC bus purchase contract), omitting the four potential remedies listed in the clause above. Although COTC included a statement in all prime contracts reviewed onsite requiring prime contractors to include the required contract assurance in all subcontracts, it did not have a

process in place for confirming prime contractor compliance with this requirement (e.g., random review of subcontracts).

### **Advisory Comments**

COTC was advised to update its DBE Program Plan to include the entire DBE non-discrimination assurance and to include its updated assurance in all future contractor, subrecipient, and subcontractor agreements. COTC was also advised to describe its procedures for ensuring all subcontracts included the required contract assurance in its DBE Program Plan and implement said procedures.

### **B) Prompt Payment**

#### **Basic Requirement (49 CFR Part 26.29)**

Recipients 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 subcontractor's work is satisfactorily completed.

#### **Discussion**

During this compliance review, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. U.S. DOT 49 CFR Part 26.29(a-b) states the following:

*(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.*

*(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.*

COTC's prompt payment provisions complied with 49 CFR Part 26.29 requirements, however, the provision included in its 2012 DBE Program Plan required payment and return of retainage to occur within 10 days, and the provision included in its contracts required payment and return of retainage to occur within 30 days, as follows:

In its 2012 DBE Program Plan, COTC stated the following:

*TRACY will include the following clause in each DOT-assisted prime contract:*

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contract receives from TRACY. The prime contractor agrees further to return retainage payments to each subcontractor 10 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TRACY. This clause applies to both DBE and nonDBE subcontracts.*

In its Professional Services Agreement with MV Public Transportation, Inc., COTC included the following:

*The CITY shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the Agreement work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by the agency.*

### **Advisory Comments**

COTC was advised to ensure its prompt payment and retainage provisions in its DBE Program Plan are consistent with the same provisions included in its agreements with subrecipients, and prime contractors, and in agreements between prime contractors and subcontractors.

### **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. Recipients should use breach of contract remedies as appropriate.

#### **Discussion**

During this compliance review, an advisory comment was issued with this requirement. In its 2012 DBE Program Plan, COTC provided for breach of contract action pursuant to the terms of the contract; responsibility determinations on future contracts; and referral of any false, fraudulent, or dishonest conduct in connection with the program to state and federal authorities for debarment and suspension or criminal prosecution actions. A review of three contracts (2011 MV Transit operations contract, 2106 Ride Right, LLC operations contract, and 2016 Gillig, LLC bus purchase contract) confirmed the inclusion of the referenced legal remedies.

COTC did not have a process in place for ensuring that prime contractors included COTC's legal remedies in all FTA-funded subcontracts (e.g., random review of subcontracts).

#### **Advisory Comment**

COTC was advised to describe its procedures for ensuring all FTA-funded subcontracts include the legal remedies documented in its DBE Program Plan, and to implement said procedures.

## **6.12 Certification Standards**

#### **Basic Requirements (49 CFR Parts 26.67–26.71)**

The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory

standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

### **Discussion**

COTC is not a certifying participant of the CUCP; therefore, this requirement is not applicable.

### **Corrective Actions and Schedules**

FTA requires no corrective actions on the part of COTC for the Certification Standards requirement.

## **6.13 Certification Procedures**

### **Basic Requirements (49 CFR Parts 26.83–26.86)**

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. DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process. The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR Parts 26.85(c)-(g). The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

### **Discussion**

COTC is not a certifying participant of the CUCP; therefore, this requirement is not applicable.

### **Corrective Actions and Schedules**

FTA requires no corrective actions on the part of COTC for the Certification Procedures requirement.

## **6.14 Record Keeping and Enforcements**

### **Basic Requirements (49 CFR Parts 26.11 and 26.37)**

Recipients must provide data about their DBE program to FTA on a regular basis. Recipients must submit Semi-Annual Uniform Reports on June 1 and December 1 of each fiscal year by using the FTA electronic grants management system, unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, nonminority women, and minority men to the DOT Office of Civil Rights by January 1 of each year.) In addition, recipients must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. Recipients must conduct enforcement measures in conjunction with monitoring contract performance for purposes such as closeout reviews for contracts.

Lastly, recipients 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 compliance review, deficiencies were found with this requirement. FTA issued COTC a finding during its FY2015 Triennial Review for not submitting DBE Uniform Reports of Commitments and Payments semi-annually. This was a repeat finding from COTC's FY2012 Triennial Review. As corrective action, in addition to submitting missing reports, COTC was required to develop and implement procedures to ensure future reports were submitted on time. In response, COTC prepared the required procedures, however, during the site visit the review team confirmed the procedures were never fully implemented and were out-of-date. For example, the procedures reference the responsibilities of a "Management Analyst," which included consulting with the COTC DBELO to obtain DBE commitments and payments, completing the semi-annual reports, and uploading the reports to "TEAM." During the site visit, COTC confirmed this process was not in effect. In addition, FTA's Transportation Electronic Award Management (TEAM) system has been replaced by TrAMS.

A review of COTC semi-annual reports in TrAMS from FY2015-FY2017 showed that COTC had submitted the required reports, however, COTC consistently submitted reports (due June 1 and December 1) late. In addition, although COTC did not have any new DBE commitments or payments to report during this period, it inaccurately reported commitments of \$2,438,414 and payments of \$545,771 to DBEs in its December 2016 semi-annual report. Upon examination, these commitments and payments went to non-DBEs and should have been reported accordingly.

Although COTC stated in its 2012 DBE Program Plan that it would develop a bidders list, at the time of the site visit, it had not done so. The review team provided technical assistance on how to collect information from the DBE and small business communities when conducting outreach and public participation efforts, at bid conferences, through inquiries and "opt-ins" received via its website, and from procurements conducted by other City of Tracy agencies for goods and services similar to those needed by its transit operation.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, COTC must submit the following to the FTA Office of Civil Rights:

- Updated procedures for submitting semi-annual Uniform Reports of Commitments and Payments accurately and on time.
- An updated DBE Program Plan that includes the updated procedures for submitting semi-annual Uniform Reports of Commitments and Payments.
- A revised December 2016 semi-annual report that accurately reflects commitments and payments to DBEs and non-DBEs.
- A draft bidders list that meets the requirements of 49 CRF Part 26.11(c) along with timelines for finalizing its bidders list, and procedures for maintaining and updating its bidders list.



## 7. Summary of Findings

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	DBE Program Plan	26.21	D	<p><b>Findings:</b> COTC's DBE Program Plan was out of date, did not sufficiently address all required elements, and did not reflect actual practice.</p> <p><b>Corrective Actions:</b> COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes provisions for Protecting Against Termination of Convenience, provisions for conducting required Shortfall Analyses and Corrective Action Plans, and describes in detail its implementation of the requirements described in 49 CFR Part 26 for the FTA program.</p>	60 Days
2.	DBE Policy Statement	26.23	D	<p><b>Findings:</b> COTC's DBE Policy Statement was out of date. COTC did not distribute its DBE Policy Statement as it said it would.</p> <p><b>Corrective Actions:</b> COTC must submit to the FTA Office of Civil Rights an updated DBE Policy Statement signed by its current City Manager. In addition, COTC must include in its updated statement a description of how it will distribute its statement, to only include methods of distribution it can implement, and provide documentation confirming it has distributed its statement accordingly, and as required by 49 CFR Part 26.23. COTC's updated DBE Policy Statement must be included in its updated DBE Program Plan.</p>	60 Days
3.	DBE Liaison Officer	26.25	D	<p><b>Findings:</b> Inadequate resources and/or coordination to administer DBE program.</p> <p><b>Corrective Actions:</b> COTC must submit to the FTA Office of Civil Rights confirmation that it has designated a new DBELO for its FTA DBE Program.</p>	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
4.	DBE Financial Institutions	26.27	AC	COTC should describe its procedures for periodically checking the FSR report to ensure the list of minority-owned banks in its DBE Program Plan is current. COTC should document its efforts to evaluate and consider the use of minority-owned banks for its own purposes. COTC should document its efforts to share information on DBE financial institutions with its prime contractors and encourage their use of minority-owned banks.	
5.	DBE Directory	26.31	AC	COTC should update its DBE Program Plan with a description of how it uses the California UCP in the administration of its DBE program.	
6.	Overconcentration	26.33	D	<p><b>Findings:</b> Overconcentration analysis incomplete.</p> <p><b>Corrective Actions:</b> COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes its procedures for analyzing and determining if overconcentration exists, and the measures taken to address the occurrence of overconcentration.</p>	60 Days
7.	Business Development Programs	26.35	AC	As an advisory comment, COTC should concentrate its efforts on developing a Small Business Element, as required by 49 CFR Part 26.39. As COTC's DBE program grows, it should consider developing a BDP.	
8.	Determining/Meeting Goals				
8.a	Calculation	26.45	D	<p><b>Findings:</b> COTC did not consider all potential FTA-funded contracting opportunities in its FY2017-FY2019 goal methodology.</p> <p><b>Corrective Actions:</b> Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail its procedures for evaluating all potential and projected FTA-funded contracting activities when calculating future triennial DBE goals, to include the involvement of or consultation with COTC transit staff familiar with all COTC transit program expenditures.</p>	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
8.b	Public Participation	26.45	D	<p><b>Findings:</b> DBE public participation process deficiencies.</p> <p><b>Corrective Actions:</b> Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail its procedures for fulfilling the public participation requirements in 49 CFR Part 26.45(g)(1)(i). COTC's procedures must include recommended consultative process best practices documented in this report.</p>	60 Days
8.c	Race-Neutral DBE Participation	26.51	D	<p><b>Findings:</b> Inadequate implementation of race-neutral measures. Small Business Element not submitted and/or implemented.</p> <p><b>Corrective Actions:</b> COTC must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• An updated DBE Program Plan that describes in detail the race-neutral measures it will employ and how it will document related activities.</li> <li>• An updated FY2017-FY2019 DBE goal methodology that describes in detail the race-neutral measures it plans to employ during the triennial period. The measures included in the goal setting methodology must also be documented in the updated COTC DBE Program Plan.</li> <li>• A Small Business Element as required by 49 CFR Part 26.39. COTC's Small Business Element can be submitted as part of its updated DBE Program Plan.</li> </ul>	60 Days
8.d	Race-Conscious DBE Participation	26.51	AC	<p>COTC should update its DBE Program Plan describing all the conditions under which it will use contract goals. COTC should use contract goals to achieve its overall goal if all conditions are met. In addition, it is recommended that COTC update its DBE Program Plan describing how it will narrowly tailor its use of contract goals in the attainment of its overall goals by monitoring and adjusting its use of contract goals per 49 CFR Part 26.51(f)(1-4).</p>	
8.e	Good Faith Efforts	26.53	ND		

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
8.f	Protecting Against Termination for Convenience	26.53 and 26.13	D	<p><b>Findings:</b> COTC's provisions for protecting against termination for convenience were lacking.</p> <p><b>Corrective Actions:</b> Within 60 days of the issuance of the final report, COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes a section documenting COTCs provisions for protecting against termination for convenience. COTC's provisions must include protections from terminating DBEs for convenience with or without a DBE substitute or replacement. Provisions must also require prime contractors to obtain written approval from FTA before terminating or substituting DBE subcontractors on FTA-funded contracts with contract goals.</p>	60 Days
8.g	Counting DBE Participation	26.55	D, AC	<p><b>Findings:</b> Recipient does not monitor DBE compliance</p> <p><b>Corrective Actions:</b> COTC must submit to the FTA Office of Civil Rights an updated DBE Program Plan that describes in detail how it will meet the requirements found in 49 CFR Part 26.55. COTC must include a description of the frequency, methods, and tools (i.e., forms, checklists, etc.) it will use to collect and accurately count DBE participation data.</p> <p><b>Advisory Comments:</b> COTC was advised to consolidate the description of its procedures for counting DBE participation in the "Counting DBE Participation" section of its updated DBE Program Plan.</p>	60 Days
8.h	Quotas	26.43	ND		

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
9.	Shortfall Analysis and Corrective Action Plan	26.47	D	<p><b>Findings:</b> Shortfall analysis or corrective steps inadequate.</p> <p><b>Corrective Actions:</b> COTC must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• A Shortfall analysis and corrective action plan for its FY2017 DBE participation goal shortfall. COTC’s corrective action plan must include making available for future goal attainment all potential FTA-funding opportunities, improving its outreach to the DBE community, and implementing recommended race-neutral participation measures, including those in its Small Business Element.</li> <li>• An updated DBE Program Plan that describes in detail its procedures for conducting shortfall analyses and developing corrective action plans, as required by 49 CFR Part 26.47(c)(1-2).</li> </ul>	60 Days
10.	Transit Vehicle Manufacturers (TVMs)	26.49	D	<p><b>Findings:</b> COTC did not address current TVM requirements in its DBE Program Plan.</p> <p><b>Corrective Actions:</b> COTC must submit to the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• An updated DBE Program Plan that includes procedures for confirming TVM eligibility prior to awarding contracts for transit vehicle purchases. COTC must also include procedures for notifying FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49. Notification must be made by entering all required information into FTA’s online Transit Vehicle Award Reporting Form.</li> <li>• of its recent award and purchase of its five new buses from Gillig, LLC via FTA’s online Transit Vehicle Award Reporting Form found at <a href="https://www.surveymonkey.com/r/vehicleawardreportsurvey">https://www.surveymonkey.com/r/vehicleawardreportsurvey</a>.</li> </ul>	60 Days
11.	Required Contract Provisions and Enforcements				

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
11.a	Contract Assurance	26.13	AC	COTC was advised to update its DBE Program Plan to include the entire DBE non-discrimination assurance and to include its updated assurance in all future contractor, subrecipient, and subcontractor agreements. COTC was also advised to describe and implement procedures for ensuring all FTA-funded subcontracts include the required contract assurance.	
11.b	Prompt Payment	26.29	AC	COTC was advised to ensure its prompt payment and retainage provisions in its DBE Program Plan are consistent with the same provisions included in its agreements with subrecipients, and prime contractors, and in agreements between prime contractors and subcontractors.	
11.c	Legal Remedies	26.37	AC	COTC was advised to describe its procedures for ensuring all FTA-funded subcontracts include the legal remedies documented in its DBE Program Plan, and to implement said procedures.	
12.	Certification Standards	26.67-26.71	ND		
13.	Certification Procedures	26.83-26.86	ND		
14.	Record Keeping and Enforcements	26.11 and 26.37	D	<p><b>Finding:</b> COTC did not submit semi-annual reports, as required.</p> <p><b>Corrective Actions:</b> COTC must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> <li>• Updated procedures for submitting semi-annual Uniform Reports of Commitments and Payments accurately and on time.</li> <li>• An updated DBE Program Plan that includes the updated procedures for submitting semi-annual Uniform Reports of Commitments and Payments.</li> <li>• A revised December 2016 semi-annual report that accurately reflects commitments and payments to DBEs and non-DBEs.</li> <li>• A draft bidders list that meets the requirements of 49 CFR Part 26.11(c) along with timelines for finalizing its bidders list, and procedures for maintaining and updating its bidders list.</li> </ul>	60 Days

Findings at the time of the site visit: ND = no deficiencies found; D = deficiency; AC = advisory comment.

## **ATTACHMENT A – FTA NOTIFICATION LETTER TO COTC**



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

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

August 24, 2017

Mr. Troy Brown  
City Manager  
City of Tracy, California  
333 Civic Center Plaza  
Tracy, CA 95376

Dear Mr. Brown:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the City of Tracy (COTC) has been selected for a review of its overall DBE program to take place October 10-12, 2017.

The purpose of this review will be to determine whether COTC is honoring its commitment, as represented by certification to FTA, to comply with all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, and an exit conference. FTA has engaged the services of the DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: Maxine Marshall, John Potts, Donald Lucas, Gregory Campbell, and Khalique Davis. Please do not remove these individuals. FTA will do so at the close of the review. The DMP team and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled for **October 10, 2017 at 9:00 a.m.** to introduce the DMP team and FTA representatives to COTC. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. Please let us know if you will designate a member of your staff to serve as COTC's liaison with the review team and to coordinate the on-site review and address questions that may arise during the visit.



So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward soft copy versions of these materials to the following contact person:

Donald G. Lucas  
The DMP Group, LLC  
2233 Wisconsin Avenue NW, Suite 228  
(202) 726-2630  
*donald.lucas@thedmpgroup.com*

We request the exit conference be scheduled for **October 12, 2017 at 4:00 p.m.** to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Reports, when issued to COTC, will be considered public documents subject to release under the Freedom of Information Act, upon request.

COTC representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Janelle Hinton, Equal Opportunity Specialist, for this compliance review, at 202-366-9259 or via e-mail at [janelle.hinton@dot.gov](mailto:janelle.hinton@dot.gov).

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day  
Program Manager for Policy & Technical Assistance

cc: Leslie T. Rogers, Regional Administrator, FTA Region 9  
Lynette Little, Regional Civil Rights Officer, FTA Region 9  
Janelle Hinton, Equal Opportunity Specialist, FTA Headquarters  
Ed Lovell, Management Analyst II, City of Tracy  
Donald Lucas, Lead Reviewer, The DMP Group

City of Tracy, California  
Disadvantaged Business Enterprise Program Compliance Review

**Enclosure 1**

**You must submit the following information to the DMP contact person within 21 calendar days from the date of this letter.**

1. Current DBE Program Plan (which should include COTC's organization chart).
2. Most recent DBE goal setting methodology submissions, semiannual reports of DBE Attainment (three years of submissions), and/or quarterly reports of ARRA DBE attainment.
3. DBE goal shortfall analyses and corrective action plans for the most recent three Federal fiscal years (FY 2014- FY 2016) in which COTC did not meet its DBE goal.
4. Current Memorandum of Understanding or similar documents for COTC's participation in the Unified Certification Program, if applicable.
5. The identification of firms, if any, that have worked on projects sponsored by the grantee who have subsequently graduated from their DBE program (i.e., exceeded the threshold dollar amounts and are no longer certified).
6. Any additional certification criteria/guidelines used by COTC in determining DBE eligibility, if applicable.
7. Current COTC DBE Directory.
8. Information identifying FTA funded contracts awarded during the current and at least two preceding Federal Fiscal Years (the information should show the names of Prime and DBE participants, the scope of work, and the amounts awarded and actually paid to each DBE, etc.).
9. Documentation showing/establishing the "Good Faith Efforts" criteria established by COTC, including verification that firms named on projects sponsored by the grantee are certified by the California Unified Certification Program.
10. Procedures for monitoring work committed to DBEs is actually performed by those DBEs (i.e., prompt payment procedures and verification process, and monitoring and enforcement mechanisms).
11. Procedures for monitoring and addressing issues of overconcentration. Description of any occurrences of overconcentration in the last three years.
12. Small Business element as implemented by COTC.

City of Tracy, California  
Disadvantaged Business Enterprise Program Compliance Review

13. Description of outreach to DBE community, including a list of specific outreach efforts in the past three years.
14. Upcoming and/or anticipated DBE contracting opportunities, if any.
15. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the complete/executed contract between your agency and the transit vehicle manufacturer.
16. FTA-assisted transit vehicle requests for proposals (RFPs) for the last five (5) years.
17. Shortfall analyses and corrective action plans for the last three (3) years, if applicable.
18. Names, titles, telephone numbers, and email addresses of interested parties (external organizations) with which COTC has interacted on the DBE program issues.
19. Any complaints received or lawsuits filed concerning COTC's DBE program over the past five (5) years.
20. The DBELO official position description.
21. Implemented procedure to ensure that all future DBE Uniform Reports are submitted accurately and on time, as required in the COTC FY 2015 Triennial Review final report, dated June 15, 2015.
22. Other pertinent information determined by COTC staff to be pertinent and demonstrative of its DBE compliance efforts.

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## **ATTACHMENT B – COTC RESPONSE TO DRAFT REPORT**

On February 22, 2018, COTC provided the following corrections to the description of its organizational structure in section 4.1 of the draft report.

#### 4.1 Introduction to City of Tracy and Organizational Structure

The City of Tracy is governed by a city council comprised of the City's mayor and four council members. The executive functions of the City's government are the responsibility of the City Manager who is responsible for the following ~~seven-eight~~ major government functions: Police Department, Fire Department, Public Works Department, Development Services, Parks and Recreation ~~and Cultural Arts~~, Administrative Services ~~Finance~~ Department, Human Resources Department, and Utilities. Each major government function is further divided into several operational divisions and municipal programs. The ~~Community Services~~ Transit Division within the ~~Public Works~~ Parks and Recreation Department administered the transit program. The heads of the ~~seven-eight~~ departments reported to the City Manager who reported to the city council. Other governmental functions included the City Treasurer, City Attorney, and Boards and Commissions.