

FTA

FEDERAL TRANSIT ADMINISTRATION

Greater Cleveland Regional Transit Authority Disadvantaged Business Enterprise Program Compliance Review

Final Report
March 2019



U.S. Department of Transportation
Federal Transit Administration

This page intentionally left blank to facilitate duplex printing.

Table of Contents

Executive Summary.....	1
1. General Information	3
2. Jurisdiction and Authorities	5
3. Purpose and Objectives	7
3.1 Purpose	7
3.2 Objectives	7
4. Background Information	9
4.1 Introduction to GCRTA and Organizational Structure	9
4.2 Budget and FTA-Assisted Projects	10
4.3 DBE Program	13
5. Scope and Methodology.....	15
5.1 Scope.....	15
5.2 Methodology	16
5.3 Stakeholder Interviews	17
6. Findings and Advisory Comments	21
6.1 DBE Program Plan.....	21
6.2 DBE Policy Statement	23
6.3 DBE Liaison Officer	23
6.4 DBE Financial Institutions	24
6.5 DBE Directory	26
6.6 Overconcentration	27
6.7 Business Development Programs	28
6.8 Determining/Meeting Goals.....	28
6.9 Shortfall Analysis and Corrective Action Plan.....	43
6.10 Transit Vehicle Manufacturers (TVMs).....	47
6.11 Required Contract Provisions	48
6.12 Certification Standards	52
6.13 Certification Procedures.....	53
6.14 Record Keeping and Enforcements	55

7. Summary of Findings	59
8. Attendee List.....	69
ATTACHMENT A – FTA NOTIFICATION LETTER TO GCRTA	71
ATTACHMENT B – GCRTA RESPONSE TO DRAFT REPORT	77

Executive Summary

Objective and Methodology – This report details the findings of a compliance review of the Greater Cleveland Regional Transit Authority’s (GCRTA) 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 and analyzed documents and information from the Federal Transit Administration (FTA) and GCRTA; and (3) interviewed GCRTA officials, DBE firm representatives, prime contractor representatives, and community-based organizations that advocate on behalf of minority- and woman-owned businesses. The four-day review included interviews, assessments of data collection systems, and a review of program and contract documents.

GCRTA’s DBE program includes the following positive program elements –

Positive Program Elements

- **Good Faith Efforts** – GCRTA effectively implemented required Good Faith Efforts requirements.
- **Counting DBE Participation** – GCRTA effectively implemented its procedures for counting DBE participation.
- **Legal Remedies** – GCRTA implemented comprehensive legal remedies to program noncompliance.
- **Protecting Against Termination for Convenience** – GCRTA effectively implemented requirements to prevent prime contractors from terminating DBE subcontractors for convenience.

The Program has the following administrative deficiencies –

Administrative Deficiencies

- **DBE Program Plan** – GCRTA’s Program Plan was out of date (i.e., it contained an outdated DBE Policy Statement and organization chart and referenced FTA’s Transportation Electronic Award Management [TEAM] system), no longer in use.
- **DBE Policy Statement** – GCRTA’s DBE Policy Statement was not signed by its current Chief Executive Officer/General Manager and referenced the name of its former DBE Liaison Officer.
- **DBE Directory** – GCRTA’s description of DBE Directory management and administration did not reflect current procedures.
- **Transit Vehicle Manufacturers (TVMs)** – GCRTA did not document its procedures in place to confirm TVM eligibility prior to contract award or procedures to report TVM awards to FTA within 30 days after awarding a TVM contract in its DBE Program Plan.
- **Contract Assurance** – GCRTA did not include the required nondiscrimination assurance in its entirety in all FTA-assisted contracts or subcontracts.
- **Certification Procedures** – GCRTA did not clearly describe the Ohio Unified Certification Program (UCP) online application process in its DBE Program Plan or on its website.

The Program has the following substantive deficiencies –**Substantive Deficiencies**

- **DBE Program Plan** – GCRTA's DBE Program Plan did not contain procedures for Shortfall Analysis and Corrective Action Plans and Protecting Against Termination for Convenience requirements.
- **Overconcentration** – GCRTA did not have a process for evaluating the occurrence of overconcentration or addressing overconcentration if it occurs.
- **Goal Calculation** – GCRTA's FY 2019–21 Step 1 calculation included past performance considerations, and its method for determining the relative availability of ready, willing, and able DBEs included market area inconsistencies and source data applicability issues.
- **Public Participation** – GCRTA did not provide documentation confirming it satisfied consultation requirements when establishing its FY 2019–21 goal.
- **Race-Neutral Measures** – GCRTA did not adequately implement required race-neutral measures and did not document its race-neutral measures in its DBE Program Plan, nor did it include several of the measures described in 49 CFR Part 26.
- **Fostering Small Business Participation** – GCRTA's efforts to foster small business participation were lacking and did not include several of the measures recommended in 49 CFR Part 26.39.
- **Race-Conscious DBE Participation** – GCRTA had not taken adequate corrective action to close a 2016 Triennial Review deficiency related to reducing the use of contract goals after exceeding overall goals for two consecutive years (FY 2013 and FY 2014). GCRTA did not adequately adjust race-conscious goals after exceeding its overall goals in FY 2015 and FY 2016.
- **Prompt Payment** – GCRTA did not have a process for monitoring and confirming that prime contractors paid DBE subcontractors per its prompt payment policy.
- **Certification Standards** – GCRTA's standards for business size and personal net worth were out of date.
- **Certification Procedures** – GCRTA's DBE Program Plan did not contain procedures for interstate certification. Some of GCRTA's applicant certification files were incomplete.
- **Record Keeping and Enforcements** – GCRTA did not report actual payments to DBEs on its FY 2016, FY 2017, and FY 2018 Semi-Annual Uniform Reports.

GCRTA's DBE goal attainment fluctuated over the past three fiscal years, exceeding its goal in FY 2015 and FY 2016 and experiencing a shortfall in FY 2017. To encourage the attainment of future goals and the implementation of GCRTA's DBE program in good faith, this report highlights several steps to help ensure GCRTA's compliance with 49 CFR Part 26 and the overall success of its DBE program.

I. General Information

This chapter provides basic information concerning this compliance review of GCRTA. Information on GCRTA, the review team, and the dates of the on-site portion of the review are in the table below.

Grant Recipient:	Greater Cleveland Regional Transit Authority
City/State:	Cleveland, OH
Grantee Number:	1237
Executive Official:	Floun'say Caver
On-site Liaison:	Carl Kirkland
Dates of On-site Visit:	September 18–21, 2018
Site Visit Location:	1240 West 6th Street Cleveland, Ohio 44113-1302

This page intentionally left blank to facilitate duplex printing.

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."

GCRTA is the recipient of one or more federal transit grants, loans, and/or contracts that result in contracting opportunities exceeding \$250,000. Hence, GCRTA 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 GCRTA's DBE program and were the basis for this compliance review.

This page intentionally left blank to facilitate duplex printing.

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 GCRTA's DBE program is necessary.

The primary purpose of the compliance review is to determine the extent to which GCRTA 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 GCRTA'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 GCRTA is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of GCRTA'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 GCRTA's DBE Program Plan from a variety of sources, including DBE program managers, other GCRTA management personnel, DBEs, prime contractors, and other stakeholders.

4. Background Information

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

4.1 Introduction to GCRTA and Organizational Structure

GCRTA was established on December 30, 1974, to provide transit services in the City of Cleveland and other communities in Cuyahoga County. Operations began in September 1975. GCRTA is governed by a 10-member Board of Trustees. The City of Cleveland appoints four members; Cuyahoga County appoints three members, one of whom must be a resident of the City of Cleveland; and the mayors and city managers of suburban communities appoint three members. Members serve 3-year staggered terms. Annually, the Board selects a President and Vice President. GCRTA's executive functions are the responsibility of the Chief Executive Officer/General Manager, who oversees an organization of nine departments and divisions: Internal Audit, Office of Management and Budget, Information Technology, Marketing and Communications, Operations, Finance and Administration, Engineering Project Management, Legal Affairs, and Human Resources. Six of the nine departments/divisions are further divided into 29 functional units. The Office of Business Development within the Finance and Administration Division is responsible for management and administration of the DBE program.

The population of GCRTA's service area is approximately 1.4 million persons. GCRTA operates a multimodal network that includes fixed-route bus service, the HealthLine bus rapid transit (BRT), light rail and heavy rail rapid transit, and Americans with Disabilities Act (ADA) complementary paratransit service. GCRTA directly operates all fixed-route bus and rail service. Approximately two-thirds of all ADA complementary paratransit service is directly operated. The balance is operated by three contractors: Provide-a-Ride, Senior Transportation Center, and Lakefront Lines. The fixed-route buses operate 24 hours a day, seven days a week on 54 routes consisting of local radial and cross-town service and park-and-ride express service. The HealthLine BRT also operates round the clock daily, serving the Euclid Avenue corridor on a dedicated right-of-way with 9.2 miles of roadway improvements and 40 stops. GCRTA's five Downtown Trolley routes serve business and entertainment hubs and lakefront attractions. The trolley hours vary by route, with service beginning at 5:45 a.m. and ending at 11:00 p.m. The Blue and Green light rail lines and the heavy rail Red Line operate daily from 4:00 a.m. to 1:00 a.m. The Blue and Green Lines are 15.3 miles long and serve 34 stations. The Red Line is 19 miles long and serves 18 stations, including Cleveland Hopkins Airport. ADA complementary paratransit operates during all fixed route hours and serves origins and destinations within three-quarter miles of fixed routes. Service up to 5 miles beyond the fixed-route corridors is provided within Cuyahoga County on a space-available basis.

GCRTA currently operates a fleet of 392 FTA-funded buses for fixed-route service. The current peak requirement is 327 vehicles. GCRTA also has a contingency fleet of 34 buses. The bus fleet consists of 40-, 45-, and 60-foot diesel and compressed natural gas (CNG) coaches and 29-foot replica trolleys. The HealthLine uses 63-foot hybrid electric and diesel transit vehicles with five sets of doors located on both sides of the coach. GCRTA has 48 light rail and 60 heavy rail cars. GCRTA also has a fleet of 80 FTA-funded and 14 locally funded minibuses and cutaway vehicles for ADA complementary paratransit service.

GCRTA operates bus service from the Triskett and Hayden Garages located in Cleveland. The ADA complementary paratransit facility is also located in Cleveland on Euclid Avenue. GCRTA provides all bus heavy maintenance at the Central Bus Maintenance facility on Woodhill Road in Cleveland.

The Central Rail Facility is on Grand Avenue in Cleveland. GCRTA has four transit centers: Southgate (in Maple Heights), Westgate (in Fairview Park), Parmatown (in Parma), and Stephanie Tubbs Jones (in downtown Cleveland). The park-and-ride facilities are located in Strongsville, North Olmsted, Westlake, and Euclid, Ohio. There are approximately 10,000 free parking spots at GCRTA's rapid transit stations and park-and-ride lots. All facilities have FTA interest.

4.2 Budget and FTA-Assisted Projects

According to the GCRTA's *FY2017 Approved Budget Effective July 1, 2016* and *FY2018 Approved Budget Effective July 1, 2017*, GCRTA's transit operating and capital budgets for FY 2017 and FY 2018 were as follows:

GCRTA Budget	FY 2017	FY 2018
Revenue		
Passenger Fares	\$45,436,326	\$42,855,419
Sales and Use Tax	\$213,718,145	\$197,793,912
Federal	\$48,455,538	\$48,766,900
State	\$10,034,083	\$17,158,741
Investment Income	\$784,827	\$477,430
Other Revenue	\$27,615,352	\$26,405,000
Debt Service Proceeds		\$30,000,000
Total Revenue	\$346,044,271	\$363,457,402
Expenditures		
Personnel Services	\$187,067,530	\$191,609,259
Diesel Fuel	\$6,535,532	\$4,966,000
Natural Gas	\$1,874,683	\$1,871,000
Other Expenditures	\$54,158,948	\$57,923,728
Capital Outlay	\$71,058,854	\$78,246,000
Debt Service	\$16,917,002	\$19,127,390
Total Expenditures	\$337,612,549	\$353,743,377

In the past few years, GCRTA completed the following noteworthy projects:

- Little Italy–University Circle Red Line ADA station
- CNG fueling station at Hayden Garage
- Shaker Square and Van Aken rail grade crossings
- Lee and Van Aken Blue Line ADA station
- Three light rail grade crossings
- Brookpark Red Line ADA station (construction completed but not closed pending lien resolutions)

- Red Line track rehabilitation, S-Curve to West 117th Street
- Tower City escalator replacements
- East 81st Street and East 83rd Street light rail track bridges
- CNG building modifications at Hayden and Central Bus Maintenance Facilities (construction completed, awaiting final invoice)
- Warrensville Green Line ADA station rehabilitation
- Tower City Center Track 7 platform and Track 8 reconstruction
- Lee/Shaker Green Line ADA station rehabilitation

GCRTA is currently implementing the following noteworthy projects:

- East 116th Street Blue Line ADA station rehabilitation
- East 34th Street ADA station reconstruction (new station open, construction approximately 98 percent complete)
- Famsleigh Blue Line ADA station rehabilitation (construction approximately 60 percent complete)
- Cuyahoga Viaduct Bridge rehabilitation
- Three to five bridge rehabilitation projects
- Red Line West track rehabilitations

GCRTA plans to pursue the following noteworthy projects in the next 3 to 5 years:

- CNG fueling station and building modifications at Triskett Garage
- Tower City Center Track 10 and 13 reconstruction
- Substation replacements (West 65th Street, Puritas, Warrensville-Van Aken, East 120th Street, West 30th Street, and West 117th Street)

Below is a list of GCRTA's open and active grants at the time of the review.

Grant Number	Grant Amount	Year Executed	Description
OH-2016-055-03	\$20,772,454	2018	2016 Section 5337 State of Good Repair
OH-2016-042-02	\$7,958,161	2018	2016 Section 5339 Bus and Bus Facilities
OH-2018-027-00	\$33,250,159	2018	Section 5307 Bus Acquisitions, Preventive Maintenance, Station Construction/Enhancements
OH-2018-001-02	\$16,509,460	2018	Section 5337 State of Good Repair
OH-2018-024-00	\$21,174,514	2018	FY 2018 Section 5337 State of Good Repair

Grant Number	Grant Amount	Year Executed	Description
OH-2018-002-01	\$28,530,662	2018	Section 5307 Bus Acquisitions, Preventive Maintenance, Station Construction/Enhancements
OH-2018-008-00	\$17,540,749	2018	2017 Bus Replacement Program
OH-2016-039-02	\$14,561,660	2018	Ohio Transit Preservation Partnership Program – Red Line West Track Rehabilitation
OH-2016-054-01	\$29,622,418	2017	2016 Section 5307 Urban
OH-2017-029-00	\$1,508,782	2017	2017 Section 5310 – Paratransit Improvement Program
OH-2016-040-01	\$9,680,061	2017	2016 Bus Replacement Program
OH-2016-041-00	\$119,085	2016	Seamless Cleveland Wayfinding Signage
OH-64-7001-00	\$985,664	2015	Career Pathways Program
OH-95-X053-02	\$13,200,000	2015	FY 2011 HealthLine OA-Hayden
OH-34-0024-00	\$2,493,376	2015	2015 Section 5339 Bus and Bus Facilities
OH-90-X823-00	\$29,080,641	2015	2015 Capital Formula
OH-54-0007-00	\$12,920,204	2015	2015 State of Good Repair
OH-90-X739-01	\$28,623,950	2015	2012 Capital Formula
OH-90-X728-02	\$28,777,393	2015	FY 2011 Capital Formula
OH-90-X782-01	\$27,784,315	2014	2013 Capital Formula
OH-90-X809-00	\$28,973,526	2014	2014 Capital Formula
OH-54-0004-00	\$13,942,274	2014	2014 State of Good Repair
OH-04-0106-00	\$250,000	2014	MAP 21-Asset Management System
OH-95-X086-01	\$1,750,000	2013	Little Italy and University Circle Stations/ Northeast Ohio Areawide Coordinating Agency
OH-57-X022-03	\$2,612,214	2013	New Freedom Program-LAPSING
OH-54-0002-00	\$14,160,630	2013	5309 FY 2013 Rail Formula
OH-05-0105-00	\$14,076,644	2012	2012 Rail Modernization

Grant Number	Grant Amount	Year Executed	Description
OH-90-X705-01	\$31,554,216	2011	FY 2010 Capital
OH-05-0101-01	\$17,525,762	2011	FY 2010 Fixed Guideway Modernization
OH-05-0103-00	\$17,800,217	2011	FFY 2011 Rail Modernization
OH-04-0067-00	\$,1375,000	2010	2008 Senior Transportation Earmark
OH-04-0056-00	\$10,729,300	2009	5309 Bus and Bus Facilities

4.3 DBE Program

FTA determined GCRTA to be one of the 50 largest transit authorities receiving federal financial assistance from the U.S. Department of Transportation (DOT). As a condition of receiving this assistance, GCRTA is responsible for complying with the regulations set forth in 49 CFR Part 26. Accordingly, GCRTA 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. GCRTA submitted its most recent DBE Program Plan to FTA on July 21, 2016; however, the plan was dated May 2014. GCRTA's Deputy General Manager of Finance and Administration served as GCRTA's Disadvantaged Business Enterprise Liaison Officer (DBELO) and was supported by five full-time staff in the agency's Office of Business Development (OBD).

GCRTA's DBE program had recently undergone major changes in leadership and staff. Its DBELO and two staff members in the OBD were new to their roles (although they both had previous DBE program experience). In addition, the Director of the OBD was on a leave of absence for health reasons. The recent DBE staff changes and challenges have temporarily impacted DBE program management (e.g., FY 2017–19 goal submission extension and new application and annual affidavit processing). Circumstances notwithstanding, GCRTA DBE program staff demonstrated an interest and willingness to implement the program in good faith.

GCRTA's FY 2016–18 overall DBE goal was 21.3 percent and its proposed FY 2017–19 overall DBE goal was 22.5 percent. GCRTA used both race-neutral and race-conscious means to attain its overall goals. GCRTA exceeded its DBE goals in FY 2015 and FY 2016 but did not meet its DBE goals in FY 2017. Technical assistance was provided to GCRTA during this compliance review on goal setting, goal attainment monitoring, adjusting race-neutral and race-conscious goals as needed, and maximizing overall DBE goal attainment through race-neutral means.

GCRTA was one of four certifying partners in the Ohio Unified Certification Program (UCP). At the time of this compliance review, the Ohio UCP had 1,255 certified DBEs in its DBE Directory, 120 of which were certified by GCRTA.

This page intentionally left blank to facilitate duplex printing.

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 GCRTA 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 GCRTA 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 GCRTA 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 GCRTA 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 26.13]. 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 GCRTA 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 GCRTA of staff and other parties whom the review team would interview.

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

- Most current DBE Program Plan;
- DBE goal methodology submissions;
- DBE semi-annual reports and/or quarterly reports as required by the American Recovery and Reinvestment Act of 2009 for the past 3 years;
- A Memorandum of Understanding or similar documents indicating GCRTA's participation in the Unified Certification Program;
- 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 GCRTA;
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by GCRTA; 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 GCRTA staff.

Following the opening conference, the review team examined GCRTA's DBE Program Plan and other documents submitted by GCRTA's DBELO. The team then conducted interviews with the DBELO regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. 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, GCRTA staff, and the review team convened for the exit conference, during which FTA and the review team discussed initial findings and corrective actions with GCRTA.

Participants in the compliance review are listed below.

Greater Cleveland Regional Transit Authority

Floun'say Caver, Interim Chief Executive Officer, General Manager
Joseph Calabrese, Senior Advisor
Rajan Gautam, Deputy General Manager-Finance and Administration
Steven Sims, Director, Office of Business Development
Carl Kirkland, Business Development Specialist
Diana Jones, Business Development Specialist
Eric Johnson, Business Development Specialist/Government Relations
Danielle Bennett, Secretary, Office of Business Development
Sheryl King Benford, General Counsel-Deputy General Manager for Legal Affairs
Anna Hlavacs, Associate Counsel
Joel Freilich, Acting Deputy General Manager Operations
Melinda Dangelo, Director of Procurement
Theodore Pickett, Sr., Fleet Team Leader
Eric Smith, Procurement Team Leader-Construction
Anthony Garofoli, Executive Director, Internal Audit
Kay Sutula, Acting Executive Director, Office of Management and Budget
George Fields, Acting Deputy General Manager, Human Resources
Michael Schipper, Deputy General Manager, Engineering and Project Management

Federal Transit Administration

John Day, Program Manager, Policy and Technical Assistance
Janelle Hinton, Equal Opportunity Specialist
Marisa Appleton, Regional Civil Rights Officer – Region 5

The DMP Group

John Potts, Lead Reviewer
Donald Lucas, Reviewer
Gregory Campbell, Reviewer

5.3 Stakeholder Interviews

During this DBE compliance review, the review team attempted to contact 10 DBEs, 7 non-DBE prime contractors, and 7 minority- and/or woman-owned business advocacy organizations (other interested parties) between September 4 and 25, 2018. The purpose of the interviews was to get feedback from GCRTA DBE program stakeholders concerning GCRTA's FTA-assisted DBE program, actual experiences, positive program elements, and any issues, concerns, and complaints. The following subsections list the interview questions asked of each stakeholder group and summarize the interview results.

Disadvantaged Business Enterprises

Ten DBEs awarded FTA-assisted GCRTA prime contracts or subcontracts since October 2015 were selected to be interviewed during this compliance review. Four of the 10 DBE firms were interviewed. Interviewees were asked the following questions:

1. *How were you solicited for this project?*
2. *What type of equipment was required for scope of work performed?*
3. *Do you own this equipment? If leased/borrowed, identify company and arrangement?*
4. *Does the prime lease/lend equipment to you?*
5. *Has GCRTA conduct any on-site monitoring regarding your firm's participation on the contract?*
6. *Has your firm subcontracted any work on this project? If yes, what work was subcontracted? What is the name of the subcontractor? What is the amount of the subcontracted work?*
7. *Was retainage being withheld?*
8. *How was retainage addressed in your subcontract? If yes, what is the rate of retainage? Is GCRTA withholding retainage from prime? What is your firm's understanding of when you will be paid retainage amount withheld?*
9. *Has your original contract amount changed (additions or deletions)? If so, explain?*
10. *Have these changes been documented in writing?*
11. *Are there any disputes regarding work performance or payment? If so, describe?*
12. *Does prime pay you through third party/joint checks?*
13. *Have you experienced any issues while working on this contract? Prompt payment? Retaliation, etc.? If yes, how was the issue resolved?*
14. *How many FTA-assisted projects has your firm worked on with the GCRTA? Estimated of how many projects and the amounts of projects?*
15. *How many years has your firm been certified?*
16. *Has your firm expanded its business since becoming certified?*
17. *How many years has your firm been working on GCRTA's FTA-assisted contracts?*

The DBEs interviewed reported that they responded to procurement solicitations directly from GCRTA or from prime contractors. The DBEs' experience working on FTA-assisted GCRTA contracts varied. One DBE reported that it has been working on GCRTA contracts for over 15 years. Another DBE had only been awarded two contracts as a subcontractor to GCRTA prime contractors. None of the DBEs interviewed leased equipment for the scope of work it was contracted to complete. All of the DBEs interviewed confirmed GCRTA had conducted periodic on-site monitoring of their activities. None of the DBEs interviewed subcontracted out any of their work or reported issues with prompt payment from prime contractors. Two of the DBEs interviewed had retainage withheld but did not report issues with the release of that retainage. Three of the DBEs interviewed reported the issuance of contract change orders resulting in more work. None of the DBEs interviewed reported complaints or issues with GCRTA's DBE program.

Prime Contractors

Three non-DBE prime contractors currently working on FTA-assisted contracts were interviewed during this compliance review. Interviewees were asked the following questions:

1. *How does prime solicit DBE work?*
2. *Has prime had any work performance issues with DBEs?*
3. *Has the prime substituted a DBE with another non-DBE subcontractor?*
4. *Does the prime lease/lend equipment to DBEs?*
5. *Has GCRTA conducted any on-site monitoring regarding DBE participation on the contract?*
6. *How soon does prime pay subcontractor after receipt of payment from GCRTA?*
7. *Is the prime withholding retainage from DBEs on this project? If yes, what percentage?*
8. *At what point will that retainage be reduced and/or returned to the DBEs?*
9. *How is DBE work considered when submitting change order requests?*
10. *Has prime made any joint check payments DBE?*

All of the prime contractors interviewed solicited DBE subcontractors from internal preapproved DBE subcontractor lists and industry- and GCRTA-hosted outreach events. Only one prime contractor interviewed reported DBE performance issues, but noted they were minor. None of the prime contractors interviewed reported substituting DBEs on contracts. Also, none of the prime contractors interviewed reported leasing equipment to DBEs to perform work. Two prime contractors reported that GCRTA conducted on-site monitoring activities. All three prime contractors interviewed reported holding retainage from DBEs. All prime contractors interviewed reported that the DBEs were paid within 10 days of receiving payment from GCRTA, as noted in the contracts. When submitting change orders, all of the prime contractors reported they considered DBE participation subject to the scope of the change.

Interested Parties

Seven stakeholder organizations were contacted for an interview to gain insight into how GCRTA works with external organizations and the minority and woman-owned business community. The organizations contacted were:

- The American Center for Economic Equality and the Black Contractors Group, Inc.
- Northeast Ohio Hispanic Chamber of Commerce
- Consortium of African American Organizations
- Urban League
- Hispanic Business Association
- NAACP/Minority Business Solutions
- Ohio Minority Supplier Diversity Council

The interview questions included:

1. *Is your organization familiar with GCRTA's DBE program?*
2. *Have you been requested to participate in the development of, or comment on GCRTA's DBE goal?*

3. *Is your organization made aware of contracting/subcontracting opportunities on GCRTA's contracts? If so, how?*
4. *How often is your organization contacted to provide referrals for GCRTA's contracting opportunities?*
5. *Does your organization participate in any outreach activities organized by GCRTA?*
6. *What is your agency's view of the effectiveness of GCRTA's DBE program?*
7. *Are you aware of any concern(s) about GCRTA's DBE program from members?*
8. *Do you have any suggestions for GCRTA to improve their DBE program?*
9. *Have any members of your organization ever worked on an FTA-assisted project for GCRTA?*

Three stakeholders responded to the interview request. All three agencies were familiar with GCRTA's DBE program; however, only two had been requested to participate in the development of or comment on GCRTA's DBE goals. The third agency had significant concerns about GCRTA's DBE program. Two agencies reported participating in outreach events hosted by GCRTA, but only one reported that the participation had been in the last 3 years. Only one agency reported that GCRTA in the past year provided information about contracting opportunities available and explained the process and requirements for competing on GCRTA contracts. None of the agencies interviewed reported being asked by GCRTA to provide DBE and small business referrals. The agencies interviewed generally felt GCRTA's DBE program could be more effective with more outreach, and one agency commented that individuals from the DBE group should apply for membership with the partner agencies.

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 GCRTA'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. FTA also issued advisory comments with this requirement. DOT DBE regulations required GCRTA 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. GCRTA's most recent DBE Program Plan, dated May 2014, was submitted to FTA on July 21, 2016. GCRTA's submission corrected a 2016 Triennial Review finding that GCRTA had not submitted its most recent DBE Program Plan as required. At the time of the site visit, the status of GCRTA's DBE Program Plan in FTA's Transit Award Management System (TrAMS) was "Under Review."

GCRTA stated on its website, but not in its DBE Program Plan, that the plan applied to FTA-assisted procurements of \$25,000 or more. There are no DOT DBE program procurement thresholds in 49 CFR Part 26. Accordingly, GCRTA must not apply procurement thresholds to its DBE Program Plan.

GCRTA's DBE Program Plan did not address procedures for a Shortfall Analysis and Corrective Action Plan or Protecting Against Termination for Convenience. In addition, GCRTA's plan was out of date. The organization chart in the plan did not reflect current staffing, referenced GCRTA's former DBELO, and contained references to FTA's Transportation Electronic Award Management (TEAM) system, which has been replaced with TrAMS.

The Certification page on GCRTA's DBE website contained a link named "DBE Participation Compliance," which when clicked made available for download a document titled, "Disadvantaged Business Enterprise Utilization." The second paragraph in this document begins with the following:

Participants in this procurement agree to ensure that DBEs, as defined at 49 CFR, Part 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds.

Current DBE program objectives include creating a level playing field, not maximum opportunity, for DBEs to participate in federally funded contracts.

Corrective Actions and Schedules

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

- A letter on agency letterhead and signed by its Acting Chief Executive Officer stating it has removed all references to a \$25,000 DBE program threshold from its website, DBE goal methodology, and all other affected locations and confirming GCRTA's DBE Program Plan applies to all federal assistance.
- An updated DBE Program Plan that reflects current DBE program organization and staffing, removes references to TEAM, and addresses all applicable requirements of 49 CFR Part 26, including Shortfall Analyses and Corrective Action Plans and Protecting Against Termination for Convenience. GCRTA must also replace its current DBE Program Plan with its updated DBE Program Plan (once approved by FTA) in all places where the plan is made available, including on its website.
- GCRTA must replace language referring to creating "maximum opportunity" for DBEs to participate in federally funded programs with "level playing field" in all documents that describe the objectives of GCRTA's DBE program.

Advisory Comments

GCRTA was advised to include a section heading in its updated DBE Program Plan for each corresponding requirement in 49 CFR Part 26 and to include in each section heading the actual Part number (e.g., 26.45). GCRTA should order the presentation of each section in its plan by Part number. GCRTA should also ensure that all attachments or appendices referenced throughout its updated DBE Program Plan are included with the plan.

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. FTA also issued an advisory comment with this requirement. The DBE Policy Statement included in GCRTA's DBE Program Plan contained outdated elements (i.e., listed the previous DBELO was listed), and it was not signed by GCRTA's General Manager. In addition, the policy statement available on the website did not include all the same elements as the version included in its DBE Program Plan. Specifically, the one on the website did not have the section delegating the DBELO, nor did it include the General Manager's signature.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA must submit to the FTA Office of Civil Rights an updated signed DBE Policy Statement that reflects the current DBELO as required by 49 CFR Part 26. In addition, the revised DBE Policy Statement must replace the current DBE Policy Statement in all places where the statement is made available, including on its website.

Advisory Comment

GCRTA's DBE Policy Statement included language stating that it has distributed its statement to the organization and to the DBE and non-DBE business communities. GCRTA was advised to document all attempts to distribute its 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, no deficiencies were found with this requirement. FTA issued advisory comments with this requirement. In its DBE Program Plan, GCRTA identified the Deputy General Manager (DGM) of Finance and Administration as its DBELO. Although the DGM of Finance and Administration's job description included oversight of the Office of Business Development (OBD), the organization unit responsible for DBE program implementation and administration, it did not specifically include DBELO responsibilities.

GCRTA explained that in the 8 months prior to the site visit, OBD underwent significant staffing changes. In addition, GCRTA's longtime DGM of Finance and Administration and DBELO

retired and was replaced in June 2018. GCRTA also indicated it planned to hire at least one new staff in its OBD.

In its DBE Program Plan, GCRTA listed the DBELO's responsibilities, as follows:

- *Gathers and reports statistical data and other information as required by DOT.*
- *Reviews third party contracts and purchase orders for compliance with this program.*
- *Works with all departments to set overall annual goals.*
- *Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.*
- *Establishes DBE goals for solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).*
- *Monitors GCRTA progress toward goal attainment and identifies ways to improve progress.*
- *Participates in pre-bid meetings.*
- *Advises the CEO/Board of Trustees on DBE matters and achievement.*
- *Chairs the DBE Advisory Committee.*
- *Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.*
- *Plans and participates in DBE training seminars.*
- *Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in the State of Ohio.*
- *Provides outreach to DBEs and community organizations to advise them of opportunities.*
- *Maintains the GCRTA updated directory on certified DBEs.*

At the time of the site visit, the newly hired DGM of Finance and Administration and DBELO was not yet fully involved with all of the DBELO responsibilities listed (e.g., Chairs the DBE Advisory Committee).

Advisory Comments

GCRTA was advised to include DBELO responsibilities in the DGM of Finance and Administration's job description. GCRTA was further advised to update its DBE Program Plan with the number of staff currently supporting the DBELO. GCRTA's DBELO and OBD staff were advised to review the DBELO responsibilities listed in its DBE Program Plan to ensure they all reflect actual practice.

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 encourage prime contractors to use these DBE financial institutions.

Discussion

During this compliance review, deficiencies were found with this requirement. FTA also issued an advisory comment with this requirement. In its DBE Program Plan, GCRTA described the following financial institutions policy:

It is the policy of the Authority to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. The Authority has made the following efforts to identify and use such institutions: Search the Federal Reserve Website for a listing of all minority (including female) owned banks, and local listings of certified D/S/M/FBE financial organizations.

As of September 2004, the Authority has identified the following such institutions:

*The Hicks Insurance Agency
1875 South Taylor Rd.
Cleveland Heights, Ohio 44118
All lines of insurance and financial services*

*Rockport Financial
31023 Center Ridge Road
Westlake, Ohio 44145
Insurance, investments, employee benefit plans*

*Goode Investment Management, Inc.
50 Public Square, Suite 104
Cleveland, Ohio 44113
Investment Advice*

*RM Investment Management, Inc.
3000 Woodhill Road
Cleveland, Ohio 44104
Portfolio management*

*SBK Brooks Investment, Inc.
824 Terminal Tower
50 Public Square
Cleveland, Ohio 44113
Misc. Business credit institutions, other non-depository credit*

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

During the site visit, the review team found that GCRTA last updated this section in 2004. There was no evidence that GCRTA made reasonable efforts to use these institutions nor any evidence to indicate that it had encouraged prime contractors on DOT-assisted contracts to make use of these institutions, as outlined in its DBE Program Plan. Further, the review team did not find any evidence of a process to ensure that GCRTA evaluated the availability of DBE

financial institutions periodically (e.g., annually). Additionally, prior to the site visit, research indicated that several of these entities no longer exist. None of the DBE financial institutions listed were minority-owned banks.

According to the March 31, 2018, Federal Reserve Statistical Release of Minority-Owned Depository Institutions, there were no minority-owned banks currently in the state of Ohio.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that accurately describes its use of DBE financial institutions and describes in detail its procedures for researching the availability of DBE financial institutions. GCRTA must also provide documentation that it has researched the availability of DBE financial institutions and that it has encouraged prime contractors to use such institutions.

Advisory Comments

GRCTA was advised to research the availability of minority-owned banks, and to document the results of its research, annually. GCRTA was advised to focus its compliance with the DBE Financial Institutions requirement on identifying minority-owned banks, rather than investment firms and insurance companies.

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, deficiencies were found with this requirement. The description of GCRTA's management and administration of its DBE Directory did not reflect actual practice. GCRTA's DBE Program Plan stated the following:

The Authority maintains a directory identifying all firms eligible 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 (NAICS code) the firm has been certified to perform as a DBE. The Directory is updated monthly and is available at:

*Greater Cleveland Regional Transit Authority
Office of Business Development
1240 W. 6th Street
Cleveland, Ohio 44113
(216) 566-5044
Copies can be picked up between 8:00am -5:00pm, Monday - Friday*

-or-

The Office of Business Development webpage: www.riderta.com

GCRTA did not maintain a DBE Directory as that was the responsibility of the Ohio Department of Transportation (ODOT), the lead agency in the Ohio UCP. The DBE Directory was not updated monthly, rather as changes occurred. The DBE Directory was not available for pickup at GCRTA but was made available through the Ohio UCP website administered by ODOT.

Corrective Actions and Schedules

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

- An updated DBE Program Plan that accurately describes GCRTA's relationship to the Ohio UCP DBE Directory and any responsibilities it has in maintaining the directory, explains how the directory is updated, and describes how to access the directory to review its contents or obtain a copy.
- Confirmation that its website contains accurate information regarding the DBE Directory (consistent with the description in its updated DBE Program Plan).

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. GCRTA's DBE Program Plan stated that "The Authority has not identified that over-concentration exists in the categories of work that DBE firms are available to perform." However, the plan did not describe GCRTA's procedures for determining overconcentration or the measures GCRTA would take to address overconcentration should it occur, nor was documentation provided confirming GCRTA conducted an annual overconcentration analysis.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA 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, the frequency with which an analysis of overconcentration will be conducted, and the measures taken to address any 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. In its DBE Program Plan, GCRTA stated it was planning to develop a BDP. During the site visit, GCRTA confirmed it had not developed a BDP and did not have plans to do so.

Advisory Comment

GCRTA was advised to update its DBE Program Plan to state it did not have 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. At the time of the site visit, GCRTA was nearing the end of its FY 2016–18 triennial goal period, which was scheduled to expire on September 30, 2018. Its FY 2019–21 DBE goal methodology was due to FTA on August 1, 2018; however, GCRTA requested an extension until October 1, 2018, which FTA approved.

During the site visit, GCRTA provided a version of its FY 2019–21 DBE goal methodology and proposed overall, race-neutral, and race-conscious goals (yet to be approved by FTA) for review. GCRTA's goal methodology, as presented, included a narrative summary description of how it calculated its goal, a breakdown of the inputs that went into the Step 1 and Step 2 goal-setting calculations, and the results of an availability study, which included the number of DBE firms in the GCRTA market area that were ready, willing, and able to perform work in one or more of the following areas: Construction, Architectural and Engineering Services, and Goods and Other Services. GCRTA also verbally presented another goal calculation spreadsheet used to calculate its goal.

GCRTA did not use DOT's recommended method for calculating its Step 1 goal, which would be to divide the number of ready, willing, and able DBEs in the applicable North American Industry Classification System (NAICS) codes by the number of all firms in the same NAICS codes to

determine the relative availability of DBEs in the GCRTA market area. Instead, GCRTA used the results of the availability study mentioned above. (The method used in the availability study was not made available or reviewed during the site visit.) Per GCRTA's narrative summary description, the availability study determined overall DBE availability to be 31.65 percent, which GCRTA established as its unadjusted base figure. Using this unadjusted base figure, GCRTA estimated DBE availability during FY 2019–21 based on past performance, which resulted in an estimated DBE participation of 21.2 percent. Finally, GCRTA averaged the unadjusted base figure and the estimated DBE participation to determine its Step 1 goal, as follows:

$$21.5 \text{ percent (see item 4 below)} + 21.2 \text{ percent} = 42.7 \text{ percent} \div 2 = 21.35 \text{ percent}$$

GCRTA's Step 1 goal calculation had the following issues:

1. The availability study used by GCRTA to calculate its FY 2017–19 DBE goal was also used to calculate its FY 2016–18 goal. The information in the availability study could be out of date.
2. DBEs were not considered in the availability study used by GCRTA to calculate the relative availability of DBEs. The study only considered minority-owned and female-owned businesses in Cuyahoga County. A portion of these companies may also have been certified DBEs; however, DBE status was not included in the availability study.
3. The availability study defined its market area as Cuyahoga County only, but GCRTA defined its market area as Cuyahoga County and contiguous counties.
4. There are inconsistencies in the DBE availability percentage resulting from the availability study and as included in the Step 1 calculation. In its narrative summary description, GCRTA stated that the DBE availability from the availability study was 31.65 percent. However, GCRTA's detailed goal calculation breakdown shows GCRTA used 21.5 percent in its calculation. If GCRTA used DBE availability of 31.65 percent, as reported, its Step 1 goal would be as follows:

$$31.65 \text{ percent} + 21.2 \text{ percent} = 52.85 \text{ percent} \div 2 = 26.4 \text{ percent}$$

5. Per DOT guidelines, using past participation to calculate the relative availability of ready, willing, and able DBEs in Step 1 is not allowed.
6. Per 49 CFR Part 26.45(c), although GCRTA is not limited to the goal calculation methods recommended by DOT, GCRTA must get prior approval from FTA before using alternate methods.

GCRTA made a Step 2 adjustment to its Step 1 goal of 21.3 percent by averaging the Step 1 goal (21.35 percent) with the median DBE goal attainment for the previous 3 years (23.6 percent) to obtain an overall goal, as follows:

$$21.35 \text{ percent} + 23.6 \text{ percent} = 44.95 \text{ percent} \div 2 = 22.5 \text{ percent}$$

GCRTA further determined the portion of its overall goal it would achieve through race-neutral means by using the median race-neutral goal attainment for the past 3 years. In doing so,

GCRTA determined the portion of its overall goal attained through race-neutral means to be 3.6 percent, leaving the remainder (18.9 percent) to be attained through race-conscious means.

During the site visit, GCRTA explained the challenges it had with identifying an effective market area for DBE goal purposes as DBE availability was distributed throughout the state and by firm capabilities. Given the challenges with its goal calculation, GCRTA must submit a revised FY 2019–21 goal methodology to FTA. The review team advised GCRTA to reconsider its methodology by using its bidders list and provided technical assistance on how to do so. The review team suggested GCRTA discuss the matter with FTA, as the suggested change would require GCRTA to request a second extension for the submission of its FY 2019–21 DBE goal.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA must submit to the FTA Office of Civil Rights a revised Triennial DBE Goal Setting Methodology for FY 2019–21 that complies with 49 CFR Part 26.45 requirements and incorporates the DOT DBE goal-setting guidance found at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>. Additional guidance is available on FTA's DBE training website at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-training>.

Advisory Comment

GCRTA was advised to use the bidders list produced and maintained by its Procurement Department when calculating its revised DBE goal for FY 2019–21.

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. Per 49 CFR Part 26.45(g)(1)(i), GCRTA was required to do the following:

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) 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.

In its DBE Program Plan, GCRTA stated,

Before establishing the overall goal each year, the Authority will consult with the DBE Program Advisory Committee. This committee will consist of the following:

- *Business, Trade and Social organizations*
- *Certified DBE firms*
- *Authority staff*
- *Minority Organizations*
- *Female Groups*

Following this consultation and the development of the goal, the Authority will publish a notice of the proposed overall goal informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Authority's, Main Office for 30 days following the date of the notice. Comments will be accepted from the general public and FTA for 45 days from the date of the notice. The goal will be published in local newspapers, minority focused media, the Authority's website and various trade-publications. The Authority will issue this notice by June 1 of each year.

GCRTA did not provide documentation confirming it consulted with its DBE Program Advisory Committee or published notice of its DBE goal in local newspapers, minority-focused media, and various trade publications when establishing its FY 2019–21 overall DBE goal, per its procedures. (The review team noted that GCRTA included documentation confirming publication of its notice in local newspapers in its FY 2016–18 DBE goal methodology.)

GCRTA posted its notice announcing its overall goal on its website on August 29, 2018, after receiving an extension to submit its FY 2019–21 overall DBE goal until October 1, 2018. The notice was posted on GCRTA's website at the time of the site visit, and GCRTA reported that it had not received any comments on its proposed goal. During the site visit, GCRTA was made aware of changes to 49 CFR Part 26.45 implemented in 2014, which made a prior requirement to make the proposed goal available for inspection for 30 days and subject to comment for 45 days discretionary.

Corrective Actions and Schedules

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

- A list of the members of its DBE Program Advisory Committee.
- Either documentation that it has consulted with its DBE Program Advisory Committee and published notice of its FY 2019–21 DBE goal in local newspapers, minority-focused

media, and various trade publications, or an updated DBE Program Plan that reflects only those methods of goal publication it actually uses, along with documentation confirming publication of its goal according to those methods.

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. GCRTA established an FY 2019–21 overall goal of 22.5 percent and based on past race-neutral goal attainment established that 3.6 percent would be attained by race-neutral means. However, GCRTA did not describe the race-neutral measures it would implement in either its DBE Program Plan or its FY 2019–21 DBE goal methodology. Race-neutral measures are described in 49 CFR Part 26.51(b)(1-9), as follows:

(b) Race-neutral means include, but are not limited to, the following:

(1) 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 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) 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);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

GCRTA was required to develop and implement a small business element that described its efforts to foster small business participation on FTA-assisted contracts. Per 49 CFR Part 26.51, the small business element taken as a whole is considered an additional race-neutral measure. GCRTA included a description of its Small Business Participation Plan in its DBE Program Plan implemented in response to the small business element requirement. 49 CFR Part 26.39 describes the requirement to foster small business participation and recommends the following measures:

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) 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.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project 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.

GCRTA's efforts to foster small business participation were as follows:

- *The Authority will proactively encourage the use of small business concerns in larger procurements by including a clause entitled "Utilization of Small Business Concerns" in all contracts that offer subcontracting opportunities; and all contractors (except*

- small business concerns) that receive contracts will be responsible to make good faith efforts to include small business concerns as subcontractors.*
- *The Authority will consider race-neutral small business set asides for prime contracts on a case-by case basis, where staff has affirmatively determined there is a reasonable expectation of receiving at least two offers from small business concerns, and the award will be a fair and competitive price. Once a product or service has been acquired successfully on the basis of a set-aside, the Authority will make every effort to ensure that future purchases for the product or service are acquired using small business concerns.*
 - *The Authority will sponsor and actively participate in outreach activities and utilize such sources, outlets, and venues to include Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, Procurement Conferences, etc. to identify and engage small businesses.*
 - *The Authority will develop informative marketing materials that assist small business concerns in pursuit of procurement opportunities, and provide networking opportunities and technical assistance to ensure they are aware of contracting opportunities, and know how to prepare responsive bids as prime or subcontractor;*
 - *The Authority will establish a Small Business Participation Advisory Council to help successfully implement the Small Business Participation Plan. The key purpose of the Small Business Participation Council will be to improve the Authority's spending outcomes with small business concerns, and that is not a function of social or economic disadvantage. The Council will review Plan performance and make recommendations on ways to effectively reach, engage, and inform to small businesses concerns of contract/business opportunities.*
 - *The Council will be comprised of 5-7 external members to include owner/senior management executives from at least two (2) well-established local small business concerns, and representatives from organizations such as the Council on Smaller Enterprises, Urban League of Greater Cleveland, Small Business Administration, etc. The General Manager and/or Deputy General Manager, Director of Procurement, and Director of the Office of Business Development also will serve of the Council, which will meet on a semi-annual basis and will provide a report to the Authority's Board of Directors annually.*

GCRTA's Small Business Participation Plan included only one of the measures recommended in 49 CFR Part 26.39 (i.e., the use of small business set-asides), and that measure had not been implemented. Moreover, the majority of its Small Business Participation Plan measures were aspirational rather than actually implemented such that their effectiveness could be measured against their intended purpose. During the site visit, GCRTA did not provide documentation confirming their implementation.

Corrective Actions and Schedules

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

- An updated DBE Program Plan that includes the race-neutral measures described in 49 CFR Part 26.51 and a plan for implementing said measures. The plan must include a detailed description of how GCRTA will periodically review the effectiveness of its race-neutral measures and adjust these measures to meet the maximum feasible portion of its overall goal by using race-neutral means. The implementation plan must include an implementation timeline.
- An updated DBE Program Plan that includes a detailed description of its efforts to foster small business participation; only those measures GCRTA has implemented or will actually implement should be described.
- A timeline for implementing any planned (but not yet implemented) measures to foster small business participation.

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 by using race-neutral measures.

Discussion

During this compliance review, deficiencies were found with this requirement. In its FY 2019–21 goal methodology, GCRTA established a race-conscious goal of 18.9 percent, which represented the difference between its overall goal of 22.5 percent and its race-neutral goal of 3.6 percent. Although there were no issues with the FY 2017–19 race-conscious goal per se, GCRTA did not describe how it established race-conscious goals in its DBE Program Plan. In addition, GCRTA had not closed a finding from its FY 2016 Triennial Review and adequately addressed follow-up notices from FTA to reduce its race-conscious goal after exceeding its overall goal for two consecutive years (FY 2013–14 and FY 2015–16).

Accordingly, in FY 2015 and FY 2017, FTA required GCRTA to do the following pursuant to 49 CFR Part 26.51(f)(4):

GCRTA must submit its adjusted race-neutral/race-conscious breakdown for [FY2015] [FY2017] to the FT A Regional Civil Rights Officer (RCRO) by [February 27, 2015] [August 5, 2017]. The submission must include the following: 1) the race-neutral and race-conscious attainment from FY2014; 2) the adjusted race-neutral projection for FY2015 and how your agency determined this adjusted percentage; 3) the race-neutral measures that will be used in [FY2015] [FY2017] to achieve your agency's goal; and 4) the adjusted race-conscious projection for [FY2015] [FY2017] and how your agency determined this adjusted percentage.

For FY 2013–15 GCRTA’s overall goal was 22 percent, with a 2 percent/20 percent race-neutral/race-conscious split. In response to FTA’s requirement, GCRTA adjusted its race-neutral/race-conscious split to 3 percent/19 percent; however, it is unclear how GCRTA determined its adjustment or what race-neutral measures would be used to achieve the adjusted goal.

For FY 2016–18 GCRTA’s overall goal was 21.3 percent, with a 3.2 percent/18.1 percent race-neutral/race-conscious split. GCRTA exceeded its overall goal in FY 2015 and FY 2016. In response to FTA’s requirement, GCRTA stated that it projected an FY 2017 overall goal shortfall based on awards and commitments through the first half of FY 2017 and estimated awards and commitments through the end of the year. Accordingly, GCRTA proposed “an adjusted 12.47% and 2.07% race-conscious/race-neutral DBE participation breakdown for FFY 2017 in response to FTA’s request that GCRTA submit an adjusted breakdown for a total DBE participation of 14.54%, which corresponds to revised calculations of likely DBE participation for the FFY.” This proposal appeared to conflate the requirement to proportionately adjust GCRTA’s race-neutral/race-conscious split with making a request to adjust its overall goal. GCRTA included a quantitative rationalization for its adjustments to its overall and race-neutral/race-conscious goals that factored in the FY 2017 performance to date and estimated performance through the end of FY 2017. GCRTA’s inclusion of future estimated performance in the adjustment of its race-neutral/race-conscious split was inconsistent with DOT recommendations, as follows (also available at <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>):

A. Consider the Amount by Which You Exceeded Your Goals in the Past. *The amount by which you exceeded your overall goals in past years can be a useful tool in helping you project the race/gender-neutral participation you can expect in the future. For example, suppose that your past year’s goal was 20%, but you obtained 30% DBE participation. The 10% difference between goal and achievement represents participation that went beyond what you told contractors they should do in order to meet the 20% goal. This 10% participation, then, was not made necessary by race/gender-conscious provisions of your program. It may be reasonable for you to assume, as you make your projected split between race/gender-neutral and race/gender-conscious measures for next year, that contractors will again be able to achieve 10% participation over and above the race/gender-conscious portion of your overall goal. If your overall goal were again 20%, this could be evidence supporting a decision for projecting 10% race/gender-neutral and 10% race/gender-conscious split for the coming year.*

Your projected split will probably be more accurate if you use past participation data from more than one year. As noted in point #5 under "Adjustments Based on Past Participation," it is advisable to calculate the median of the past years' participation. For example, if your goal was 20% in each of the past three years, and your achievements were 21%, 22%, and 30%, the median amount by which you exceeded your goal was 2% (i.e., the median of 1%, 2% and 10%). You could then use this figure as evidence supporting a projection of 2% race/gender-neutral participation for the coming year. If you do use only one year's past participation for this purpose, be sure that the year you use was one in which you set your goal under the new Part 26 regulations.

B. Consider Past Participation by DBE Prime Contractors. *If you obtained any of your past participation through the use of DBE primes, then those attainments should be considered race/gender-neutral and can be used as a basis for estimating a similar level*

of race/gender-neutral participation in the next program year. For instance, assume that your goal for last year was 20% and your achievement was 20%. If a portion of that 20% resulted from the participation of DBE primes - and thus from race/gender-neutral means - then it may be appropriate to assume that you will be able to achieve similar results through the race/gender-neutral participation of DBE primes in the future. Of course, in this instance it is especially important to ensure that you are comparing similar types of contracts. For example, if last year's participation by DBE primes occurred in a type of contracting in which there are many DBE primes, and this year you intend to do all of your work in industries in which there are few DBE primes, then it would be inappropriate to assume that you will replicate similar levels of participation by DBE primes.

C. Consider Past Participation by DBE Subcontractors on Contracts Without Goals. *If you obtained any of your past participation through the use of DBE subcontractors on contracts without DBE goals, then those attainments should be considered race/gender-neutral and can be used as a basis for estimating a similar level of race/gender-neutral participation in the next program year. For instance, assume that your goal for last year was 20% and your achievement was 20%. If a portion of that 20% resulted from the participation of DBE subcontractors on contracts without goals - and thus from race/gender-neutral means - then it may be appropriate to assume that you will be able to achieve similar results in the future. Again, it is extremely important to ensure that you are comparing similar types of contracts. For example, if last year's participation by DBE primes occurred in a type of contracting in which there are many DBE subcontractors, and this year you intend to do all of your work in industries in which there are few DBE subcontractors, then it would be inappropriate to assume that you will replicate similar levels of participation by DBE subcontractors.*

D. Consider MBE/WBE/DBE Participation Pursuant to Race/Gender-Neutral State or Local Programs. *An excellent source of information about how much DBE participation is likely in the absence of race/gender-conscious measures may be found in similar state or local transportation construction projects that do not use any*

race/gender-conscious measures at all. For example, if projects funded with purely state/local funds involve no race/gender-conscious measures aimed at increasing the participation of DBEs and these projects achieve a median rate of 8% DBE participation, then you may project that you will achieve 8% DBE participation in your

contracting without race/gender-conscious DBE goals. As above, your projection will be more accurate if you use the median of a number of past years.

E. Consider Concrete Plans to Implement New Race-Neutral Methods. *If you have instituted new and comprehensive mechanisms aimed at obtaining additional DBE participation through race/gender-neutral means, these efforts might provide the basis for estimating a greater level of race/gender-neutral participation for the upcoming year. The key here is that any such efforts used to justify race/gender-neutral participation in the upcoming fiscal year must be:*

1. new,
2. ready for immediate implementation,
3. described in detail, and
4. likely to result in additional DBE participation.

Evidence might include the establishment of a new, comprehensive mentor-protégée program aimed at providing assistance to small businesses; a detailed plan to break up larger projects into smaller subparts for which small businesses and DBEs will be more likely to be able to compete; or the institution of aggressive new efforts to provide bonding and credit to small companies, including DBEs, that have been unable to obtain it in the past.

F. Consider Past History of Inability to Achieve Goals. *In determining how much of your goal you should meet through race/gender-neutral means, another factor to consider is a past history of inability to meet goals. If you have relied exclusively on race/gender-conscious measures in the past to meet your overall goals, but have not been able to achieve them, this may justify relying exclusively on race/gender-conscious means to meet your goal for the upcoming year. There are some caveats with respect to this particular factor in determining whether or not you will be likely to achieve a level playing field through race/gender-neutral means. If the goal you have set under Part 26 is significantly lower than your past goals, then your inability to meet your past goals is not a good justification for a completely race/gender-conscious goal under the new rule. However, if your goal under Part 23 was 20% and you only achieved 15% using entirely race/gender-conscious measures, that would be justification for using entirely race/gender-conscious measures only if your goal under the new Part 26 is approximately 20% or higher. This does not mean that you are prohibited from proposing to use race/gender-neutral means to meet all or part of your goal. However, if you have a history of being unable to achieve reasonable goals in the past, you will have to demonstrate some additional evidence for your contention that race/gender-neutral means will suffice to meet your goals in the future. Such evidence might include the establishment of a new, comprehensive mentor-protégée program aimed at providing assistance to small businesses or the institution of aggressive new efforts to provide bonding and credit to small companies that have been unable to obtain it in the past.*

G. Avoid Double-Counting. *It is important to note that some of the types of evidence for race/gender-neutral and race/gender-conscious projections outlined above cannot be used at the same time or it will result in overestimating past race/gender-neutral achievements. For instance, if you both exceeded your goals and used DBE primes in the same year - and thus the DBE primes contributed to you exceeding your goals - then you must be certain not to double count the extent to which the participation of DBE primes provides a basis for a race/gender-neutral projection in the next year. If you exceeded your goal by 10% and at the same time DBE primes accounted for 5% of your total DBE participation, then the total race/gender-neutral participation value for that year would be 10%, not 15%.*

H. Monitor DBE Participation to Determine Whether You Need to Adjust Your Use of Race/Gender-Conscious Measures. *Of course, once you have projected how much of your goal can be achieved through race/gender-neutral means; it will become critically important for you to monitor DBE participation during the year to determine whether your projections were on target. Your projections are just that: projections. By monitoring actual DBE participation you will be able to determine what, if any, midyear corrections are needed in your mix of race/gender-conscious and race/gender-neutral measures used to achieve your goals. Remember: you must meet as much of your goal as possible through race/gender-neutral means. Therefore, if it appears that part way through the fiscal year that you are on track to exceed your goals, you should ratchet back your use of race/gender-conscious goals. Likewise, if you are using all, or mostly, race/gender-neutral measures and it appears that you will not meet your goal, you should consider instituting some race/gender-conscious measures or, at a minimum, more aggressively implementing your race/gender-neutral measures.*

It is important to underscore that the above recommended approaches base race-neutral/race-conscious adjustments on past performance, not estimated future performance. This information was provided to GCRTA as technical assistance to help provide its Office of Business Development with recommended methods for establishing race-neutral/race-conscious goals and adjusting race-neutral/race-conscious goals should it be required to do so in the future.

In addition to having and communicating a past performance–based reason for making race-neutral/race-conscious split adjustments, GCRTA must also develop, implement, and track the effectiveness of race-neutral measures implemented to attain its adjusted race-neutral/race-conscious split to achieve the maximum portion of its overall DBE goal with race-neutral means. Should GCRTA revise its FY 2019–21 goal calculation as recommended in section 6.8(A) of this report, it should implement one of the recommended DOT methods when determining a revised race-neutral/race-conscious split. Based on GCRTA’s commitment to attain the maximum portion of its overall DBE goal by race-neutral means, GCRTA’s DBE participation for FY 2013–18, and related requirements to adjust its race-neutral/race-conscious goals (per 49 CFR Part 26.51 and as communicated by FTA), a reasonable expectation is that a greater portion of its overall goal would be attained through race-neutral means. GCRTA’s race-neutral goals for the triennial periods FY 2013–15, FY 2016–18, and FY 2019–21 (proposed) were, respectively, 3 percent, 3.2 percent, and 3.6 percent. Because GCRTA race-neutral goals have only slightly increased from the first period to the last, and per the finding described in section 6.8(C) of this report, GCRTA must enhance its efforts to maximize overall DBE goal attainment by race-neutral means.

Corrective Actions and Schedules

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

- Documentation confirming implementation of corrective actions taken to close the race-conscious goal adjustment finding in its 2016 Triennial Review.
- An updated DBE Program Plan that describes how GCRTA establishes and uses race-conscious goals. GCRTA must include detailed procedures for reducing its use of race-conscious goals per 49 CFR Part 26.51(f)(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 GFEs 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 five days after bid opening—as a matter of responsibility. The recipient must review bids by 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. GCRTA's GFE requirements were described in its DBE Program Plan, complied with 49 CFR Part 26.53(b)(2)(i-vi) requirements, and were included in all solicitation documents and General Service Provisions included in all non-TVM contract documents.

Section III Bidding Requirements, Terms and Conditions of GCRTA's non-TVM General Service Provisions described in detail the requirements for making GFEs on all contracts with contract goals. GCRTA required GFEs to be submitted by all bidders as a matter of responsiveness and by existing contractors when seeking to make DBE substitutions on existing contracts. GCRTA required bidders and/or existing contractors to document their GFEs on the following forms:

- *Declaration of Proposed Disadvantaged Business Enterprise Utilization*
- *DBE Affidavit*
- *Disadvantaged Business Enterprise (DBE) Participation Plan*
- *Letter of Intent to Perform as a Subcontractor*
- *Certificate of DBE Unavailability*

A review of the following procurement files confirmed GCRTA implemented its GFE procedures and complied with 49 CFR Part 26.53(b)(2)(i-vi) requirements: 2016-056/24P-2, 2016-129/14.97, 2016-172/23V5, 2016-171, 2017-047/52I/J, and 2017-061/52M.

Although GCRTA did not report instances of bidders requesting administrative reconsideration after being disqualified for failing to demonstrate GFEs, GCRTA's DBE Program Plan satisfactorily addressed procedures for administrative reconsideration of bids initially determined nonresponsive.

GCRTA's DBE Program Plan satisfactorily addressed GFE requirements for prime contractors when substituting or terminating a DBE firm already under contract. Substitution and termination of DBE subcontractors by prime contractors required prior written approval from GCRTA.

Corrective Actions and Schedules

FTA requires no corrective actions for the Good Faith Efforts requirement at this time.

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, no deficiency was found with this requirement. As reported in the DBE Program Plan section of this report, GCRTA did not address this requirement in its DBE Program Plan; however, a review of GCRTA's General Contract Provisions included in all its non-TVM contracts contained the following:

DBE Modifications and Substitutions The contractor must receive the approval of GCRTA Office of Business Development before termination or making substitution for any subcontractors listed in its DBE plan.

This Provision applies to all modifications and substitutions under this Contract. The Contractor will be required to comply with this Provision to the extent needed to achieve the DBE goals agreed to at the time of contract award.

- a) *If a prime contractor wishes to terminate or substitute a DBE subcontractor listed as fulfilling its contract goal, and then performs the work of the terminated DBE subcontractor with its own forces, an affiliate, a non-DBE subcontractor or with another DBE subcontractor, it must submit written documentation prior to the termination or substitution of the DBE subcontractor to the Office of Business Development. This will include any changes to items of work, material, services, or DBE firms that differ from those identified on the Intent to Perform form(s) on file. The Bidder/Contractor must provide any and all documentation and information as may be requested with respect to the requested change.*
- b) *The Bidder's/Contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include, but are not limited to: the DBE was not able to perform; the DBE was unable to produce acceptable work; and/or the DBE has submitted an unreasonable escalation in price. In the case of a DBE subcontractor being substituted by another DBE subcontractor, the Contractor should include the name, address, certification number and principal office of the proposed DBE firm. After careful review, the Office of Business Development will approve or disapprove the change.*
- c) *If the change involves a subcontractor substitution, the Bidder/Contractor must make good faith effort to replace one DBE with another DBE. The substitute DBE*

firm must be certified by the RTA in order for the Bidder/Contractor to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the Bidder/Contractor is unable to contract with another DBE firm, good faith effort documentation must be provided to the Office of Business Development describing the unsuccessful attempts to locate a substitute DBE. In all situations, the Contractor may not terminate or substitute a DBE subcontractor without the prior written consent.

- d) *The Bidder/Contractor must submit a new Intent to Perform form for the substitute DBE firm(s) with the request for change to verify that the new DBE firm(s) is certified by the RTA. The Contractor shall provide a copy of the executed subcontract agreement with the proposed DBE firm to the Office of Business Development within five (5) business days of its receipt of the substitution approval.*
- e) *If the change involves a modification, the Contractor must submit, if applicable, the Intent to Perform form specified for contract modifications for any DBE subcontractor affected by this change. This form may be obtained from the Office of Business Development or see Enclosure B-3.*
- f) *If the Contractor does not comply with this Provision, the Authority may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Office of Business Development may recommend that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.*

Corrective Actions and Schedules

FTA requires no corrective actions for the Protecting Against Termination for Convenience requirement at this time.

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, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. GCRTA's General Contract Provisions included a detailed description of how it counts DBE participation, consistent with and responsive to the requirements described in 49 CFR Part 26.55; however, the same detailed description was not included in its DBE Program Plan. GCRTA's procedures for counting DBE participation included a monthly review of work performed by DBEs when authorizing prime contractor invoices to confirm DBEs were performing a commercially useful function in accordance with DBE

participation plans submitted at the time of bid. Included in GCRTA's process was the requirement for DBEs to affirm they were performing work as contracted. This affirmation was documented in GCRTA's Payment Confirmation Report that accompanied all payment applications (invoices) submitted monthly by its prime contractors.

The review team observed during its tour of GCRTA's 116th Street Station construction project that a DBE trucking company was on site pouring concrete. The prime contractor confirmed that the DBE trucking company transported and poured the concrete; however, the prime contractor procured and paid for the concrete. GCRTA confirmed that it only counted fees or transportation charges for the delivery and pouring of the concrete toward DBE goals, as required by 49 CFR Part 26.55(e)(3).

Advisory Comment

GCRTA was advised to update its DBE Program Plan with its procedures for counting DBE participation as described in its General Contract Provisions.

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 DBE Program Plan, GCRTA stated that it does not use quotas in any way in the administration of its DBE program. A review of several recent contracts, along with interviews with GCRTA staff, confirmed that GCRTA 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, no deficiencies were found with this requirement. FTA issued advisory comments with this requirement. GCRTA's DBE goal for FY 2016–18 was 21.3 percent (3.2 percent race-neutral, 18.1 percent race-conscious). GCRTA stated in its shortfall analysis that its goal attainment in FY 2017 was 15.8 percent (2.9 percent race-neutral, 12.3 percent race-conscious). (The review team noted that the sum of the race-neutral and race-conscious

goal percentages included in GCRTA's FY 2017 shortfall analysis totaled 15.2 percent, not 15.8 percent. GCRTA's FY 2017 Semi-Annual Uniform Reports in TrAMS show race-neutral attainment of 3.5 percent and race-conscious attainment of 12.3 percent, totaling 15.8 percent.) Per 49 CFR Part 26.47, GCRTA (one of the 50 largest transit agencies in the United States) was required to submit a shortfall analysis and corrective action plan to FTA within 90 days after the end of the federal fiscal year (i.e., December 31, 2017) for its FY 2017 shortfall. GCRTA requested an extension to submit its FY 2017 shortfall analysis and corrective action plan until February 7, 2018, which FTA granted. GCRTA submitted its shortfall analysis and corrective plan on February 6, 2018. In a letter dated April 9, 2018, FTA determined that GCRTA's shortfall analysis and corrective action plan satisfied the requirements of 49 CFR Part 26.47(c).

GCRTA prefaced its shortfall analysis by describing its understanding that DBE goal attainment was to be managed over the course of the triennial period. Consequently, GCRTA measured attainment based on a 3-year average and not annually, as required by 49 CFR Part 26.47(c). GCRTA rationalized that although it experienced a shortfall in FY 2017, it exceeded its goal in FY 2016, and that averaging the goal attainment percentages for FY 2016 and FY 2017 yielded a goal attainment of 21.8 percent (FY 2016 and FY 2017 Semi-Annual Uniform Reports show the 2-year attainment at 22.2 percent) compared to an overall goal of 21.3 percent. During the site visit, GCRTA confirmed its understanding that goal attainment was to be measured annually.

GCRTA attributed its FY 2017 shortfall to (1) the timing and nature of capital projects and (2) GCRTA's efforts to reduce the use of contract goals in FY 2017 in response to exceeding its overall goal in the two previous fiscal years (2015 and 2016). GCRTA stated the former circumstance as one resulting from the fact that 8 of the 22 contracts in FY 2017 were for goods and services specialized in nature and for which there were no ready, willing, and able DBEs. GCRTA described the goods and services as "transformers/rectifier set, heavy rail vehicle line breakers, rail car transfer table, engine kits, and brake microprocessors." These contracts represented \$2,248,430 (12 percent) of the \$18,819,336 in FTA assistance in FY 2017. GCRTA implemented the latter efforts, as required by 49 CFR Part 26.51(f)(4) and affirmed by FTA in related communications.

GCRTA provided a detailed analysis of the 22 FTA-assisted contracts awarded in FY 2017. Of the \$18,819,336 in FTA assistance in FY 2017, \$16,570,906 (88 percent) went to funding 14 contracts with DBE contract goals. DBE contract goal participation was attained on all of these contracts (and exceeded on 9 of the 14 contracts).

GCRTA also provided a summary of the race-neutral measures taken to achieve its FY 2017 overall goal. These measures included:

- *Provided DBE Program information at NOACA (Metro Planning Organization) Annual Meeting*
- *Participated ODOT in discussion of the Unified Certification Program (UCP) Memorandum of Understanding (MOU)*
- *Participated on meeting with Strategic Resources Consulting regarding DBE Certification*
- *Attended a Meet & Greet with newly established Small Businesses*
- *Provided DBE Program information at American Contract Construction Association National Training Institute hosted in Cleveland*

- *Provided DBE Program information at United Negro College Funds Leaders Luncheon*
- *Provided DBE Program information at local Chief Procurement Officer meeting on Communicating the Value of Supplier Diversity*
- *Presented at the Construction Employers Association meeting on the DBE program*
- *Attended DBE Certification Training hosted by FHWA Ohio Division*
- *Attended American Contract Construction Association Meeting*
- *Attended DBE Civil Rights Symposium in Columbus*
- *Provided DBE Program information at Cleveland Business to Business Matchmaker at Progressive Field*
- *Participated on DBE Appeal Process with ODOT*
- *Participated on American Contract Compliance Association Training*
- *Attended DBE Civil Rights Symposium in Columbus*
- *Participated in Cleveland Business to Business Matchmaker at Progressive Field*
- *Conducted meeting on Small Business Participation Plan*
- *Provided DBE Program information at Commission on Economic Inclusion meeting*

GCRTA stated a principal reason for the FY 2017 shortfall was “a conscientious effort by the Authority as per FTA’s notice to lower the use of contract specific goals” and further stated that, “In part to ensure DBE attainment did not exceed the overall three-year participation goal for FFY 2016-2018, FFY 2017 attainment was managed to a lowered level.” However, GCRTA did not describe in detail or analyze the effectiveness of what it did to manage attainment to a lowered level. GCRTA also did not identify or discuss what “a lowered level” meant, in specific terms, as it had not adjusted its race-neutral/race-conscious goals, as required by 49 CFR Part 26.51(f)(4).

In its corrective action plan, GCRTA stated, “The Authority believes its DBE attainment to-date for the FFY 2016-2018 period demonstrates a conscientious effort to [...] ensure the maximum feasible portion of the Overall DBE Participation goal is attained using race neutral means.” GCRTA also stated, “There is no indication that the race neutral portion[s] of the program are out of balance or not effective.” Although it was the case that its race-neutral/race-conscious goal attainment remained proportionately consistent in FY 2015, FY 2016, and FY 2017, GCRTA’s race-neutral measures were limited to participating in outreach to the DBE and non-DBE communities and program information dissemination. GCRTA did not include the implementation of other race-neutral measures described in 49 CFR Part 26.51(c), as follows:

- *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 of this part.*
- *Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing)*
- *Providing technical assistance and other services.*

-
- *Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.*
 - *Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.*
 - *Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.*
 - *Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.*

GCRTA's corrective action plan also did not include measures to foster small business participation as described in 49 CFR Part 26.39(b), as follows:

- *To facilitate competition by small business concerns, take all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contracts*
- *Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million)*
- *In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.*
- *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.*
- *Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.*
- *To meet the portion of your overall goal you project 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.*

Implementation of one or more of the race-neutral and small business participation measures would more fully demonstrate GCRTA's commitment and effort to ensure the maximum feasible portion of its goal is attained through race-neutral means; help address future DBE goal shortfalls; and help to proportionately adjust race-neutral/race-conscious goals when required to do so per 49 CFR Part 26.52(f)(4).

Advisory Comments

GCRTA was advised to do the following regarding all future shortfall analyses and corrective action plans:

- Analyze overall DBE goal attainment on an annual basis.
- Ensure all goal attainment percentages are consistent with those reported in TrAMS.
- When analyzing DBE goal shortfalls, provide details and examples when describing goal attainment efforts and implement corrective actions informed by and responsive to the results of the analysis. Corrective actions should include estimated implementation dates and milestones.
- Consider and implement all feasible race-neutral measures described in 49 CFR Part 26.51(c) and measures to foster small business participation described in 49 CFR Part 26.39(b) in all future corrective action plans.

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. GCRTA's DBE Program Plan did not address the requirements found at 49 CFR Part 26.49(a)(1) and 26.49(a)(4), as follows:

- (1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.*
- (4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement*

GCRTA could not provide documentation confirming it had checked the FTA's certified list of Transit Vehicle Manufacturers prior to awarding TVM contracts or documentation confirming it had submitted the information required in 49 CFR Part 26.49(a)(4) to FTA. FTA did confirm, however, that GCRTA had submitted the required TVM contract award documentation.

During the site visit, the review team provided technical assistance to GCRTA on how to check FTA's certified list of TVMs posted on the FTA website at

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers> to confirm TVMs are certified prior to award and advised GCRTA to obtain a screen shot of the certified TVM list and keep a copy of the list in the procurement file to meet the requirement. The review team also provided technical assistance on the requirement that within 30 days of TVM contract award, GCRTA must enter the information required in 49 CFR Part 26.49(a)(4) to FTA via its online Transit Vehicle Award Reporting form at <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA must submit 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. GCRTA 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(a)(4). Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting form 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, deficiencies were found with this requirement. GCRTA included a partially compliant contract assurance in its DBE Program Plan and TVM contracts. GCRTA included nondiscrimination language in its non-TVM contracts but did not include the contract assurance required in 49 CFR Part 26.13 in substantial part or whole.

The required contract assurance in 49 CFR Part 26.13 is as follows:

Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient 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.*

GCRTA's contract assurance as described in its DBE Program Plan stated the following:

Contract Assurance: The Authority will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, 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 remedies as the recipient deems appropriate.

GCRTA's DBE contract assurance omitted the four remedies included in the assurance required by 49 CFR Part 26.13.

Two GCRTA TVM contracts (2013-100 and 2017-091) and six non-TVM contracts (2016-056/24P-2, 2016-129/14.97, 2016-172/23V5, 2016-171, 2017-047/52I/J, and 2017-061/52M) were reviewed for the required contract language. None of the contracts reviewed contained the contract assurance language required in 49 CFR Part 26.13.

Corrective Actions and Schedules

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

- An updated DBE Program Plan that includes the contract assurance described in 49 CFR Part 26.13 in its entirety and states that the entire assurance required by the Part will be included in all FTA-assisted contracts (TVM and non-TVM).
- Updated General Service Provisions that include the contract assurance described in 49 CFR Part 26.13 in its entirety and confirmation that the required contract assurance will be included in all future FTA-assisted contracts either by inclusion in the General Service Provisions or otherwise.
- Documentation confirming all active FTA-assisted contracts have been reviewed to determine if they contain the required contract assurance described in 49 CFR Part 26.13 in its entirety, and that all contracts that do not contain the required contract assurance have been updated.

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, deficiencies were found with this requirement. GCRTA's DBE Program Plan stated the following regarding prompt payment:

The Authority will include in all construction solicitation packages and contracts the following Prompt Payment language:

Within ten (10) days after receiving payment from the Authority, Contractor shall pay each subcontractor or material supplier all amounts due and invoiced.

Upon completion of the project or completion of any subcontractor's portion of the project, and upon receipt of all required documentation and deliverables, the Authority will approve release of retainage or portions thereof directly to the Contractor. The Contractor shall release retainage due to each subcontractor or material supplier within ten (10) days following Authority's payment to the Contractor for work completed or material supplied by them.

The prompt payment provision was included in the six non-TVM contracts reviewed on site (2016-056/24P-2, 2016-129/14.97, 2016-172/23V5, 2016-171, 2017-047/52I/J, and 2017-061/52M). Although the review team was not made aware of any prompt payment issues by way of subcontractor complaints or otherwise, GCRTA was not adequately monitoring payments to DBEs for compliance with its prompt payment provision, as required by 49 CFR Part 26.29. GCRTA monitored payments to DBEs by using a combination of its vendor Payment Application form, prime contractor Payment Compliance Report, Field Monitoring Report, and Subcontractor/Subconsultant Payment Confirmation Report. However, no combination of these forms and reports compared the date the prime contractor received payment from GCRTA to the date prime contractors paid DBE subcontractors. Without making and documenting this comparison, GCRTA could not confirm that prime contractors were meeting the prompt payment requirements.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for verifying compliance with the Prompt Payment requirements found at 49 CFR Part 26.29, for all future payments on FTA-assisted contracts. GCRTA's procedures must include a verification and comparison of the date GCRTA paid the prime contractor and the date the prime contractor paid the DBE subcontractor. GCRTA's updated DBE Program Plan must also include procedures for monitoring DBE subcontracts for the required prompt payment language.

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, no deficiencies were found with this requirement. FTA issued an advisory comment with this requirement. GCRTA documented its legal remedies for noncompliance in its DBE Program Plan (Attachment C) and in its TVM General Contract Provisions.

GCRTA's legal remedies were as follows:

The following remedies shall be included in all Authority contracts:

In the event of the Contractor's noncompliance with the nondiscrimination/ disadvantaged business enterprise business provisions of this contract, the GCRTA shall impose such sanctions as it may determine to be appropriate, including but not limited to:

- a. Withholding of payments under the contract until the Contractor complies; and/or*
- b. Cancellation, termination, or suspension of the contract, in whole or in part;*
- c. Suspension from participation in future GCRTA contracts.*

The following enforcement action apply to firms participating in the DBE program as provided in 49 CFR Part 26, Section 26.107:

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR Part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or

fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

GCRTA's legal remedies were included in the following contracts reviewed on site: 2016-056/24P-2, 2016-129/14.97, 2016-172/23V5, 2016-171, 2017-047/52I/J, and 2017-061/52M.

Advisory Comment

GCRTA was advised to close the finding in its 2016 Triennial Review related to legal remedies by submitting a copy of its General Service Provisions to FTA, highlighting the legal remedies therein, along with confirmation that the General Service Provisions as submitted will be included in all FTA-assisted contracts.

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

During this compliance review, deficiencies were found with this requirement. FTA issued advisory comments with this requirement. GCRTA appeared to copy the language in 49 CFR Part 26 Subpart D, Certification Standards, verbatim into Attachment J of its DBE Program Plan to describe its DBE certification standards, and in doing so substantially addressed the Certification Standards requirement. However, some of the standards were out of date. Specifically, GCRTA's DBE Program Plan stated that firms with annual average gross receipts in excess of \$16.6 million were ineligible for DBE certification. The current cap on statutory gross receipts when determining business size eligibility is \$23.98 million. GCRTA also stated in its DBE Program Plan that the personal net worth limit for owners of applicant firms was \$750,000. The current personal net worth limit is \$1.32 million. Although its DBE Program Plan contained outdated certification standards, during the site visit, GCRTA stated it was using the current business size and personal net worth limitations when evaluating applicant firms for DBE certification. A review of three recent applications confirmed the use of the current standards and Personal Net Worth form.

GCRTA combined the description of its Certification Standards (49 CFR Part 26 Subpart D) and Certification Procedures (49 CFR Part 26 Subpart E) in the same section of its DBE Program Plan, making the distinction of the two requirement areas unclear. In addition, GCRTA incorporated by reference to Attachment J the details of its certification standards and included the full detail of its certification procedures in the main body of its DBE Program Plan.

Corrective Actions and Schedules

Within 60 days of the issuance of the final report, GCRTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes all certifications standards, as currently described in 49 CFR Part 26 Subpart D, including the standards updated in the 2014 DBE Final

Rule related to business size, personal net worth, economic disadvantage, ownership, and control. GCRTA must use the personal net worth statement found at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-personal-net-worth-statement>.

Advisory Comments

GCRTA should avoid inserting text verbatim from 49 CFR Part 26 into its DBE Program Plan without first confirming the text describes actual practice. In addition, when using text from 49 CFR Part 26, GCRTA should adapt the text to read as if it described its own standard or requirement, not DOT's requirement (though the two should not conflict). For example, if 49 CFR Part 26 states, "**You must require** each individual who makes this certification to support it," GCRTA should change the text to state, "**GCRTA requires** each individual who makes this certification to support it."

GCRTA should separate its Certification Standards and Certification Procedures into two distinct sections, as they are related but distinct sections in 49 CFR Part 26 (i.e., Subparts D and E). For clarity, GCRTA should include a detailed description of both its certification standards and certification procedures (under separate section headings) in the main body of its DBE Program Plan.

6.13 Certification Procedures

Basic Requirements (49 CFR Parts 26.83, 26.85, and 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

During this compliance review, deficiencies were found with this requirement. GCRTA was one of four certifying partners in the Ohio UCP administered by ODOT. At the time of the site visit, GCRTA was responsible for certifying 120 of the 1,255 DBEs in the Ohio UCP (9.5 percent). GCRTA substantially addressed the Certification Procedures requirement described in 49 CFR Part 26 Subpart E, complied with the terms of its UCP partner agreement with ODOT (Memorandum of Understanding signed on January 21, 2004), and used all required and current forms (i.e., DBE Application, No Change Annual Affidavit, and Personal Net Worth). However, neither its DBE Program Plan nor the certification procedures described on its website reflected current practice regarding how applicants submitted the DBE application and supporting documents for consideration.

In recent years, the Ohio UCP implemented the use of an online DBE application that all applicant firms were to use to submit DBE applications and upload supporting documentation for review. All four Ohio UCP certifying partners used the online system and coordinated document and application file management with ODOT. GCRTA did not describe this process in its DBE Program Plan. In addition, GCRTA's website contained a link on its DBE certification page that when clicked routed the applicant to the Ohio UCP online application portal. GCRTA did not provide instructions on its website preparing the applicant to be routed to a non-GCRTA website, which could cause confusion for the applicant. Finally, GCRTA had links to download hardcopy Personal Net Worth and No Change Annual Affidavit forms on the DBE certification page of its website that were broken.

GCRTA did not address procedures for interstate certification in its DBE Program Plan. The Ohio UCP partnership agreement briefly described "Reciprocity Agreement" procedures, as follows:

Reciprocity Agreement. *The committee decided to review any requests for reciprocity agreements as they are received or needed. Upon completion of the UCP process, the committee decided it would review any requests for reciprocity.*

GCRTA did not provide any more detail regarding its interstate certification procedures in its DBE Program Plan; however, the Ohio UCP website contained a downloadable interstate certification application under the heading "Applying for DBE Certification – Out-of-State Firms." The application contained the following language:

The purpose of the interstate certification policy is to make the Ohio UCP DBE certification process easier on DBEs certified in a home state other than Ohio. The DBE program is a national program, and administrative obstacles to certification undermine important program objectives.

PLEASE NOTE: *Applicants to provide to Ohio a complete copy of their application form, all supporting documentation, and other information submitted to the firm's home state or other States wherein the firm is certified.*

During the site visit, the following application files were reviewed for content and completeness. Although GCRTA's applicant files were well-organized in accordance with the terms of its UCP partner agreement, applicant files were missing required information as follows:

	DBE Application	Personal Net Worth	Annual Affidavits	Business Tax Filings	Socio/Econ Disadvantage Affidavit
Adrian Maldonado & Associates	Yes	Yes	Yes	Yes	Yes
Cordero Concrete & Construction, LLC	Yes	Yes	No	Yes	Yes
Cousco Brown, Inc.	Yes	Yes	Yes	Yes	Yes

	DBE Application	Personal Net Worth	Annual Affidavits	Business Tax Filings	Socio/Econ Disadvantage Affidavit
Maria Aces & Days Cleaning Co.	Yes	Yes	No	No	Yes
Clarke's Family Trucking, Inc.	Yes	No	Yes	Yes	Yes
Strategic Resources Consulting	Yes	No	Yes	Yes	Yes
Sparks Professional Services, Inc. (Denial)	No	No	No	Yes	No
JCM & Associates, Inc. (Interstate Certification)	Yes	Yes	Yes	Yes	Yes

Corrective Actions and Schedules

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

- An updated DBE Program Plan that includes a detailed description of its current certification procedures, including procedures for interstate certification; describes the steps applicants must take to submit DBE applications and supporting documents through the Ohio UCP online DBE application portal; and describes in detail its procedures for coordinating with ODOT to receive originals or copies of all application documentation in all applicant files stored on site at GCRTA.
- Confirmation that it has updated the DBE Certification page on its website describing the use of the Ohio UCP online DBE application portal and that it has fixed all broken links to DBE certification information and forms (i.e., UCP Certification Application, Interstate Certification, and Statement of Personal Net Worth).

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 also issued advisory comments with this requirement. GCRTA had not completed the “Actual Payments on Contracts Completed This Period” section of its Semi-Annual Reports submitted for FY 2016–18.

In addition, at the time of the site visit, FTA reported an outstanding finding from GCRTA’s 2016 Triennial Review regarding incomplete Semi-Annual Uniform Reports submitted in FY 2013 and FY 2014. The finding stated that although GCRTA reported subcontracts awarded during these periods in fields 9(c)–9(h) of the Uniform Report, the total dollars and number of subcontracts required in fields 9(A) and 9(B) were missing. Per its 2016 Triennial Review, FTA required GCRTA to update its FY 2013 and FY 2014 Semi-Annual Uniform Reports with the required information and to include procedures for accurately reporting subcontractor activity in all future reports. GCRTA appeared to have not taken corrective action on the finding as required per a review of the FY 2013 and FY 2014 Uniform Reports in TrAMS. However, during the site visit, GCRTA provided documentation (TrAMS screenshots) of its FY 2013 and FY 2014 reports captured on June 29, 2016, showing the reports fully completed, as required.

As described in its DBE Program Plan, GCRTA monitored payments to DBEs and overall program compliance through an active three-step process. First, contractors submitted invoices on GCRTA’s Application for Payment form and accompanying Contract Compliance Payment Compliance Report. The Application for Payment form included the original contract amount, approved change orders (if any), current invoice amount, time period, and running total of payments to date. The Contract Compliance Payment Compliance Report included the original contract amount, contract DBE participation goal (if any), amount paid to DBE and non-DBE subcontractors for the invoice time period, and total amount paid to DBE and non-DBE subcontractors to date. GCRTA required contractor payment applications to be approved by the Engineering and Project Development Office, the Engineering and Project Development Project Manager, and the Office of Business Development (OBD). The OBD was primarily responsible for ensuring DBE program compliance before vendor payments were released. The OBD also conducted periodic field monitoring activities to ensure prime contractors and DBE subcontractors complied with contract terms regarding work performed by DBEs, including whether DBEs were performing a commercially useful function. Business Development Specialists in the OBD conducted the field monitoring activities and reported field monitoring results on the Field Monitoring Report form, which captured the names and number of DBE firms on site, type of work performed, tools and equipment used, and equipment ownership. GCRTA required DBE subcontractors to complete and submit a monthly Subcontractor/Subconsultant Payment Confirmation Report confirming receipt of payment.

During the site visit, the review team accompanied GCRTA on a tour and field monitoring visit at its FTA-assisted 116th Street Station construction project (contract 2016-171) and observed GCRTA’s field monitoring process. GCRTA interviewed the prime contractor, reviewed supporting documentation (i.e., daily work logs and sign-in sheets), and interviewed DBE staff on site. The review team further reviewed GCRTA’s completion of the Field Monitoring Report described above.

GCRTA enforcement mechanisms included prepayment authorization; reporting false, fraudulent, or dishonest conduct to the DOT Inspector General; withholding of payments; cancellation, termination, or suspension of contracts in whole or part; and suspension from participation in future GCRTA contracts. GCRTA referenced additional enforcement actions for DBE program noncompliance described in 49 CFR Part 26.107.

GCRTA's OBD maintained a bidders list that included all required elements described in 49 CFR Part 26.11(c); however, the list comprised only firms that were awarded contracts. GCRTA's Procurement Department maintained a similar bidders list that contained all bidders whether they were successful or not.

Corrective Actions and Schedules

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

- Revised Semi-Annual Uniform Reports for FY 2016–18 that include Actual Payments on Contracts Completed This Period.
- An updated DBE Program Plan that includes detailed procedures for properly completing Semi-Annual Uniform Reports.

Advisory Comments

GCRTA was advised to submit to FTA its revised FY 2013 and FY 2014 Semi-Annual Uniform Reports (previously updated on June 29, 2016) to partially close the related finding in its FY 2016 Triennial Review. Development and implementation of procedures for properly completing Semi-Annual Uniform Reports, as included as corrective action in this DBE compliance review, should close out the FY 2016 Triennial Review finding. GCRTA was advised to review FTA's DBE reporting webinar on FTA's website at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-training>. GCRTA was advised to use its Procurement Department's bidders list for DBE program purposes, including developing future DBE goals.

This page intentionally left blank to facilitate duplex printing.

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
			AC	<p>and describes in detail its procedures for researching the availability of DBE financial institutions. GCRTA must also provide documentation that it has researched the availability of DBE financial institutions and that it has encouraged prime contractors to use such institutions.</p> <p>Advisory Comment: GRCTA was advised to research the availability of minority-owned banks, and to document the results of its research, annually. GCRTA was advised to focus its compliance with the DBE Financial Institutions requirement on identifying minority-owned banks, rather than investment firms and insurance companies.</p>	
5.	DBE Directory	26.31	D	<p>Findings: GCRTA's description of the management of its DBE Directory did not reflect current circumstances.</p> <p>Corrective Actions: GCRTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that accurately describes GCRTA's relationship to the Ohio UCP DBE Directory and any responsibilities it has in maintaining the directory, explains how the directory is updated, and describes how to access the directory to review its contents or obtain a copy. • Confirmation that its website contains accurate information regarding the DBE Directory (consistent with the description in its updated DBE Program Plan). 	60 Days
6.	Overconcentration	26.33	D	<p>Findings: GCRTA did not have procedures in place to analyze and address occurrences of overconcentration.</p> <p>Corrective Actions: GCRTA 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, the frequency with which an analysis of overconcentration will be conducted, and the measures taken to address any occurrence of overconcentration (e.g., use of incentives, technical</p>	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				assistance, business development programs, and mentor-protégé programs).	
7.	Business Development Programs	26.35	AC	Advisory Comment: GCRTA was advised to update its DBE Program Plan to state it did not have a BDP.	
8.	Determining/Meeting Goals				
8.a	Calculation	26.45	D	Findings: GCRTA’s Step 1 analysis of the relative availability of ready, willing, and able DBEs contained errors (i.e., market area discrepancies and source data deficiencies). Corrective Actions: GCRTA must submit to the FTA Office of Civil Rights a revised Triennial DBE Goal Setting Methodology for FY 2019–21 that complies with 49 CFR Part 26.45 requirements and incorporates the DOT DBE goal-setting guidance found at https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise . Additional guidance is available on FTA’s DBE training website at https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-training .	60 Days
		AC	Advisory Comment: GCRTA was advised to use the bidders list produced and maintained by its Procurement Department when calculating its revised DBE goal for FY 2019–21.		

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
8.b	Public Participation	26.45	D	<p>Finding: GCRTA did not consult with minority, women's, and general contractor groups, community organizations, and other officials or organizations when establishing its FY 2019–21 DBE goal.</p> <p>Corrective Actions: GCRTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • A list of the members of its DBE Program Advisory Committee. • Either documentation that it has consulted with its DBE Program Advisory Committee and published notice of its FY 2019–21 DBE goal in local newspapers, minority-focused media, and various trade publications, or an updated DBE Program Plan that reflects only those methods of goal publication it actually uses, along with documentation confirming publication of its goal according to those methods. 	60 Days
8.c	Race-Neutral DBE Participation	26.51	D	<p>Findings: GCRTA did not implement race-neutral measures as required. GCRTA did not effectively implement its efforts to foster small business participation as described in its DBE Program Plan or implement the recommended small business element measures described in 49 CFR Part 26.39.</p> <p>Corrective Actions: GCRTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that includes the race-neutral measures described in 49 CFR Part 26.51 and a plan for implementing said measures. The plan must include a detailed description of how GCRTA will periodically review the effectiveness of its race-neutral measures and adjust these measures to meet the maximum feasible portion of its overall goal by using race-neutral means. The implementation plan must include an implementation timeline. • An updated DBE Program Plan that includes a detailed description of its efforts to foster small business participation; only those measures GCRTA has implemented or will actually implement should be described. 	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				<ul style="list-style-type: none"> A timeline for implementing any planned (but not yet implemented) measures to foster small business participation. 	
8.d	Race-Conscious DBE Participation	26.51	D	<p>Findings: GCRTA had not submitted documentation confirming it had taken corrective action to close the race-conscious goal finding in its 2016 Triennial Review. GCRTA's DBE Program Plan did not describe procedures for its use of race-conscious goals.</p> <p>Corrective Actions: GCRTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> Documentation confirming implementation of corrective actions taken to close the race-conscious goal adjustment finding in its 2016 Triennial Review. An updated DBE Program Plan that describes how GCRTA establishes and uses race-conscious goals. GCRTA must include detailed procedures for reducing its use of race-conscious goals per 49 CFR Part 26.51(f)(4). 	60 Days
8.e	Good Faith Efforts	26.53	ND		
8.f	Protecting Against Termination for Convenience	26.53 and 26.13	ND		
8.g	Counting DBE Participation	26.55	AC	GCRTA was advised to update its DBE Program Plan with its procedures for counting DBE participation as described in its General Contract Provisions.	
8.h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	AC	<p>GCRTA was advised to do the following regarding all future shortfall analyses and corrective action plans:</p> <ul style="list-style-type: none"> Analyze overall DBE goal attainment on an annual basis. Ensure all goal attainment percentages are consistent with those reported in TrAMS. When analyzing DBE goal shortfalls, provide details and examples when describing goal attainment efforts and implement corrective actions informed by and responsive to the results of the analysis. 	

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				<p>Corrective actions should include estimated implementation dates and milestones.</p> <ul style="list-style-type: none"> Consider and implement all feasible race-neutral measures described in 49 CFR Part 26.51(c) and measures to foster small business participation described in 49 CFR Part 26.39(b) in all future corrective action plans. 	
10.	Transit Vehicle Manufacturers (TVMs)	26.49	D	<p>Findings: GCRTA did not document that it confirmed it awarded transit vehicle contracts to FTA-approved TVMs. GCRTA did not document required TVM award procedures in its DBE Program Plan.</p> <p>Corrective Actions: GCRTA must submit 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. GCRTA 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(a)(4). Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting form at https://www.surveymonkey.com/r/vehicleawardreportsurvey.</p>	60 Days
11.	Required Contract Provisions				
11.a	Contract Assurance	26.13	D	<p>Finding: GCRTA did not include the full required nondiscrimination assurance, including the four remedies, in prime contractor and subcontractor agreements.</p> <p>Corrective Actions: GCRTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> An updated DBE Program Plan that includes the contract assurance described in 49 CFR Part 26.13 in its entirety and states that the entire assurance required by the Part will be included in all FTA-assisted contracts (TVM and non-TVM). Updated General Service Provisions that include the contract assurance described in 49 CFR Part 26.13 in its entirety and 	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
				<p>confirmation that the required contract assurance will be included in all future FTA-assisted contracts either by inclusion in the General Service Provisions or otherwise.</p> <ul style="list-style-type: none"> Documentation confirming all active FTA-assisted contracts have been reviewed to determine if they contain the required contract assurance described in 49 CFR Part 26.13 in its entirety, and that all contracts that do not contain the required contract assurance have been updated. 	
11.b	Prompt Payment	26.29	D	<p>Finding: While a prompt payment clause was included in all contracts reviewed, no verification of compliance with prompt payment requirements was provided.</p> <p>Corrective Actions: GCRTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes procedures for verifying compliance with the Prompt Payment requirements found at 49 CFR Part 26.29, for all future payments on FTA-assisted contracts. GCRTA's procedures must include a verification and comparison of the date GCRTA paid the prime contractor and the date the prime contractor paid the DBE subcontractor. GCRTA's updated DBE Program Plan must also include procedures for monitoring DBE subcontracts for the required prompt payment language.</p>	60 Days
11.c	Legal Remedies	26.37	AC	GCRTA was advised to close the finding in its 2016 Triennial Review related to legal remedies by submitting a copy of its General Service Provisions to FTA, highlighting the legal remedies therein, along with confirmation that the General Service Provisions as submitted will be included in all FTA-assisted contracts.	
12.	Certification Standards	26.67-26.71	D	<p>Findings: GCRTA's DBE Program Plan included incorrect business size and personal net worth standards.</p> <p>Corrective Actions: GCRTA must submit to the FTA Office of Civil Rights an updated DBE Program Plan that includes all current certifications standards, as currently described in 49 CFR Part 26 Subpart D, including the standards updated in the 2014 DBE Final Rule related to business size, personal net worth, economic disadvantage, ownership, and control. GCRTA must use the personal net worth statement found at</p>	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Findings, Corrective Actions, Advisory Comments	Response Days/Date
			AC	<p>https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-personal-net-worth-statement.</p> <p>Advisory Comments: GCRTA should avoid inserting text verbatim from 49 CFR Part 26 into its DBE Program Plan without first confirming the text describes actual practice. In addition, when using text from 49 CFR Part 26, GCRTA should adapt the text to read as if it described its own standard or requirement, not DOT’s requirement (though the two should not conflict). For example, if 49 CFR Part 26 states, “You must require each individual who makes this certification to support it,” GCRTA should change the text to state, “GCRTA requires each individual who makes this certification to support it.”</p> <p>GCRTA should separate its Certification Standards and Certification Procedures into two distinct sections, as they are related but distinct sections in 49 CFR Part 26 (i.e., Subparts D and E). For clarity, GCRTA should include a detailed description of both its certification standards and certification procedures (under separate section headings) in the main body of its DBE Program Plan.</p>	
13.	Certification Procedures	26.83, 26.85, and 26.86	D	<p>Findings: GCRTA did not include procedures for interstate certification in its DBE Program Plan and did not describe its current procedures for completing DBE certification applications online through the Ohio UCP website in its DBE Program Plan or on its website. The DBE Certification page on GCRTA’s website contained links to certification information that were broken.</p> <p>Corrective Actions: GCRTA must submit the following to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • An updated DBE Program Plan that includes a detailed description of its current certification procedures, including procedures for interstate certification; describes the steps applicants must take to submit DBE applications and supporting documents through the Ohio UCP online DBE application portal; and describes in detail its procedures for coordinating with ODOT to receive originals or 	60 Days

8. Attendee List

Name	Title
Greater Cleveland Regional Transportation Authority	
Floun'say Caver	Interim Chief Executive Officer, General Manager
Joseph Calabrese	Senior Advisor
Rajan Gautam	Deputy General Manager-Finance and Administration
Steven Sims	Director, Office of Business Development
Carl Kirkland	Business Development Specialist
Diana Jones	Business Development Specialist
Eric Johnson	Business Development Specialist/Government Relations
Danielle Bennett	Secretary, Office of Business Development
Sheryl King Benford	General Counsel-Deputy General Manager for Legal Affairs
Anna Hlavacs	Associate Counsel
Joel Freilich	Acting Deputy General Manager Operations
Melinda Dangelo	Director of Procurement
Theodore Pickett, Sr.	Fleet Team Leader
Eric Smith	Procurement Team Leader-Construction
Anthony Garofoli	Executive Director, Internal Audit
Kay Sutula	Acting Executive Director, Office of Management and Budget
George Fields	Acting Deputy General Manager, Human Resources
Michael Schipper	Deputy General Manager, Engineering and Project Management
Federal Transit Administration	
John Day	Program Manager, Policy and Technical Assistance
Janelle Hinton	Equal Opportunity Specialist
Marisa Appleton	Civil Rights Officer for Oversight
Prime Contractor	
Michael Picciano	Panzica Project Superintendent
The DMP Group – DBE Program Compliance Reviewers	
John Potts	Lead Reviewer
Donald Lucas	Reviewer
Gregory Campbell	Reviewer

This page intentionally left blank to facilitate duplex printing.

ATTACHMENT A – FTA NOTIFICATION LETTER TO GCRTA



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

Headquarters

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

June 28, 2018

Joseph A. Calabrese
Chief Executive Officer
Greater Cleveland Regional Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1302

Dear Mr. Calabrese:

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 Greater Cleveland Regional Transit Authority (GCRTA) has been selected for a review of its overall DBE program to take place September 18-21, 2018.

The purpose of this review is to determine whether GCRTA is honoring its commitment, as represented by certification to FTA, to comply with the 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, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of The DMP Group, LLC (DMP) of Washington, D.C. to conduct this compliance review. The DMP 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 Tuesday, September 18, 2018 at 9:00 a.m. Eastern Standard Time, to introduce the DMP team and FTA representatives to GCRTA. 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. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents. Please let us know if you will designate a member of your staff to serve as GCRTA'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 electronic (soft copy) versions of these materials to the following contact person, who is available to discuss material transmission options with you:

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 Friday, September 21, 2018 at 11:00 a.m. Eastern Standard Time, 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 report, when issued to GCRTA, will be considered public documents subject to release under the Freedom of Information Act, upon request.

GCRTA 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 me at 202-366-1671, or via e-mail at *john.day@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
and Technical Assistance

Enclosure

cc: Kelley Brookins, Acting Regional Administrator, FTA Region 5
Nicholas Sun, Program Manager, Regional Operations Division, FTA
Janelle Hinton, Equal Opportunity Specialist, FTA
Carl Kirkland, Acting Director, Office of Business Development, GCRTA
Maxine Marshall, Lead Reviewer, The DMP Group, LLC

Greater Cleveland Regional Transit Authority
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 GCRTA's organization chart).
2. A narrative that describes the GCRTA individuals and resources dedicated to implementing the DBE program requirements, handling DBE program inquiries, and educating GCRTA staff on DBE program requirements. The narrative should include an organization chart showing GCRTA's DBE staff and a budget showing funds allocated to the DBE program.
3. FY 2016 – FY 2018 DBE goal setting methodology submission and semiannual reports of DBE attainment (fiscal years 2015, 2016, 2017, and 2018), and/or quarterly reports of ARRA DBE attainment, if applicable.
4. DBE goal shortfall analyses and corrective action plans for the most recent three Federal fiscal years (FY 2015- FY 2017) in which GCRTA did not meet its DBE goal.
5. Current Memorandum of Understanding or similar documents for GCRTA's participation in the Ohio Unified Certification Program.
6. Any additional certification criteria/guidelines used by GCRTA in determining DBE eligibility, if applicable.
7. Provide the number of DBE applications GCRTA has reviewed, approved, and denied each year from FY2015 through FY2018 to date. Include the number of DBE applications and the names of applicants that are currently pending review.
8. Current DBE Directory exported to Microsoft Excel.
9. Provide a list (preferably in an Excel spreadsheet) of ongoing FTA-assisted **GCRTA** contracts. The list should identify the award date, total contract amount, DBE contract goal (where applicable), prime contractor name, DBE participant names (where applicable), the scope of work, the amounts awarded and actually paid to each DBE (where applicable), and worksite locations (where applicable).
10. Provide a list (preferably in an Excel spreadsheet) of ongoing FTA-assisted **subrecipient** contracts (organized by subrecipient), if applicable. The list should identify the award date, total contract amount, DBE contract goal (where applicable), prime contractor name, DBE participant names (where applicable), the scope of work, the amounts awarded and actually paid to each DBE (where applicable), and worksite locations (where applicable).
11. Provide a list (preferably in an Excel spreadsheet) of FTA-assisted contracts with

Greater Cleveland Regional Transit Authority
Disadvantaged Business Enterprise Program Compliance Review

DBE goals completed by GCRTA from FY 2017 – current.

12. Provide a list (preferably in an Excel spreadsheet) of FTA-assisted contracts with DBE goals completed by subrecipients (organized by subrecipient) from FY 2017 – current, if applicable.
13. The identification of firms, if any, that have worked on GCRTA’s projects and have graduated from GCRTA’s DBE program in the last three years, i.e., exceeded the threshold dollar amounts and are no longer certified.
14. Good Faith Effort criteria established by GCRTA.
15. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
16. Examples of GCRTA’s implementation of its DBE Program small business element identified in its DBE Program Plan as the “Small Business Participation Plan.”
17. List of FTA-assisted GCRTA and subrecipient (if applicable) transit vehicle procurements/contracts for the last five (5) years.
18. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years, developed by GCRTA and its subrecipients (if applicable).
19. List of all bids accepted for the RFPs provided in response to Item 16.
20. Names of interested parties (external organizations) with which GCRTA has interacted on the DBE program issues.
21. Any complaints or lawsuits received concerning GCRTA’s DBE program or its prime contractors over the past three (3) years.
22. The DBELO official position description and position descriptions for other GCRTA staff or contractors responsible for implementing the DBE Program.
23. Current DBE staff positions filled and vacant.
24. Prompt payment verification process.
25. Status of open findings from the FY 2016 Triennial Review and any related corrective actions.
26. Documentation confirming the vehicles purchased by GCRTA on September 14,

Greater Cleveland Regional Transit Authority
Disadvantaged Business Enterprise Program Compliance Review

2017 from Whitworth Bus Sales were manufactured by an FTA-approved Transit Vehicle Manufacturer.

27. Other pertinent information determined by GCRTA's staff to further demonstrate GCRTA's DBE compliance efforts.

ATTACHMENT B – GCRTA RESPONSE TO DRAFT REPORT



Greater Cleveland
Regional Transit Authority

1240 West 6th Street
Cleveland, Ohio 44113-1302
Phone: 216-566-5100
riderta.com

February 19, 2019

Mr. John Day
Program Manager for Policy
& Technical Assistance
U.S. Department of Transportation
East Building, 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, D.C. 20590

RE: Federal Transit Administration FY2019 DBE Compliance Review

Dear Mr. Day,

We have reviewed the draft report from the DBE review of the Greater Cleveland Regional Transit Authority (GCRTA), conducted on September 18-21, 2018. We welcome the support and guidance provided in the administration of our DBE program, and are committed to improving and enhancing the program.

We believe our DBE program is operated in full compliance with applicable regulations. In general, where deficiencies are noted in the draft report, the concern is not that applicable regulations were not followed but instead, there is some question of whether and to what extent procedures are documented in the DBE Program Manual. As such, we respectfully request the specific regulatory guidance or references that set-forth the information that must be included in the DBE Program Manual.

Also, we believe the Authority has taken adequate corrective action to close a 2016 Triennial Review deficiency related to reducing the use of contract goals. A full response was provided to FTA in our letter from Joseph Calabrese to Marjorie Hughes, FTA, Region V, Civil Rights Officer, dated August 4, 2017 (See attached).

The draft report contains some errors and inaccuracies, and we do not agree with certain findings. However, we recognize the overall benefit that will result from close examination of our program, and careful consideration, research, and response to each of the named deficiencies. Thus, we prefer to place our time and attention on undertaking a comprehensive review of our DBE program and will provide a response to the final report covering all items remaining from the draft report.



Greater Cleveland
Regional Transit Authority

Mr. John Day
February 19, 2019
Page 2

We believe this approach will best serve all necessary interests including regulatory, programmatic, and public. Our response and development of corrective actions to the final report presents an opportunity for our staff to become better acquainted with the requirements and intricacies of the program, which may be needed due to the significant turnover of the program staff in 2018. This also will allow us to address the factual errors and inaccuracies contained in the draft report.

We look forward to your continued assistance and support as we partner to offer the best DBE program in compliance with all applicable laws and regulations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Floun'say R. Caver, Ph.D.', written in a cursive style.

Floun'say R. Caver Ph.D., Interim CEO
General Manager - Secretary Treasurer

cc: Steven Sims
Carl R. Kirkland
Rajan D. Gautam



The Greater Cleveland
Regional Transit Authority

1240 West 6th Street
Cleveland, Ohio 44113-1302
Phone: 216-566-5100
rideRTA.com

August 4, 2017

Ms. Marjorie Hughes
Region V Civil Rights Officer
U.S. Department of Transportation
Federal Transit Administration
200 West Adams Street Ste. 320
Chicago, Illinois 60606

Re: Race-Neutral/Race-Conscious Breakdown Adjustment

Dear Ms. Hughes:

This letter is in response to Mr. John Day's letter dated July 6, 2017 regarding the Race-Neutral/Race-Conscious Breakdown related to the Authority's 2016-2018 DBE participation goal, and its reference to the letter from Ms. Linda Ford dated January 30, 2015. As instructed, we are directing the letter to your attention. As indicated in our response to Ms. Ford, dated February 26, 2015, GCRTA is committed to compliance with all applicable laws and regulations related to the implementation of the Disadvantaged Business Enterprise Program as outlined at 49 CFR Part 26 of the federal regulations. As such, we make every effort to ensure that our DBE program primarily is a race neutral initiative that incorporates race-conscious elements, as needed.

Since notification in the January 30, 2015 letter, the Authority has acted diligently to lower the percent goal set on specific contracts and ensure the race-neutral/race-conscious breakdown of the DBE participation is consistent with the level established for a given federal fiscal year. **The race-conscious/race-neutral DBE participation attainment for FFY 2016 was 21.89% and 7.32%, respectively.** While the levels exceeded that calculated for FFYs 2016-2018, the result reflected the utilization of DBE firms by prime contractors and DBE firms serving as prime contractors at levels not indicative of historical performance.

However, the higher overall utilization of DBE firms by prime contractors and higher race neutral outcome reflecting DBE firms serving as prime contractors has not continued into FFY 2017. As reported on the Semi Annual Report of DBE Awards and Commitments submitted for the first half of FFY 2017, GCRTA was tracking below its overall annual DBE participation goal at 12.36% with a breakdown of 9.89% from race-conscious means and 2.47% from race-neutral means.

The race-conscious/race-neutral participation goal for FFY 2017 is 18.10% and 3.20% based on the three-year federal fiscal period 2016-2018. **The Authority now estimates that it likely will achieve DBE participation in the range of 14.54% for the full FFY 2017 as compared to the goal of 21.30%, with the race-conscious/race-neutral breakdown being 12.47% and 2.07%.**



August 4, 2017

Page 2

Re: Race-Neutral/Race-Conscious Breakdown Adjustment

While it should be noted the estimated DBE participation for the combined periods FFY 2016 and 2017 is on target with the three year (2016-2018) DBE goal determination at 21.11% overall with 16.69% race-conscious and 4.42% race-neutral, **GCRTA proposes an adjusted 12.47% and 2.07% race-conscious/race-neutral DBE participation breakdown for FFY 2017 in response to FTA's request that GCRTA submit an adjusted breakdown for a total DBE participation of 14.54%, which corresponds to revised calculations of likely DBE participation for the FFY.**

The amount and breakdown were determined based on actual DBE attainment for the period October 1 - June 30, combined with the calculation of estimated DBE participation on contracts for the remainder of the FFY, which is based on a detailed review of anticipated procurements for July 1 - September 30. (See Exhibit A).

GCRTA believes its DBE participation results demonstrates the Authority's effort to respond to FTA's concerns by closely administering its goal setting activities to remain within the established DBE goal and ensure that race-neutrality drives the program. The Authority will address the difference in FFY 2017 DBE attainment as compared to the DBE participation goal in a shortfall analysis once the actual results for the FFY are fully known.

To ensure the Authority continue to meet the maximum feasible portion of the overall DBE participation goal using race-neutral means, and will continue the following measures: 1. closely administer its goal setting activities and race-conscious/race-neutral attainment on contracts, 2. actively engage the prime contractor community to encourage, promote, and advocate for the utilization of DBE firms on contracts, and 3. actively encourage, promote and solicit DBE firms to bid on projects as prime contractors, where appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph A. Calabrese', is written over a circular stamp or seal.

Joseph A. Calabrese, CEO
General Manager
Secretary Treasurer

JAC:SS:db

cc: John Day, Program Manager for Policy and Technical Assistance
Steven Sims, GCRTA