

FTA

FEDERAL TRANSIT ADMINISTRATION

Metropolitan Atlanta Rapid Transit Authority (MARTA)

Disadvantaged Business Enterprise (DBE) Program
Compliance Review

Final Report
May 2019



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Executive Summary

This report details the findings of a Compliance Review of the Metropolitan Atlanta Rapid Transit Authority's (MARTA) Disadvantaged Business Enterprise (DBE) program implementation. The Compliance Review team (1) examined the agency's DBE program procedures, management structures, actions, and documentation; (2) collected documents and information from the Federal Transit Administration (FTA) and MARTA; and (3) interviewed MARTA officials, prime and subcontractors, and community-based organizations that advocate on behalf of minority- and woman-owned businesses. The three-day review included interviews, assessments of data collection systems, and review of program and contract documents.

MARTA's DBE program includes the following positive program elements –

Positive Program Elements

- MARTA has implemented an electronic DBE Program Management System to: (1) automate its DBE certification intake process and allow applications to be completed and submitted electronically; and (2) automate the process for collecting DBE participation information to monitor prime contractors' DBE program compliance.

MARTA's DBE program has the following administrative deficiencies –

Administrative Deficiencies

- DBE Policy Statement and DBE Program Plan are out of date.
- MARTA has established DBE goals on non-federally funded contracts.
- MARTA must update its DBE monitoring procedures.
- MARTA does not maintain a bidders list in accordance with 49 CFR Part 26.11(c).

MARTA's DBE program has the following substantive deficiencies –

Substantive Deficiencies

- MARTA has submitted two versions of its FFY 2018-2020 DBE goal that have not met FTA requirements for approval.
- MARTA has insufficient staff to administer requirements of the DBE program adequately.
- MARTA has a backlog of pending DBE certification applications and Annual Affidavits.

MARTA's overall DBE goal for FFYs 2015-2017 was set at 30% (5% Race-Neutral, 25% Race-Conscious). In the review of MARTA's reported DBE participation for the past three completed fiscal years, the recipient exceeded its 30% overall goal each year with attainments of 56.36%, 32.29%, and 33.92%, respectively. See details in the table below.

MARTA's Goal Attainment Summary

	DBE Goal: 30% (RN: 5% / RC: 25%)			
	FY 2015	FY 2016	FY 2017	Three-Year Totals
Total DBE Dollars	\$ 3,643,029	\$ 62,950,493	\$ 19,167,412	\$ 85,760,934
Total Prime Dollars	\$ 6,463,987	\$ 194,980,195	\$ 56,511,695	\$ 257,955,877
DBE Goal Attainment	56.36%	32.29%	33.92%	33.25%

For the 2015-2017 triennial goal period, MARTA's overall goal attainment was 33.25%. MARTA attained 2.84% of the 5% race-neutral portion of its goal and exceeded the 25% race-conscious portion of the goal with an attainment of 30.41%. See details in the table below.

MARTA's Race-Neutral / Race Conscious Goal Attainment

	DBE Goal: 30% (RN: 5% / RC: 25%)						Overall Goal Attainment	
	FY 2015	DBE %	FY 2016	DBE %	FY 2017	DBE %		Three-Year Totals
Total								
Prime Dollars	\$ 6,463,987		\$ 194,980,195		\$ 56,511,695		\$ 257,955,877	
R/N DBE Dollars	\$ 3,403,029	52.65%	\$ 1,059,908	0.54%	\$ 2,856,502	5.05%	\$ 7,319,440	2.84%
R/C DBE Dollars	\$ 240,000	3.71%	\$ 61,890,585	31.74%	\$ 16,310,910	28.86%	\$ 78,441,495	30.41%
Total DBE Dollars	\$ 3,643,029	56.36%	\$ 62,950,493	32.29%	\$ 19,167,412	33.92%	\$ 85,760,935	33.25%

The FY 2015 race-neutral goal attainment for the fiscal year was attributed to the award of ten DBE prime contracts in the June 1st report, and eight DBE prime contracts and one DBE subcontract in the December 1st report. When exceeding its 25% race-conscious goal during the course of FFYs 2016 and 2017, MARTA did not eliminate or reduce the use of contract goals to ensure that it did not exceed the overall goal.

This report highlights several actions to help ensure the DBE program is implemented in compliance with 49 CFR Part 26.

I. General Information

This chapter provides basic information concerning this Compliance Review of the Metropolitan Atlanta Rapid Transit Authority (MARTA). Information on MARTA, the review team, and the dates of the review are presented below.

Grant Recipient:	Metropolitan Atlanta Rapid Transit Authority (MARTA)
City/State:	Atlanta, Georgia
Recipient Number:	1101
Executive Official:	Jeffrey A. Parker, General Manager / CEO
On-site Liaison:	Paula M. Nash, Interim Executive Director, Diversity and Inclusion Antoine Smith, Manager, Supplier Diversity
Report Prepared By:	Milligan & Company, LLC
Dates of On-site Visit:	November 28 – 30, 2018
Compliance Review Team Members:	Lillie Claitt, Lead Reviewer Habibatu Atta, Reviewer Kristin Tighe, Reviewer

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2. Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights Compliance Reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub recipients with Section 12 of the Master Agreement, Federal Transit Administration M.A. (24), October 1, 2017, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

MARTA awards contracts that exceed \$250,000 in FTA funds annually, hence it 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 MARTA's DBE Program Plan and were the basis for this Compliance Review.

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3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub recipients 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 the MARTA's DBE program is necessary.

The primary purpose of the Compliance Review is to determine the extent MARTA has implemented 49 CFR Part 26, as represented in its DBE Program Plan. This Compliance Review is intended to be a fact-finding process to: (1) assess MARTA'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 designed to 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 MARTA's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to 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 MARTA is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of MARTA'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 MARTA's DBE Program Plan from a variety of sources, including MARTA management personnel, DBEs, prime contractors, DBE subcontractors, and other stakeholders.

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4. Background Information

The purpose of this section is to provide an understanding of MARTA's operations and scale. The section highlights MARTA's services, budget, and the history of its DBE program.

4.1 Introduction to MARTA and Organizational Structure

MARTA is the principal rapid transit system in the Atlanta metropolitan area and the ninth largest in the United States. In 1965, the Metropolitan Atlanta Rapid Transit Authority Act was passed by the state legislature and subsequently approved in two counties, Fulton and DeKalb, including the City of Atlanta, creating MARTA. The MARTA Act authorized the agency to serve the Metropolitan Atlanta region, subject to approval by referendum, of a one percent sales and use tax for construction and operation of the transit system.

In February 1972, MARTA purchased the Atlanta Transit System and took control of the area's primary bus transportation system.

A Board of Directors, currently comprised of 15 members, governs MARTA. Twelve are appointed by the jurisdictions (Fulton, DeKalb and Clayton counties and the City of Atlanta); the Governor appoints one member and two members serve as ex-officio in their capacity as Commissioner of the Georgia DOT and Executive Director of the Georgia Regional Transportation Authority. The population of Fulton and DeKalb counties, including the City of Atlanta, is approximately 2.1 million people. In the November 2014 election, the citizens of Clayton County voted to join MARTA, and on November 8, 2016, the City of Atlanta voted to pass a historic tax increase to support MARTA's expansion and enhancements in the city. More than two-thirds of voters approved an additional 0.5 sales tax. It is expected that the tax increase will provide about \$2.5 billion over the next 40 years to fund rail improvements, expansion, and provide new buses and other services.

MARTA consists of heavy rail, bus, paratransit and light rail services that operate within the boundaries of Fulton, DeKalb, and Clayton counties. For over a quarter of a century, MARTA has moved over 3.5 billion people throughout the region.

- Rail service is provided with 338 rail cars capable of carrying passengers to any of its 38 stations.
- MARTA provides complete mobility service, including a fleet of 208 lift vans.
- More than 550 buses provide service along 1,659 miles of road on 106 routes. MARTA customers have access to 9,719 bus stops and 729 shelters.

MARTA operates from its headquarters building at the Lindbergh Center station. MARTA has three fixed-route bus facilities: in southeast Atlanta, the Hamilton Boulevard facility; in west central Atlanta, the Perry Boulevard facility; and the Laredo Drive facility in Decatur which is located in DeKalb County. The paratransit fleet operation and maintenance facility is located on Brady Avenue in central Atlanta. Additionally, all heavy bus maintenance and non-revenue vehicle fleet maintenance occurs at the Browns Mill Heavy Maintenance Facility. MARTA's rail system has three major support facilities: Avondale Yard and Shops on the East Line near Decatur; Armour Rail Services Facility in Central Atlanta; and the South Yard near the Airport

Station. All facilities are FTA funded with the exception of the Perry Bus Garage, the Armour Rail Services Facility, and the Chamblee Integrated Operations Center.

4.2 Budget and FTA-Assisted Projects

MARTA's Operating and Capital budget reflects federal and local funds, as well as revenue from fares and other sources. For Fiscal Year 2018, MARTA's adopted Capital and Operating budget was as follows:

Funding Source	Funding Amount	
Federal – FTA	Total:	\$ 131.0 M
	Capital:	\$ 65.0 M
	Operating:	\$ 66.0 M
Local:		\$ 439.8 M
	Grand Total:	\$ 570.8 M

MARTA has several FTA-assisted projects currently underway, aimed at enhancing and replacing current amenities, expanding services, and rehabilitating underused or outdated features. In its document submittals, MARTA provided a list of on-going FTA-assisted contracts that include:

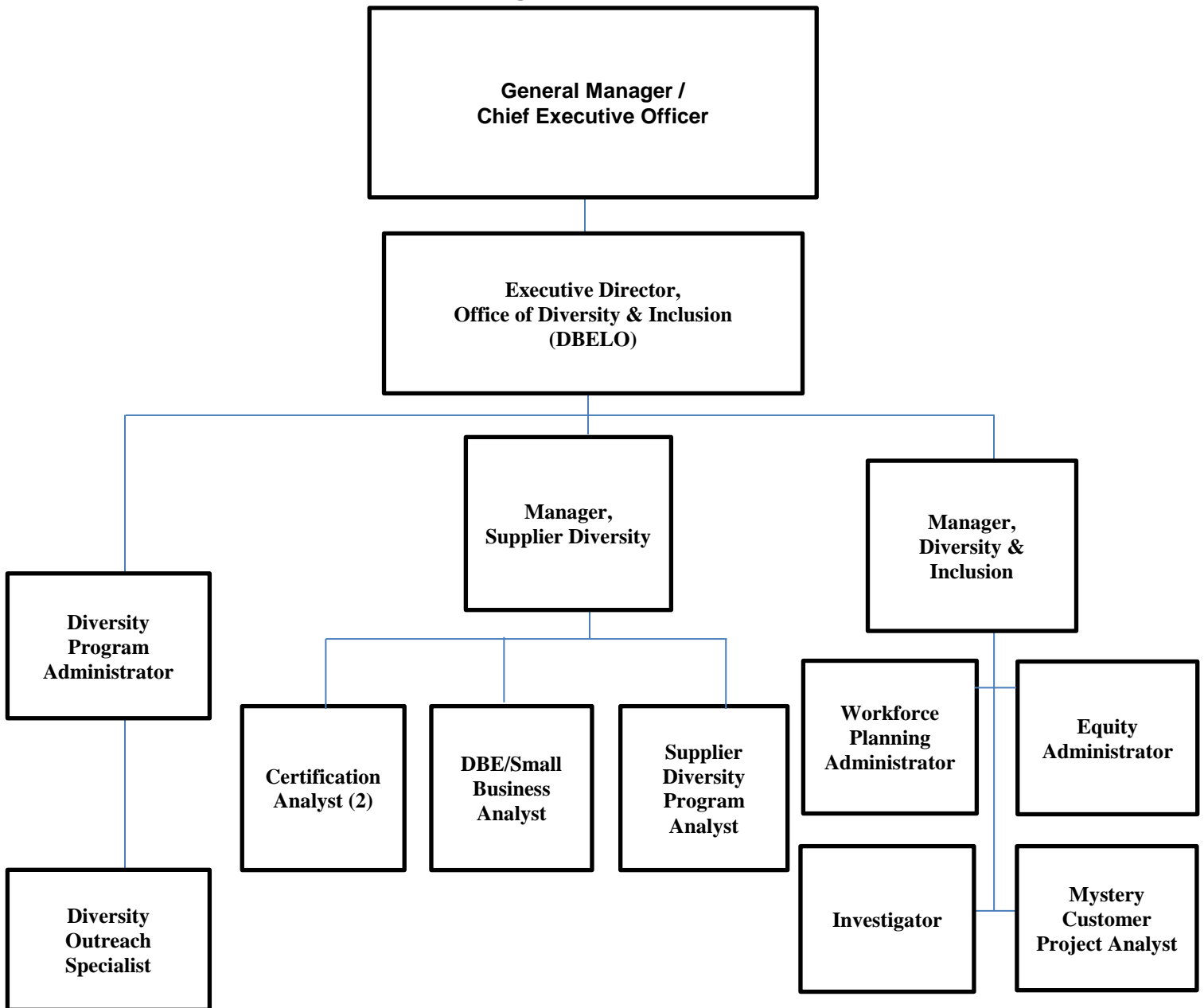
- Train Control System Upgrade (TCSU) SCADA
- System-wide Tunnel Lighting Upgrades
- CNG Protection System Upgrade
- Elevator/Escalator Rehabilitation Program and Maintenance
- North Avenue Switchgear Replacement
- System-wide UPS Replacement
- North Avenue Station Low Voltage Replacement
- Standby Power Systems-Generator Replacement
- Emergency Trip Station Replacement - Group 4
- Track Safe Grant, Phase II
- Public Address System Upgrade
- Rail Station Electronic Signage Upgrade
- CNG Fueling and IWTP Facility at Hamilton

4.3 DBE Program

MARTA's Executive Director, Office of Diversity and Inclusion (D&I) is the designated Disadvantaged Business Enterprise Liaison Officer (DBELO) responsible for monitoring and enforcing the agency's DBE program to ensure compliance with appropriate federal and state laws and regulations. The Executive Director, D&I (DBELO) has direct and independent access to MARTA's General Manager/Chief Executive Officer (GM/CEO). The agency's organization chart displays the DBELO's reporting relationship to the GM/CEO.

**MARTA
Office of Diversity and Inclusion – FY2018**

Organization Chart



The job description for the Executive Director of Diversity and Inclusion was provided for review. The position reports to the General Manager/CEO, and is responsible for oversight of several MARTA programs, which include the Americans with Disabilities Act (ADA), Affirmative Action (AA) / Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) Programs, Supplier/Workforce Diversity, Title VI Program, and the Limited English Proficiency Plan. The position description does not state that

the Executive Director, Diversity & Inclusion serves as MARTA's DBELO, or lists the specific duties and responsibilities of the DBELO. According to the Office of Diversity & Inclusion organization chart, eleven positions report to the Executive Director. Five positions administer the DBE program: the Manager, Supplier Diversity, and four direct reports: Certification Analyst (2), DBE/Small Business Analyst, and Supplier Diversity Program Analyst. One Certification Analyst position is currently vacant.

MARTA is a certifying participant for the state of Georgia Unified Certification Program (GA UCP).

5. Scope and Methodology

5.1 Scope

Implementation of the following DBE program components specified by the FTA, are reviewed 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 MARTA 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 MARTA as well as 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 (not) exist and addresses 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 MARTA did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufactures (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include MARTA seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- A non-discrimination 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, along with 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, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86]
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

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 (Attachment A) to MARTA that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed MARTA of staff and other parties that would potentially be interviewed.

Before conducting the on-site visit, MARTA was asked to provide the following documents:

- Most current DBE Program Plan
- DBE goal methodology submissions
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years
- A Memorandum of Understanding or similar documents indicating MARTA's participation in the Unified Certification Program (UCP)
- A list of FTA-assisted contracts awarded during the current and previous fiscal years
- A list of DBE firms that had worked on FTA-assisted projects sponsored by MARTA
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by MARTA
- 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.

An opening conference was conducted at the beginning of the Compliance Review with FTA representatives, MARTA staff, and the review team. The following people attended the meeting:

Federal Transit Administration

Dee Foster	Region IV Civil Rights Officer – (by telephone)
Janelle Hinton	Equal Opportunity Specialist – (by telephone)

Metropolitan Atlanta Rapid Transit Authority (MARTA)

Jeff Parker	General Manager & Chief Executive Officer
Paula Nash	Interim Executive Director, Diversity and Inclusion
Antoine Smith	Manager, Supplier Diversity
Jonathan Hunt	Chief of Corporate Law & Real Estate
Onyinye Akujuo	Director, Federal and State Grant Programs
Jeter Barnhill	Project Manager
Patrick Minnucci	Director of Project Management & Construction
Elizabeth O'Neill	Chief Counsel
David Springstead	AGM Capital Programs & Interim AGM Rail Operations
Lisa DeGrace	Chief Contracts Officer
Cynthia Beasley	Director of Accounting
Melissa Mullinax	Chief of Staff

Milligan and Company, LLC

Sandra Swiacki	Project Director – (by telephone)
Lillie Claitt	Lead Reviewer
Habibatu Atta	Reviewer
Kristin Tighe	Reviewer

Following the opening conference, the review team reviewed their analysis and understanding of MARTA's DBE Program Plan and other documents submitted by the DBE Liaison Officer. The team then conducted interviews with MARTA staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. These interviews included staff from MARTA's DBE Program Office, Procurement/Contracts, Grants/Finance, Project Management and Legal departments. A sample of contracts were then selected and reviewed for their DBE elements.

At the end of the review, FTA representatives, MARTA staff, and the review team convened for the final exit conference. At the exit conference, initial observations were discussed with MARTA. Attending the conference were:

Federal Transit Administration

John Day	Program Manager of Policy and Technical Assistance – (by telephone)
Dee Foster	Region IV Civil Rights Officer – (by telephone)
Janelle Hinton	Equal Opportunity Specialist – (by telephone)

Metropolitan Atlanta Rapid Transit Authority (MARTA)

Jeff Parker	General Manager & Chief Executive Officer (by telephone)
Paula Nash	Interim Executive Director, Diversity and Inclusion
Antoine Smith	Manager, Supplier Diversity
Onyinye Akujuo	Director, Federal and State Grant Programs
Patrick Minnucci	Director of Project Management & Construction
Elizabeth O'Neill	Chief Counsel
Lisa DeGrace	Chief Contracts Officer
Melissa Mullinax	Chief of Staff

Milligan and Company, LLC

Sandra Swiacki	Project Director – (by telephone)
Lillie Claitt	Lead Reviewer
Habibatu Atta	Reviewer
Kristin Tighe	Reviewer

FTA provided MARTA with a draft copy of the report for review and response. Factual corrections suggested by MARTA were incorporated.

5.3 Stakeholder Interviews

This section discusses information gathered during interviews with community representatives, stakeholder groups, and contractors regarding MARTA's DBE program.

Prior to the on-site, the review team contacted the following companies:

Prime Contractors:

Alstom Signal
Centennial Contractors Enterprise
Lakeshore Engineering

DBE Subcontractors:

D&D Electric Company
Knowledge Architects
Michael Thrasher Trucking
Pearlnet, LLC

The companies were randomly selected from MARTA's list of federally funded contracts awarded during FFYs 2016 to present.

Interviews were conducted with the three prime contractors and two DBE subcontractors, D&D Electric Company and Knowledge Architects. The interview questions presented were:

- *What is your contracting experience with the organization?*
- *Give a brief description of your current/active contract.*

- *What is the dollar value of your contract?*
- *What are the payment and retainage terms?*
- *How much have you been paid to date?*
- *How is your working relationship with the prime contractor or subcontractor?*
- *Have there been any contract issues?*

The prime contractors noted that they have a cooperative working relationship with MARTA. Each prime contractor provided an overview of how DBEs were solicited for participation on their project. Strategies included contacting DBE subcontractors with whom they have a working relationship, and inviting DBEs from the UCP directory to bid. Two prime contractors stated that there have not been any DBE performance issues or DBE substitutions on their respective contracts. One prime contractor had performance issues with a DBE subcontractor on a prior project; MARTA was notified and allowed the prime contractor to solicit another DBE subcontractor to complete the work. Two of the prime contractors indicated that MARTA conducted regular job-site inspections and attended progress meetings regularly. One prime contractor mentioned that they submit quarterly reports regarding DBE participation regularly, as required by MARTA.

In response to the question regarding payment terms, there were varied responses from the three prime contractors. For example, the responses were -- subcontractors are paid within five days, within seven days, and within ten to thirty days after payment is received from MARTA. Regarding retainage, all three prime contractors responded that they are withholding ten percent retainage, although one prime contractor stated they have reduced the retainage to five percent now that the project is over 50% complete. The prime contractors also indicated that DBEs are considered for change order work.

The two DBE subcontractors interviewed were also familiar with MARTA's DBE program and had a good working relationship with the agency. Both DBE subcontractors stated that they were solicited for work because of their past working relationship with the prime contractor. One subcontractor stated that they were a substitution for a DBE on another project, and has maintained a working relationship with the prime contractor on other projects since that time. None of the subcontractors had any disputes regarding work performance or progress payments. Both DBE subcontractors stated that retainage was being withheld.

Stakeholder Organizations

The purpose of this activity was to invite the organizations to participate in interviews to determine their relationship with MARTA and to see how the agency presents its DBE program to external stakeholders.

Four organizations were contacted:

- USDOT Mid-South Atlantic Small Business Transportation Resource Center (SBTRC)
- Women in Construction Engineering & Related Services
- National Association of Minority Contractors
- Georgia Hispanic Construction Association

Two organizations responded to the request for an interview:

- Georgia Hispanic Construction Association: This organization's primary mission is to develop and promote the Hispanic construction industry in Georgia.
- National Association of Minority Contractors: This organization was established to address the needs and concerns of minority contractors.

The interview questions presented were:

- *Are you familiar with the agency's DBE program?*
- *Have you been requested to participate in the development of or comment on the agency's DBE goal?*
- *Is your organization made aware of contracting/subcontracting opportunities on the agency's contracts? If so, how?*
- *How often is your organization contacted to provide referrals for the agency's contracting opportunities?*
- *Do you participate in any outreach efforts organized by the agency?*
- *What is your view of the effectiveness of the agency's DBE program?*
- *Are you aware of any concerns about the DBE program from members?*
- *Do you have any suggestions for the agency to improve their DBE program?*

Representatives from the two organizations were familiar with MARTA's DBE program. One of the representatives stated that they participated in the consultation meeting when the DBE goal was developed.

The representatives from both organizations stated that MARTA made their organizations aware of contracting opportunities through weekly email bid notifications. One representative stated they were also aware of contracting opportunities through their attendance at MARTA's outreach events. The most recent outreach event, MARTA's Partnership Day, occurred on October 31, 2018. Both representatives also mentioned that MARTA participates in outreach activities hosted by their respective organizations.

One representative recommended that MARTA should increase communication and involvement with stakeholder organizations, attend more membership / outreach events, and share more information about upcoming bid opportunities. The representative suggested MARTA host "matchmaker" events between prime and subcontractors, so contractors could have an opportunity to meet and establish a connection, which could lead to future working relationships.

6. Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to MARTA's DBE program is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed 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 will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review.
- A statement concerning the DBE requirements being violated or potentially being violated.
- A statement concerning the required corrective action to resolve the issue.

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed 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, significant changes in the program must be submitted for approval.

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Program Plan.

The Civil Rights Information in TrAMS indicates MARTA submitted its DBE Program Plan on 2/28/2012. It was revised on 6/13/13, and approved by FTA on 6/14/2013. Although the plan contains all of the requirements set forth in the DBE regulations, the corrective actions and recommendations listed in this report will necessitate additional updates to the DBE Program Plan.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MARTA must submit to the FTA Office of Civil Rights an updated DBE Program 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. This policy must be circulated throughout the recipient's organization and to the DBE and non-DBE business communities.

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Policy Statement.

The policy statement included in MARTA's 2013 DBE Program Plan has the signature of the agency's former General Manager/CEO, Keith T. Parker, dated 1/31/13. The policy statement posted on the agency's website has the signature of the agency's current General Manager/CEO, Jeffrey A. Parker, and dated 3/6/2018.

Neither policy statement included in the DBE Program Plan or posted on the website contain all the DBE program objectives. Specifically, the policy does not identify the designated DBELO; state that the DBE Program Plan is accorded the same priority as compliance with all other legal obligations incurred; or indicate how or to whom the policy is circulated.

During the on-site, MARTA indicated that DBE posters were distributed throughout the organization, but the posters were not available for examination. In addition, no documentation was provided evidencing how MARTA disseminates the policy to the DBE and non-DBE business communities.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MARTA must submit to the FTA Office of Civil Rights, evidence that the policy statement included in its DBE Program Plan and posted on the agency's website contains all required program objectives, and that the policy is signed and dated by the current General Manager/CEO. Additionally, MARTA must provide evidence that the policy statement is disseminated internally and externally.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25)

Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Liaison Officer.

MARTA's 2013 DBE Program Plan indicates the Executive Director, Office of Diversity and Equal Opportunity (DEO), is the designated DBELO. According to the DBE Program Plan, the position reports to the Assistant General Manager for Human Resources, with dotted line reporting responsibility to the General Manager/CEO. The organization chart (Attachment 1) included in the DBE Program Plan displays the Executive Director, DEO's position within the organization.

The 2013 DBE Program Plan indicates that the DBELO is a senior management position, with duties structured to facilitate long and short-range planning for program activities. The DBELO activities listed in the DBE program are consistent with the responsibilities required to implement all aspects of the recipient's DBE program in accordance with 49 CFR part 26, which include:

- Gathers and reports statistical data and other information as required by DOT
- Reviews third party contract and purchase requisitions 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
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results
- Analyzes MARTA's progress toward attainment and identifies ways to improve progress
- Participates in pre-bid and pre-proposal meetings
- Advises the CEO/governing body of DBE matters and achievements
- Determines contractor compliance with good faith efforts
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance
- Plans and participates in DBE training seminars
- Acts as liaison/partner to the Uniform Certification Process in Georgia
- Provides outreach to DBEs and community organizations to advise them of opportunities
- Maintains MARTA's updated directory of certified DBEs

In May 2016, the name of the Office of Diversity and Equal Opportunity (DEO) was changed to the Office of Diversity and Inclusion (D&I). The Executive Director of the office, who is the designated DBELO, now has a direct reporting relationship to the General Manager/CEO. An updated organization chart was provided during the on-site review, displaying the Executive Director's position in the organization.

The Executive Director identified in the 2013 DBE Program Plan left the agency. An interim Executive Director, D&I was appointed as the designated DBELO.

The position description states that the Executive Director, D&I reports to the GM/CEO, and has multiple oversight responsibilities that include DBE, EEO, ADA, SBE, Supplier/Workforce Diversity, Title VI, and Limited English Proficiency Plan. One of the essential duties and responsibilities of the position is the implementation of those programs. The position description does not specifically describe the DBELO duties and responsibilities as delineated in the DBE Program Plan. Nor does it indicate the amount of time the Executive Director is allotted to actively participate in administering the agency's DBE program.

The Executive Director, D&I has a staff of five persons responsible for administering the DBE program. The positions include the Manager, Supplier Diversity, two Certification Analysts, one DBE/Small Business Analyst, and one Supplier Diversity Program Analyst. The four analyst positions report to the Manager, Supplier Diversity. One Certification Analyst position is currently vacant.

Although the Manager, Supplier Diversity and support staff are performing day-to-day DBE program activities, the staffing is not sufficient to administer effectively all of the various requirements of the program including the processing of new certification applications and annual affidavits; contract monitoring; and collecting, maintaining and analyzing supporting documentation for DBE reports.

New DBE Certifications / Annual Affidavits

MARTA has automated the process for applicants to complete and submit new certification applications and annual affidavits; however, there is insufficient staff available to receive the volume of applications and annual affidavits in queue. There is currently one staff person processing new certifications and reviewing annual affidavits. According to MARTA's electronic certification system, there is a total of 15 new certification applications and 215 annual affidavits pending receipt for processing.

Contract Monitoring and DBE Reports

MARTA has more than 25 ongoing FTA-assisted projects that require DBE monitoring, and currently one staff person is responsible for the monitoring task. There is insufficient staff available to perform adequately all required monitoring tasks including prompt payment verification, conducting commercially useful function reviews, and preparing DBE participation reports.

Corrective Actions and Schedule

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

- A job description for the designated DBELO outlining the duties and responsibilities of the position and indicating the level of active involvement dedicated to administering DBE program activities; and
- A resource/staffing plan to ensure that all requirements of the DBE program are adequately accomplished.

6.4 DBE Financial Institutions

Basic Requirement (49 CFR Part 26.27)

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

Discussion

During this compliance review, deficiencies were found with the requirement for DBE Financial Institutions.

MARTA's 2013 DBE Program Plan indicates the recipient has identified eight minority financial institutions and banks:

Capital City Bank and Trust
Carver State Bank
Citizens Trust Bank
Global Commerce Bank
Metro City Bank
Quantum National Bank
State Bank of Georgia
United Americas Bank, NA

The DBE Program Plan states that all prime contractors and subcontractors are cognizant of MARTA's commitment to use minority financial institutions and banks. The plan provides a listing of identified financial institutions including the names of contact persons and their respective services. Contractors are also encouraged to be inclusive in their use of minority financial institutions and banks. Exhibit H, found in MARTA's solicitation documents provides a listing of recommended minority-owned banks for contractors to consider. The list contains a "Utilization of Minority-owned Banks Disclaimer" that states:

"MARTA encourages all contactors and their subcontractors, suppliers and vendors to consider utilizing the services of Minority-owned Banks for funds received from Authority projects. Failure to investigate the opportunities to use banking institutions owned and controlled by minorities and women in good faith may cause a contractor to be in non-compliance with 49

CFR 26.27. The Federal requirement states that deposits in banking institutions are not to be considered toward the fulfillment of DBE goals.”

During the on-site, MARTA stated that it re-evaluates the existence of minority-owned financial institutions, and provided a revised listing dated November 2018. The list includes the names of six minority-owned banks located in the State of Georgia:

MINORITY-OWNED BANKS STATE OF GEORGIA			
Bank Name	Address	Telephone/Fax	Contact/Title
Carver State Bank	701 MLK Jr., Blvd, Savannah, GA 31402	T: (912) 447-4203 F: (912) 232-8666	Robert E. James President
Citizens Trust Bank	230 Peachtree Street, NW; Suite 2700 Atlanta, GA 30303	T: (404) 575-8221 F: (404) 575-8320	Samuel J. Cox Senior EVP & CFO
Metro City Bank	5441 Buford Hwy, Ste. 109, Doraville, GA 30340	T: (770) 455-4974 F: (770) 455-4983	Abdul Mohdnor Senior Vice President
Quantum National Bank	505 Peachtree Industrial Blvd, Suwanee, GA 30024	T: (678) 889-4504 F: (770) 904-3484	Dana Litman EVP, CFO & CRO
State Bank of Georgia	131 Gingercake Road, Fayetteville, GA 30214	T: (678) 216-3220 F: (678) 545-2434	Kathy Hulsey CFO
Touchmark National Bank	3651 Old Milton Parkway Alpharetta, GA 30005	T: (770) 407-6700 F: (770) 407-6752	Kellie Pressnall EVP & CFO

MARTA's solicitation documents are not updated with the current listing of minority-owned financial institutions. Furthermore, there was no evidence that MARTA itself made efforts to use any of the identified financial institutions.

Corrective Actions and Schedule

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

- Evidence that the DBE Program Plan is updated to contain the current list of identified minority-owned financial institutions;
- Evidence that MARTA's solicitation documents are updated with the current list of minority-owned financial institutions; and
- Evidence of MARTA's efforts to evaluate the use of the identified minority-owned financial institutions.

6.5 DBE Directory

Basic Requirement (49 CFR Part 26.31)

A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion

During this compliance review, no deficiencies were found with the requirement for DBE Directory.

MARTA is a certifying member of the Georgia UCP, but is not responsible for maintaining the GUCP DBE directory. MARTA's website includes a link to the GUCP DBE directory for public access.

MARTA transfers its certified DBE information to GDOT for update into the DBE Directory. MARTA's information includes the company name, contact person, business address, telephone number, email address, applicable NAICS codes, and the description of the specific type of work each DBE is certified to perform.

6.6 Overconcentration

Basic Requirement (49 CFR Part 26.33)

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

Discussion

During this compliance review, deficiencies were found with the requirement for overconcentration.

MARTA's DBE Program Plan states the recipient has determined that overconcentration does not exist in the type of work DBEs perform, and that MARTA will re-evaluate the existence of overconcentration annually.

The DBE Program Plan does not describe the procedures MARTA would use to determine overconcentration or the measures it would take should it occur. Nor is there evidence that MARTA has evaluated the existence of overconcentration annually.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MARTA must submit to the FTA Office of Civil Rights, procedures for determining if overconcentration exists, and the measures it will take to address overconcentration, if applicable.

6.7 Business Development Programs

Basic Requirement (49 CFR Part 26.35)

The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion

During this compliance review, no deficiencies were found with the requirement for Business Development Programs.

MARTA has not established a formal business development program for FTA approval.

The DBE Program Plan states that MARTA promotes business development through partnerships with the Greater Atlanta Economic Alliance and the Georgia Minority Supplier Development Council. The partnerships include activities such as:

- Participation in the Alliance's Construction Business Management Institute training module to address the necessity for detailed contract requirements, criteria used to evaluate bids, financial planning in correlation with progress payments, and pros and cons of intentionally under bidding, and the concepts of responsiveness and responsibility;
- Coordination of outreach programs targeting small, minority, women and disadvantaged businesses;
- With assistance of MARTA's Marketing Department, communicate by the use of special brochures, e-alerts and other means to publicize and inform the targeted small business audience of available programs, workshops and contracting opportunities.

At the on-site, MARTA provided evidence of the business development activities identified above with a listing of its internal and external DBE outreach and communication activities conducted throughout 2017 and 2018.

6.8 Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45)

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

Discussion

During this compliance review, deficiencies were found with the requirement for Determining / Meeting Goals.

MARTA submitted an initial FFY 2018-2020 proposed triennial goal for approval on 8/1/2017 and a subsequent revision on 9/19/17. The proposed revised goal was set at 16% (11% RC / 5% RN). FTA advised MARTA that the revised goal had a number of missing elements in the following areas: Goal-Setting Methodology, Step 1; Goal Setting Methodology, Step 2; Calculation of Race-Neutral / Race-Conscious Split; and Consultation Documentation. In response to instructions from FTA, MARTA submitted a proposed interim goal of 22% (20% RC / 2% RN) on August 24, 2018.

During the on-site, MARTA's interim goal was examined for its content and accuracy. The methodology was reviewed with the interim DBELO and the Manager, Supplier Diversity, and technical assistance was provided.

Step 1 – Determining the Base Figure

MARTA's methodology indicated the proposed interim goal of 22% was developed by analyzing DBE participation on past, current and future contracts, the UCP DBE Directory, and the U.S. Census Bureau County Business Patterns. MARTA identified its market area as the five major counties in the Metropolitan Statistical Area (MSA) of Metropolitan Atlanta, which are the counties of Clayton, Cobb, DeKalb, Fulton, and Gwinnett.

MARTA identified a list of eight (8) federally-assisted projects anticipated for award during the FFY 2018 – 2020 goal period. The eight (8) projects are:

1. Inman Park Bridge Rehabilitation
2. Emergency Trip Station
3. Track Rehabilitation, Phase IV
4. Browns Mill Bus Facility – Paint Booth Renovations
5. Traction Power Substation Replacement North/South
6. Traction Power Substation Replacement East/West
7. Auxiliary Low Voltage Switchgear Replacement North/South
8. Auxiliary Low Voltage Switchgear Replacement East/West

The listing did not include the estimated dollar value or a breakdown of the associated scope of works for each project.

During the on-site technical assistance session, the Manager, Supplier Diversity presented a copy of MARTA's "FFY 2018 – 2020 DBE Goal Worksheet" which listed the eight projects anticipated for FFYs 2018 – 2020 and the estimated FTA funded dollars (totaling \$466,538,219). See table below.

Award Year	Project Name	FTA Funded Amount	% of Total FTA Funds
FY 2018	Inman Park Bridge Rehabilitation	\$ 3,200,000	0.69%
FY 2018	Emergency Trip Station	\$ 21,572,894	4.62%
FY 2018	Track Rehabilitation, Phase IV	\$ 52,000,000	11.15%
FY 2018	Browns Mill Bus Facility - Paint Booth Renovation	\$ 4,985,004	1.07%
FY 2019	Traction Power Substation Replacement North/South	\$ 139,060,078	29.81%
FY 2019	Traction Power Substation Replacement East/West	\$ 81,267,041	17.42%
FY 2020	Auxiliary Low Voltage Switchgear Replacement North/South	\$ 99,070,428	21.24%
FY 2020	Auxiliary Low Voltage Switchgear Replacement East/West	\$ 65,382,774	14.01%
	Total FTA-Assisted Contract Dollars	\$ 466,538,219	100.00%

The methodology includes a chart identifying a “General Grouping of Activity Categories” by NAICS code, and indicates the percentage/weight of the dollar amount for each category to the total subcontract dollars. It did not indicate which NAICS code applied to which project identified above.

General Grouping of Activity Categories for Overall Goal

NAICS Code	NAICS Code Description	Amount of DOT Funds on Project	% of Total DOT Funds (Weight)
238110	Poured Concrete Contractors	\$ 2,227,371	0.0495%
238210	Electrical Contractor/Suppliers	\$24,752,646	0.5501%
238220	Plumbing / HVAC Contractors	\$ 3,430,763	0.0762%
238390	Ceiling Contractors	\$ 1,379,911	0.0307%
238910	Site Preparation Contractors	\$ 2,018,959	0.0449%
238990	All Other Specialty Trade Contractors	\$ 6,360,135	0.1414%
423710	Hardware Merchant Wholesalers	\$ 2,450,000	0.0545%
423730	HVAC Equipment and Supplies Merchant Wholesalers	\$ 2,375,080	0.0528%
	Total FTA-Assisted Contract Funds	\$44,994,865	1

The reviewer noted that the above chart combines Electrical Contractors and Electrical Suppliers under one NAICS code, 238210 – “Electrical Contractors and Other Wiring Installation Contractors”. There is a separate NAICS code for Electrical Suppliers, which is 423610 - “Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers”.

MARTA’s methodology indicates the agency used the U.S. Census Bureau County Business Patterns (CBP), for the five counties in its market area, and the UCP DBE Directory to determine the Step 1 goal base figure. See the following chart.

According to the chart, the number of all firms from the Census Bureau CBP totaled 2,723 and the total number of firms from the Georgia UCP DBE Directory totaled 571. Based on those numbers, the Step 1 Base Figure calculation is:

$$\frac{\text{Total Ready, Willing and Able DBE (UCP Directory)} \quad 571}{\text{Total All Firms (Census CBP)} \quad 2,723} = 20.97\%$$

General Grouping of Contracts for Overall Goal

NAICS Code	Category Where Majority of Contracts to be Awarded During Three Year Period of FY 2018 - FY 2020 with Percentages	Counties in County Business Patterns					Total Firms in County Business Patterns and DBEs	Total Firms in DBE Directory	Overall Relative Availability
		Clayton	Cobb	DeKalb	Futon	Gwinnett			
238110	Poured Concrete Contractors	6	43	8	20	54	229	98	0.4279%
238210	Electrical Contractors/Suppliers	29	191	91	108	276	789	94	0.1191%
238220	Plumbing / HVAC Contractors	46	155	96	107	290	727	33	0.0454%
238390	Ceiling Contractors	2	28	13	18	32	118	25	0.2119%
238910	Site Preparation Contractors	10	50	13	27	44	299	155	0.5184%
238990	All Other Specialty Trade Contractors	12	59	29	39	75	363	148	0.4077%
423710	Hardware Merchant Wholesalers	5	21	17	21	44	120	12	0.1000%
423730	HVAC Equipment and Supplies Merchant Wholesalers	8	14	10	12	28	78	6	0.0769%
	Combined Totals	118	561	277	352	843	2723	571	20.97%

In determining the Step 1 base figure, MARTA added the total number of firms from the DBE directory to the total number of all firms from the Census Bureau County Business Patterns (CBP) database, likely inflating the total number of all firms. For example, the total number of all firms from the CBP for NAICS Code 238110 – Poured Contract Contractors is 131; the total number of firms from the UCP DBE Directory is 98. MARTA added the two numbers together, potentially inflating the total number of all firms to equal 229.

The resulting numbers, based on not adding these numbers together, and overall relative availability percentage is highlighted in the chart below. Based on these numbers, the Step 1 Base Figure calculation would be:

$$\frac{\text{Total Ready, Willing and Able DBE (UCP Directory)} \quad 571}{\text{Total All Firms (Census CBP)} \quad 2,151} = 26.55\%$$

Corrected Relative Availability Numbers

NAICS Code	Category Where Majority of Contracts to be Awarded During Three Year Period of FY 2018 - FY 2020 with Percentages	Counties in County Business Patterns					Total Firms in County Business Patterns	Total Firms in DBE Directory	Overall Relative Availability
		Clayton	Cobb	DeKalb	Fulton	Gwinnett			
238110	Poured Concrete Contractors	6	43	8	20	54	131	98	0.7481%
238210	Electrical Contractors/Suppliers	29	191	91	108	276	695	94	0.1353%
238220	Plumbing / HVAC Contractors	46	155	96	107	290	694	33	0.0476%
238390	Ceiling Contractors	2	28	13	18	32	93	25	0.2688%
238910	Site Preparation Contractors	10	50	13	27	44	144	155	1.0764%
238990	All Other Specialty Trade Contractors	12	59	29	39	75	214	148	0.6915%
423710	Hardware Merchant Wholesalers	5	21	17	21	44	108	12	0.1111%
423730	HVAC Equipment and Supplies Merchant Wholesalers	8	14	10	12	28	72	6	0.0833%
	Combined Totals	118	561	277	352	843	2151	571	0.2655%

To refine the base figure, MARTA included weighting in the methodology, comparing the relative availability percentages for each category of work with the proportion of subcontract dollars expected to be spent in that category. The result of MARTA's weighting calculation is shown in the following chart.

MARTA's (Weight) x (Availability) Calculation

NAICS Code	Project/ Subcontract Activity	Weight / Subcontract Dollars	X	Relative Availability	Weighted Base Figure
238110	Poured Concrete Contractors	0.04950		0.42790	0.02118
238210	Electrical Contractors	0.55012		0.11910	0.06552
238220	Plumbing/HVAC Contractors	0.07625		0.04540	0.00346
238390	Ceiling Contractors	0.03067		0.21190	0.00650
238910	Site Preparation Contractors	0.04487		0.51840	0.02326
238990	All Specialty Trade Contractors	0.14135		0.40770	0.05763
423710	Hardware Merchants	0.05445		0.10000	0.00545

NAICS Code	Project/ Subcontract Activity	Weight / Subcontract Dollars	X	Relative Availability	Weighted Base Figure
423730	HVAC Equipment/Suppliers	0.05279		0.07690	0.00406
		1.00000	Total		0.18706
				Expressed as a % (*100)	18.71
				Rounded, Weighted Base Figure:	19%

When applying the **adjusted** relative availability percentages from the chart above to MARTA's weighting chart, the resulting calculation is as follows:

NAICS Code	Project/ Subcontract Activity	Weight / Subcontract Dollars	X	Relative Availability	Weighted Base Figure
238110	Poured Concrete Contractors	0.0495		0.7481	0.0370
238210	Electrical Contractors	0.5501		0.1353	0.0744
238220	Plumbing/HVAC Contractors	0.0762		0.0476	0.0036
238390	Ceiling Contractors	0.0307		0.2688	0.0082
238910	Site Preparation Contractors	0.0449		1.0764	0.0483
238990	All Specialty Trade Contractors	0.1414		0.6915	0.0977
423710	Hardware Merchants	0.0545		0.1111	0.0060
423730	HVAC Equipment/Suppliers	0.0528		0.0833	0.0044
		1.00000	Total		0.2798
				Expressed as a % (*100)	27.98
				Rounded, Weighted Base Figure:	28%

Step 2 – Adjusting the Base Figure

The methodology indicates MARTA did not see a need to adjust the 22% overall goal for FFY 2018 – FFY 2020, stating:

“The Authority examined the work performed on MARTA’s federally assisted contracts over the past five fiscal years” (FFY 2013 through FFY 2017)”, and that “the median for actual participation was 25%”. It further stated, MARTA “added together the Step 1 Base Figure of 19% and the median actual past participation percentage of 25%, which is divided by 2. This totaled 22%. However, given the Authority’s average goal over the last three years of 22.75%, we did not see a need to adjust the overall goal for FFY 2018 – FFY 2020”.

MARTA presents its historical race-conscious attainment as follows:

RC – Goal Attained	19.24%	2013
	23.95%	2014
	25.06%	2012
	27.29%	2016
	52.80%	2015

Breakout of Estimated Race-Neutral / Race-Conscious Participation

MARTA has indicated that it will meet its interim overall three-year DBE goal of 22% by 2% race-neutral means and 20% race-conscious means, and presents its historical race-neutral goal attainment as follows:

RN – Goal Attained	1.00%	2012
	1.00%	2013
	5.00%	2015
	5.00%	2016
	5.05%	2014

The rationale for MARTA's RN/RC split calculation is described in the following manner:

Overall DBE Goal FFY 2012 – FFY 2014	28%
Overall DBE Goal Attained	23%
Proposed DBE Goal FFY 2018 – FFY 2020	22%
Relative RN Attained	10%
Absolute RN Attained	2%
RC Split	22%

There is insufficient data to support the percentages provided above or the calculation used to determine the race-neutral / race-conscious split.

Corrective Actions and Schedule

Within 30 days of the issuance of the final report, MARTA must submit to the FTA Office of Civil Rights a revised FFY 2018 - 2020 DBE goal methodology addressing all of the elements noted in this report and FTA's DBE Goal Setting Review letter.

B) Public Participation

Basic Requirement (49 CFR Part 26.45)

In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

Discussion

During this compliance review, deficiencies were found with the requirement for Public Participation.

The review team examined the documentation included in MARTA's goal methodology submitted on September 19, 2017.

Details in the methodology regarding consultative meetings for the FFY 2018-2020 DBE goal, state:

- MARTA sent an email to more than 175 certified DBES who are presently working on MARTA contracts, as well as over 2,800 certified DBEs in the GUCP database;
- MARTA's Manager of Supplier Diversity held a consultative session with the Latin American Chamber of Commerce;
- A notice was published announcing MARTA's proposed overall goal for FFY 2018-2020; its rationale appeared on MARTA's website, informing the public that the methodology was available for inspection during business hours at MARTA's principal office for 30 days;
- MARTA accepted comments on the goal for 45 days from the date of the notice, ending July 31, 2017; and
- MARTA hosted sessions to receive questions and accept comments from the public during the advertisement period and no written questions or comments were received.

MARTA provided the following documentation to the review team:

- A Notice of Public Meeting stating: *"A public workshop regarding the goal will be held on June 20, 2017 @ 2:30 PM and July 17, 2017 @ 10:00 AM at MARTA's Headquarters Building, Bid Room, 2424 Piedmont Road, NE, Atlanta, GA 30324."*
- FFY 2018-2020 DBE Goal Presentation for the public meeting
- Sign-in sheet from the June 20, 2017 Public Comment Session indicating *"No DBEs Showed"*
- Sign-in sheet from the July 1, 2017 Public Comment Session indicating three persons were in attendance
- Attendance sheet from the July 27, 2017 session held with the Latin American Chamber of Commerce

The public notice announcement included in the documentation indicates a "proposed DBE goal of 33% goal for FFY 2018 – 2020", which was not congruent with the 16% overall goal stated in the methodology submitted on September 19, 2017.

The documentation does not include a list of the companies and organizations contacted; or include minutes from any of the consultation meetings held; nor does the documentation include evidence that the goal was posted on the recipient's website prior to submitting the methodology to the FTA.

Corrective Actions and Schedule

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

- A process and timeline to ensure that the consultation process, including all publications and requests for comments and feedback is completed prior to the August 1st goal submittal deadline; and
- A plan to ensure that the consultation process is adequately documented and included with the goal submission, providing evidence with specific details as to when the meeting was held, the participants in the meeting, evidence of request for comments and whether comments were received from the participants, and proof that the goal is posted on the website.

C) Race-Neutral DBE Participation

Basic Requirement (49 CFR Part 26.51)

The recipient 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 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

Discussion

During this compliance review, deficiencies were found with the requirement for Race-Neutral DBE Participation.

MARTA submitted a proposed interim DBE goal of 22% for FFY 2018-2020. The race-neutral portion of the goal is set at 2%. MARTA's DBE goal for FFY 2015-2017 was set at 30%; the race-neutral portion was set at 5%. For the triennial period, MARTA attained 2.84% of its overall 5% race-neutral DBE goal.

Attachment 8: "*Small Business Element*", found in MARTA's DBE Program Plan outlines the recipient's strategies to create contracting opportunities for small businesses. MARTA's DBE Program Plan states the agency will significantly expand its efforts to increase the number of (DBE) participants through its SBE program.

MARTA's Board of Directors approved a target "Small Business Allocation" of 5% of contracts under \$100,000. The corresponding success/performance indicators identified for MARTA's SBE program objectives are to:

1. Ensure MARTA's DBE program is available to small businesses by collaborating across the community and within the MARTA organization to expand opportunities for small businesses
2. Create opportunities to grow small business and to assist in job creation
3. Strengthen MARTA's entrepreneurial education, counseling and training resources to create new businesses and support the needs of existing businesses

4. Strengthen MARTA's relevance to small businesses to drive innovation and motivation and job creation more effectively through both the agency's existing program and new initiatives

No evidence was provided documenting how race-neutral measures described in MARTA's Small Business Program or referenced in MARTA's goal methodology have been implemented effectively to meet the agency's race-neutral goals.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, MARTA must submit to the FTA Office of Civil Rights procedures for implementing and documenting race-neutral measures to facilitate DBE and 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 using race-neutral measures.

Discussion

During this compliance review, deficiencies were found with the requirement for Race-Conscious DBE Participation.

MARTA's DBE Program Plan states, "The Authority will use contract goals for applicable contracts during given fiscal years, when and if needed."

MARTA established an overall DBE goal of 30% for FFY 2015 – 2017; the race-conscious portion of the goal was set at 25%. MARTA's race-conscious goal attainment for the triennial period was 30.41%, exceeding the projected race-conscious DBE participation by 5.41%. During the course of the triennial period, MARTA did not reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals did not result in exceeding the overall goal. MARTA exceeded its 30% DBE goal by 3.25%.

In the examination of MARTA's contracts, the reviewers observed that the agency sets DBE goals on both federal and non-federal contracts. During the on-site, MARTA provided its Bid Submittal Manual for both federally and non-federally funded contracts. Both manuals contain Instructions to Bidders and Contract Terms and Conditions that reference 49 CFR Part 26 and stipulate MARTA's provisions and guidelines for Disadvantaged Business Enterprise participation. One non-federal contract examined, Procurement of Non-Revenue Tires, contained a 25% DBE goal and the federal DBE requirements.

DBE goals set on non-federally funded contracts are not applicable, are unenforceable, and could serve to confuse the bidding community.

Corrective Actions and Schedule

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

- A procedure for determining when the use of race-conscious goals must be reduced; and
- Evidence that MARTA's non-federally funded solicitation and contract documents are revised, removing all non-applicable federal requirements and clauses.

E) Good Faith Efforts

Basic Requirement (49 CFR Part 26.53)

The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) 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 DBEs submitted in response to the contract goal; written confirmation from each DBE listed; or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE Program Plan.

Discussion

During this compliance review, no deficiencies were found with the requirement for Good Faith Efforts.

MARTA has determined that its DBE requirement is a matter of responsiveness. According to the DBE Program Plan, Diversity and Inclusion staff will review all bid responses and proposals to determine completeness and accuracy of the required DBE documents. In the event that a contract goal is not met, it is the responsibility of the DBELO / Executive Director of Diversity and Inclusion to determine whether the good faith efforts put forth by the bidders or proposers is adequate before a contract can be awarded.

The DBE Program Plan also states, *"In those instances where a contract-specific DBE goal is included in a procurement/solicitation, MARTA will not award the contract to a bidder who does not either:*

- 1. Meet the contract goal with verified, countable DBE participation; or*
- 2. Document it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid."*

According to the DBE Program Plan, when contract goals are established, bidders / proposers are required to submit:

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

The requirements for demonstration of good faith efforts are included in MARTA's solicitation and contract documents, in accordance with 49 CFR Part 26, Appendix A.

The DBE Program Plan describes MARTA's administrative reconsideration process, and states that, *"Within five to ten days of being informed by MARTA that the bidder /offeror is not (responsive, responsible) because it has not documented sufficient good faith efforts, a bidder / offeror may request administrative reconsideration. The Bidder / offeror shall make this request in writing to the following reconsideration official: Elizabeth O'Neil, Chief, Litigation Section, Legal Services Department, MARTA 2424 Piedmont Road, NE, Atlanta, GA 30324. She can be reach at (404)-848-5220."*

Upon review of solicitations, contract documents, as well as documents submitted by bidders / proposers in response to contract goals, it appears that MARTA is following its good faith efforts procedures. The review team did not find evidence indicating MARTA has awarded any contracts in which good faith effort procedures were not applied.

F) Protecting Against Termination for Convenience

Basic Requirement (49 CFR 26.53 and 26.13)

Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontract with its own forces or those of an affiliate, or reducing the scope of a 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 deficiencies were found with the requirement for Protecting Against Termination for Convenience.

MARTA's DBE Program Plan states:

"MARTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without MARTA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation..."

Before transmitting to MARTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided

to MARTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise MARTA of why it objects to the proposed termination (the five day period may be reduced if the matter is one of public necessity, e.g., safety)."

In the review of MARTA's solicitation and contract documents, termination language and procedures delineated at 49 CFR Part 26.53(f) were included.

The review team examined the following three projects where a DBE was terminated:

- Laredo Security Gate Upgrade
- Public Address System Upgrade
- Rail Station Electronic Signage Upgrade

Each of the three project files contained:

- Written notification from the prime contractor requesting permission from MARTA to terminate the DBE subcontractor;
- Written notification to the DBE subcontractor of the prime contractor's intent to terminate the subcontract, which provided five days for a response;
- Documentation to demonstrate "good cause" for termination from the prime contractor; and
- Written consent from MARTA to accept the request.

The file also contained evidence that MARTA attempted to contact the DBEs by email and telephone; however, the DBEs were non-responsive.

G) Counting DBE Participation

Basic Requirement (49 CFR Part 26.55)

The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is 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 the requirement for Counting DBE Participation.

The Counting DBE Participation section of the DBE Program Plan states, "*When a DBE participates on a contract MARTA will count only the value of the work actually performed by the DBE toward the DBE goal.*" Exhibit G of MARTA'S DBE Program Plan details the agency's counting procedures. The procedure is entitled "*Counting Provisions for Overall and Contract Goals Including: Payments, CUF, Supplies/Materials/Services, Trucking, Review of CUF Determinations and De-certification*". The counting procedures conform to the requirements of 49 CFR Part 26.55.

When a contract goal is set, bidders are requested to submit a Schedule of Disadvantaged Business Enterprise (DBE) Participation form with their bids, identifying the names, respective scopes of work, and dollar value of each proposed DBE subcontractor to participate in the contract work.

There were no counting issues observed in the review of MARTA's solicitation or contract documents.

H) Quotas

Basic Requirement (49 CFR Part 26.43)

The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

Discussion

During this compliance review, no deficiencies were found with the requirement for Quotas.

MARTA's DBE Program Plan states that the Authority does not use quotas in the administration of the DBE program. No evidence of the use of quotas by MARTA was found during the on-site visit.

6.9 Shortfall Analysis and Corrective Action Plan

Basic Requirement (49 CFR Part 26.47)

The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

Discussion

During this compliance review, no deficiencies were found with the requirement for Shortfall Analysis and Corrective Action Plan.

MARTA was not required to conduct a shortfall analysis in FFY 2015, 2016 or 2017. The recipient exceeded its 30% overall DBE goal each fiscal year with attainments of 56.36%, 32.29% and 33.92%, respectively.

6.10 Transit Vehicle Manufacturers (TVMs)

Basic Requirement (49 CFR Part 26.49)

The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the DBE requirements (DBE plan and

annual overall DBE goal). Certified TVMs are listed on the FTA website and a recipient should ascertain that the TVM is on the list prior to permitting a bid or proposal.

The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

Discussion

During this compliance review, deficiencies were found with the requirement for Transit Vehicle Manufacturers (TVMs).

MARTA's DBE Program Plan includes a provision for transit vehicle manufactures. Exhibit F: "Transit Vehicle Manufacturers Certification", which states, "*Prior to award of any resulting Contract, the Bidders/Proposers will be required to furnish a copy of their program submission along with their certification of compliance with the Federal Requirements Provision of 49 CFR 26.49 – Transit Vehicles (TVM) Certification of Compliance with Disadvantaged Business Enterprise Regulations*".

The exhibit does not state that MARTA verifies the certification status of a TVM on the FTA's website listing of certified TVMs prior to an award. Nor does it state the November 2014 requirement for recipients to report 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.

MARTA has not purchased transit vehicles over the past five federal fiscal years. In the review of MARTA's listing of FTA grants, no funding is designated for the purchase of any public mass transportation vehicles.

Corrective Actions and Schedule

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

- Procedures for confirming TVM eligibility prior to awarding contracts for transit vehicle purchases; and
- Procedures for notifying the FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49. Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting Form found at: <https://www.surveymonkey.com/r/vehicleawardreportsurvey>.

6.11 Required Contract Provisions and Enforcement

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 non-discrimination clauses detailed by the DBE regulations.

Discussion

During this compliance review, deficiencies were found with the requirement for Contract Assurance.

MARTA provided a list of seven federally-assisted contracts awarded during FFYs 2016 to present, a list of twenty-six on-going federally-assisted contracts, and the name of one completed federally-assisted contract.

Five prime contracts and four DBE subcontracts were selected for examination and listed in the table below. The Operations and Technical Maintenance Services contract is a professional service contract that is awarded to two prime consultants, HNTB Corporation and WSP USA, Inc. The contract is based on task orders, and both consultants have designated DBE subconsultants. According to MARTA, task orders have not been issued to any of the DBE subconsultants. The HNTB prime contract, selected for this review, had no subconsultant agreements available for examination.

Prime Contractor	Project	Contract Number	DBE Goal	DBE Subcontractor	DBE Scope of Work
Centennial Contractors Enterprise, Inc. (Non-DBE) Awarded – 8/21/13 (Contract Completed)	Laredo Security Gate Upgrade	Project # CP B24310	20%	D & D Electric Company, Inc.	Electrical Work
HNTB Corp. (Non-DBE) Awarded 7/8/17	Operations and Technical Maintenance Services	Project # AE 37501	30%	Various DBE subconsultants / Not Yet Active	Depends on Task Order Work
Kiewit Infrastructure South Co. (Non-DBE) Awarded 5/23/17	Public Address System Upgrade	Project # P37171	23%	D & R Construction Contracting, LLC	Installation of public address system
Kiewit Infrastructure South Co. (Non-DBE) Awarded 5/23/17	Rail Station Electronic Signage Upgrade	Project # P37176	21%	Khafra Engineering Consultants (Second tier subcontractor to B+C Contracting (Non-DBE))	Design electronic signage

Prime Contractor	Project	Contract Number	DBE Goal	DBE Subcontractor	DBE Scope of Work
Lakeshore Engineering, LLC (Non-DBE) Awarded 6/14/17	CNG Fueling Facility at Hamilton	Project # B37768	20%	Michael Thrasher Trucking	Grading and Pipe

MARTA's DBE Program Plan states that it will ensure that the following clause is placed in every FTA-assisted contract and subcontract:

"The contractor 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."

This contract assurance clause is not verbatim as required by the current version of 49 CFR Part 26.13.

The contract assurance statements found in the Centennial, HNTB, both Kiewit contracts, and Lakeshore prime contracts, and the D & R and Khafra DBE subcontracts is not verbatim with 49 CFR Part 26.13. The contracts include the contract assurance language found in the DBE Program Plan, which is not compliant with the regulation.

The D & D Electric DBE subcontract did not include contract assurance language.

Corrective Actions and Schedule

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

- Evidence that the DBE Program Plan is updated to include the complete and accurate language found at 49 CFR part 26.13; and
- A procedure to ensure that the correct DBE contract assurance language is contained in every FTA-assisted contract and subcontract and is verbatim and compliant with the DBE regulation.

B) Prompt Payment

Basic Requirement (49 CFR Part 26.29)

The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of

retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

Discussion

During this compliance review, deficiencies were found with the requirement for Prompt Payment.

Prompt Payment

MARTA's DBE Program Plan states that it will require prime contractors to include the following clause in "each subcontract the prime contractor signs with a subcontractor; and each lower tier contract the subcontractor signs with a lower tier contractor":

"The Contractor is required to pay subcontractors for satisfactory performance of their contracts within 5 days after the Authority has paid the Contractor for such work. The Contractor will not be paid for work performed by a subcontractor until the prime ensures that the subcontractor is paid."

Prompt payment language found in the DBE section of the contracts is consistent with the DBE Program Plan, which is 5 days. However, prompt payment language found in the General Terms and Conditions section of the Centennial, both Kiewit contracts, and Lakeshore prime contracts states, *"The Contractor is required to pay subcontractors for satisfactory performance of their contracts within 21 days after the Authority has paid the Contractor for such work."*

Reviewers noted that the language in the General Terms and Conditions section of the contracts was inconsistent with the language contained in the DBE section and the Program Plan.

In the examination of the DBE subcontracts, the Khafra second tier subcontract with B&C Contracting states, *"partial payments shall not become due consultant until thirty (30) days after B&C receives consultant's receipt of invoice for such services from Consultant. Final payment to be made within 7 days after full payment of services has been received by B&C from contractor."* The prompt payment language in the B&C DBE subcontract agreement is also inconsistent with the DBE Program Plan.

There was no prompt payment language found in the D&D Electric DBE subcontract.

The prompt payment terms found in the HNTB prime contract and the D&R and Michael Thrasher subcontracts, state that the DBE will be paid within 5 days of the date of the prime contractor's receipt of payment, which is consistent with the DBE Program Plan.

Retainage

MARTA's DBE program states that the following retainage terms will be included in all federally-assisted prime contracts:

"The Contractor shall not require retainage of subcontractors that is greater than the retainage required of the Contractor by the Authority. In addition, the Contractor must return any

retainage payments to those subcontractors within 14 days after the subcontractor's work related to this contract is satisfactorily completed; or any retainage payments after incremental acceptance of the subcontractor's work by MARTA and Contractor's receipt of the partial retainage payment related to the subcontractor's work. The Contractor's failure to pay subcontractors, as provided herein, shall be a material breach for which the Authority may cancel the Contract."

Return of retainage language found in the DBE section of the contracts is consistent with the DBE Program Plan, which is 14 days. However, return of retainage language found in the General Terms and Conditions section of the Centennial, both Kiewit contracts, and the Lakeshore prime contracts states, *"If the Contractor withholds any retainage pending final completion of any Subcontractor's work, the Contractor is required to pay the retainage so withheld within 21 days after such Subcontractor completes his work satisfactorily."*

Reviewers noted that the language in the General Terms and Conditions was inconsistent with the language in the DBE section and the DBE Program Plan.

The Khafra subcontract states, *"Retention will be released to consultant once all station installation design details have been approved by owner."* The return of retainage language in this subcontract is also inconsistent with the DBE Program Plan.

There was no return of retainage language found in the D & D Electric subcontract.

The return of retainage terms found in the HNTB prime contract, and the Michael Thrasher and D & R subcontracts are consistent with the DBE Program Plan.

Corrective Actions and Schedule:

Within 60 days of the issuance of the final report, MARTA must submit to the FTA Office of Civil Rights, a procedure for ensuring that prompt payment and return of retainage language included in every DOT-assisted contract and subcontract is consistent and in compliance with DBE regulations and MARTA's DBE Program Plan

C) Legal Remedies

Basic Requirement (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. Breach of contract remedies should be used as appropriate.

Discussion

During this compliance review, no deficiencies were found with the requirement for Legal Remedies.

The DBE Program Plan states the following:

“The Contractor's failure to pay subcontractors, as provided herein, shall be a material breach for which the Authority may cancel the Contract. In addition, 49 CFR 26.29 cites that all progress payments not promptly processed by the prime within specified time limits (i.e. 5 days from receipt of payment by MARTA) will bear interest of 1 % per month on the unpaid balance. The Contractor shall not delay or postpone payment to a subcontractor without prior written approval from the Executive Director of Diversity and Equal Opportunity.”

Reviewers noted that all of the prime contracts (Centennial, HNTB, both Kiewit contracts, and Lakeshore) contained the contract language as stated above.

The DBE Program Plan also states:

“Failure to comply with the Authority's EEO and DBE contract requirements may constitute cause for cancellation or termination of a contract for default and may render a contractor ineligible for future contracts with the Authority.”

The Centennial, HNTB, both Kiewit contracts, the Lakeshore prime contracts and the D & R, Khafra, and Michael Thrasher subcontracts contained breach of contract, dispute resolution, and termination for cause and convenience clause language.

According to staff, MARTA has not had the need to initiate any legal remedies for its federally funded contracts to date.

6.12 Certification Standards

Basic Requirement (49 CFR Part 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, no deficiencies were found with the requirement for Certification Standards.

The Certification Standards section of the DBE Program Plan states, “MARTA is a certifying partner with the Georgia Unified Certification Program and follows the dictates of the program as outlined in Attachment 6 – Georgia Unified Certification Program (GUCP)”. MARTA and the Georgia Department of Transportation (GDOT) are the certifying partners in the GUCP.

As a certifying partner in the GUCP, MARTA is responsible for processing applications for DBE/ACDBE certification. Firms located within the counties of Fulton, DeKalb or Clayton must submit their certification applications to MARTA. All other firms located in Georgia, outside of Fulton, DeKalb or Clayton counties and outside the State of Georgia (interstate certification), must submit their application to GDOT. Attachment 6 - Georgia Unified Certification Program

(GUCP) Certification Procedures is updated as of 4/10/2013. The Certification Procedures describe the standards and steps taken for processing certification applications. Section II of the UCP Procedures provide the Certification Standards which cover rules for determining membership, business size, social and economic disadvantage, ownership, and control.

As of November 2015, applications submitted to MARTA are received electronically through MARTA's DBE management software system, powered by B2GNOW. Applicants access, complete, and submit the required DOT certification application and personal net worth (PNW) form through the B2GNow software system.

6.13 Certification Procedures

A) Onsite Visits and Document Review

Basic Requirement (49 CFR Part 26.83)

The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

Discussion

During this compliance review, deficiencies were found with the requirement for Onsite Visits and Document Review.

At the on-site, the reviewers were provided access to the B2GNow software for the examination of certification files and documents.

According to the electronic DBE certification processing system, MARTA has a total of 1,112 certified firms and 230 pending applications that include 215 DBE no-change affidavits and 15 new DBE applications.

Five (5) certification files were selected for examination to determine compliance with certification requirements:

Firm Name	Status	Area Examined
CM Squared Group, LLC	New certification	Application & On-Site
The Intuition Consulting Firm, LLC	New certification	Application & On-Site
Charter Construction Services	Existing certification	Annual Affidavit
Transport Care Services	Existing certification	Annual Affidavit
Carey Steele Security, LLC	Denial	Denial Letter

The "Certification Application: Main Summary" report generated through the electronic system provided information regarding the receipt of an application and the review process. The report specifies the date and time the application and documents are submitted by the applicant and received /accepted by MARTA. Any request for additional documents or information is forwarded electronically through the system to the applicant.

The following information was obtained/reviewed from the system's Certification Application: Main Summary report:

- Date the application was received
- Certification date
- Documents submitted/reviewed
- On-site report
- Annual Affidavit of No-change, if applicable

The two DBE firms identified as new certification applications (received within one year), *CM Squared Group, LLC* and *The Intuition Consulting Firm, LLC*, were examined in the electronic DBE certification system.

CM Squared Group, LLC – The firm’s completed certification application, all required supporting documentation, and the on-site report were contained in the file.

The Intuition Consulting Firm, LLC – The firm’s completed certification application and all required supporting documentation were contained in the file. However, the on-site report for this firm was not found.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, the MARTA must submit to the FTA Office of Civil Rights a procedure to ensure that on-site visits are conducted and documented in the certification files.

B) Annual Affidavit

Basic Requirement (49 CFR Part 83)

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.

Discussion

During this compliance review, deficiencies were found with the requirement for Annual Affidavit.

The review of MARTA's electronic certification management system indicates the agency is not processing annual affidavits timely. At the time of the on-site, the system reported 215 DBE annual affidavits in queue, pending receipt and processing by MARTA. The pending affidavits submission dates include March 2018 to present.

Two existing certified firms (certified more than one year) were examined for the annual affidavit requirement:

- Charter Construction Services, Inc. – According to the certification system, this firm was certified as of 10/4/16. The system indicated an Annual Affidavit was received on 10/1/18; however, no information pertaining to the required 2017 Annual Affidavit was found.
- Transport Care Services – The certification date for this firm could not be determined. The system indicated an Annual Affidavit was received on 12/10/18; no other Annual Affidavit information was found.

Corrective Actions and Schedule

Within 60 days of the issuance of the final report, the MARTA must submit to the FTA Office of Civil Rights a procedure to ensure annual affidavits submitted electronically are received and processed timely.

C) Interstate Certification

Basic Requirement (49 CFR 26.85)

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 26.85(c)-(g).

Discussion

During this compliance review, no deficiencies were found with the requirement for Interstate Certification.

As of July 2017, GDOT assumed responsibility for processing all interstate certifications for the state. The requirement for Interstate Certification compliance is not currently applicable to MARTA for this review.

D) Certification Appeals

Basic Requirement (49 CFR 26.86)

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, no deficiencies were found with the requirement for Certification Appeals.

The GUCP Procedures outline the process for denials of initial requests for certification. Specifically, the procedures state:

- A. *A firm shall be notified in writing by the Certifying Partner that it has been denied DBE certification by the GUCP.*
- B. *The firm shall be provided with a written explanation of the reasons for denial, specifically referencing the evidence(s) in the record that supports each reason for the denial.*
- C. *All documents and information used to render a determination of denial shall be made available for inspection by the applicant, upon written request.*
- D. *A firm that is denied DBE certification may not re-apply for certification with the GUCP for a period of one year (12 months).*

- E. A firm that has been denied DBE certification may appeal the denial to the USDOT in accordance with §26.89 of the regulation.*
- F. Coordination of Denial Hearings and request for certification appeals, hearings and or meetings shall be coordinated and administratively handled by the certifying GUCP Partner.*

One certification file was reviewed for the denial and appeals requirements: Carey Steele Security LLC. The denial letter explained the reasons for the denial, cited the regulatory provisions for each of the reasons, and advised the business owner of the USDOT appeal rights. The denial letters also informed the business owner that the firm could reapply to the program in 12 months.

6.14 Record Keeping and Enforcements

Basic Requirement (49 CFR Part 26.11 and 26.37)

The recipient must provide data about its DBE program to FTA on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year 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, non-minority women, and minority men to the DOT Office of Civil Rights by January 1st of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close-out reviews for contracts.

Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion

During this compliance review, deficiencies were found with the requirement for Record Keeping and Enforcement.

Reporting

MARTA submitted all FFY 2015 – 2017 semi-annual DBE reports on or before the required June 1 and December 1 due dates, with the exception of the FY 2015 June 1 report, which was submitted on June 16, 2015. FTA's current review status of the June 16 report is "Incorrect/Incomplete", as of July 14, 2015.

The June 2015 DBE report indicates 10 Prime Contracts were awarded (all to DBEs), totaling \$2,323,860 (Line 8C), and one DBE subcontract award, totaling \$161,100 (Line 9C). As a result, the total dollars awarded to DBEs (Line 8C and Line 9C) equals \$2,484,960, while the total dollars for Prime Contracts Awarded (Line 8A) equals \$2,323,860. There appears to be an error in the calculation of the total dollars awarded to DBEs, resulting in a total DBE percentage of 106.93%. ($\$2,484,960 \div \$2,323,860 = 106.93$ percent)

The “Prime Contracts and Subcontracts Awarded” information reported in the June 16, 2015 semi-annual DBE report is shown in the following table:

MARTA – FFY 2015 Semi-Annual Report Goal Attainment Summary

Fiscal Year 2015 Goal: 30%		1	2	3 (1 + 2)
	DBE Uniform Report	1-Jun	1-Dec	Totals
A.	Total dollars awarded to DBE Prime Contractors (Line 8C)	\$ 2,323,860.00	\$ 765,999.00	\$ 3,089,859.00
B.	Total dollars awarded to DBE Subcontractors (Line 9C)	\$ 161,100.00	\$ 392,070.00	\$ 553,170.00
C.	Total dollars awarded to DBEs (A3+B3)	\$ 2,484,960.00	\$ 1,158,069.00	\$ 3,643,029.00
D.	Total prime contract dollars awarded (Line 8A)	\$ 2,323,860.00	\$ 3,979,027.00	\$ 6,302,887.00
E.	Total Race Conscious contracting dollars awarded to DBE (Line 9E)	\$ -	\$ 240,000.00	\$ 240,000.00
	% of Total to DBEs	106.93%	29.10%	
F.	Annual Percentage of awards using Race Conscious goals (E3/D3)	-	-	3.81%
G.	Annual Percentage Awarded (C3/D3)	-	-	57.80%

There is no evidence of a corrected June 1, 2015 report submitted in TrAMS. MARTA did not provide requested supporting documentation for any of the semi-annual reports during the on-site visit. It was noted that the dollar value of all FTA-funded contracts was low in comparison to other years reviewed, however the reason for this could not be determined without supporting documentation.

Monitoring

The DBE Program Plan states the agency tracks and monitors all payments to prime contractors and subsequent payments to subcontractors. MARTA has established detailed monitoring procedures for its DBE program. The procedures are included in the DBE Program Plan as Attachments & Appendices, Exhibits and Forms, which are:

- Attachment 3 – Monitoring and Enforcement Mechanisms/Legal Remedies
- Exhibit D – Mechanism for Prompt Payment and Enforcement
- Exhibit E – Payment Verification Letter (subcontractors)

MARTA has automated its manual monitoring system and has transferred the process to the electronic B2GNow DBE Compliance System. The DBE compliance system collects prime contractor payments and DBE subcontractors confirm receipt of prime contractor payments through the system. The Office of D&I receives automated alerts when prime payments are posted. The DBE Compliance System collects and maintains a large volume of monitoring data; however, it could not be determined how MARTA is using the information collected to gauge the effectiveness of the program.

The Office of D&I attends job progress meetings as required, performs job site visits, and completes commercially useful function reviews. During the site visit, MARTA provided a copy of its “DBE Onsite Contracting Monitoring and Compliance Review Procedures” for construction and non-construction contracts. According to the procedures, on-site monitoring and compliance reviews are conducted at a minimum of once per month, bi-monthly or quarterly depending on the nature of the contract. The procedures include a monitoring form and checklist to verify DBE compliance elements and serves as written certification that records have been reviewed and the job sites have been monitored. Although MARTA identifies 25 or more on-going projects, there was no evidence documenting how many of those projects were monitored with an-onsite compliance review and how frequently.

Bidders List

The DBE Program Plan indicates that MARTA will maintain a bidders list in accordance with 49 CFR Part 26.11, and will use the list as an informational reference when the agency sets its overall DBE goal. MARTA’s procedure for “*Preparation and Maintenance of the Bidders List*” is included as Exhibit A in the plan.

In accordance with the procedure, all bidders or proposers shall be asked to complete and include with their bid package a Bidders List enrollment form. In the review of MARTA’s solicitation documents, a copy of a form entitled “List of Proposed Subcontractors” appears to contain all of the required fields for a bidders list. The procedures state further that the Office of Contracts, Procurement and Materials shall be responsible for the management of the bidders’ information collected. However, MARTA could not provide evidence of a process describing how the information is being collected and maintained.

The on-line registration system maintained by MARTA does not contain all of the required fields for a bidders list. The registration system collects only the vendor/contractor’s commodity code and description of product/service, vendor name, address, phone/fax number, email address and contact name.

Corrective Actions and Schedule

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

- A procedure to ensure that semi-annual DBE reports are submitted accurately and timely;
- Evidence of a process for collecting and maintaining supporting documentation used for preparation of semi-annual DBE reports;
- Evidence of how vendor/contractor information is collected and maintained to establish a bidders list in accordance with §26.11(c)
- Evidence of a procedure detailing how information collected for DBE monitoring through the electronic monitoring system is reviewed for compliance; and
- Evidence of onsite monitoring and compliance reviews conducted and documented in accordance with established procedures.

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7. Summary Findings

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
1.	Program Plan	26.21	D	MARTA's approved 2013 DBE Program Plan is out of date.	Submit to the FTA Office of Civil Rights an updated DBE Program Plan.	Within 60 days of the issuance of the final report
2.	Policy Statement	26.23	D	<p>MARTA's policy statement does not identify the designated DBELO; state that the DBE program is accorded the same priority as compliance with all other legal obligations incurred, or indicate how the policy will be circulated internally and externally.</p> <p>The policy in the 2013 DBE Program Plan is signed by the former GM/CEO.</p>	Submit to the FTA Office of Civil Rights evidence that the policy statement included in its DBE Program Plan and posted on the agency's website contains all required program objectives, and that the policy is signed and dated by the current General Manager/CEO. Additionally, provide evidence that the policy statement is disseminated internally and externally.	Within 60 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
3.	DBE Liaison Officer	26.25	D	<p>The position description for the DBELO indicates multiple oversight responsibilities that include DBE, EEO, ADA, SBE, Supplier/Workforce Diversity, Title IV and Limited English Proficiency Plan. It cannot be determined the amount of time allotted to perform the DBELO duties.</p> <p>There is insufficient DBE staff to administer the various aspects of the program adequately.</p>	<p>Submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> •A job description for the designated DBELO outlining the duties and responsibilities of the position and indicating the level of active involvement dedicated to administering DBE program activities; and •A staffing plan to ensure that all requirements of the DBE program are adequately accomplished. 	<p>Within 60 days of the issuance of the final report</p>
4.	Financial Institutions	26.27	D	<p>MARTA'S DBE Program Plan and solicitation documents are not updated with the current list of minority-owned financial institutions.</p>	<p>Submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> •Evidence that the DBE Program Plan is updated to contain the current list of identified minority-owned financial institutions; •Evidence that MARTA's solicitation documents are updated with the current list of minority-owned financial institutions; and •Evidence of MARTA's efforts to use the identified minority-owned financial institutions. 	<p>Within 60 days of the issuance of the final report</p>

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
5.	DBE Directory	26.31	ND	-	-	-
6.	Overconcentration	26.33	D	MARTA's DBE Program Plan states that the recipient has determined that overconcentration does not exist in the type of work DBEs perform. The rationale for the determination was not stated.	Submit to the FTA Office of Civil Rights, procedures for determining if overconcentration exists, and the measures it will take to address overconcentration, if applicable.	Within 60 days of the issuance of the final report
7.	Business Development Programs	26.35	ND	-	-	-
8.	Determining/Meeting Goals		-	-	-	-
8.a	Calculation	26.45	D	MARTA submitted a revised proposed interim DBE goal of 22% for FFYs 2018 – 2020 for FTA approval.	Submit to the FTA Office of Civil Rights a revised FFY 2018 - 2020 DBE goal methodology addressing all of the elements noted in this report and FTA's DBE Goal Setting Review letter.	Within 30 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
8.b	Public Participation	6.45	D	Public Participation for the FFY 2018 – 2020 goal was not sufficiently documented. No evidence that the goal was posted on MARTA’s website.	Submit to the FTA Office of Civil Rights: •A process and timeline to ensure that the consultation process, including all publications and requests for comments and feedback is completed prior to the August 1st goal submittal deadline; and •A plan to ensure that the consultation process is adequately documented and included with the goal submission, providing evidence with specific details as to when the meeting was held, the participants in the meeting, evidence of request for comments and whether comments were received from the participants, and proof that the goal is posted on the website.	Within 60 days of the issuance of the final report
8.c	Race-Neutral	26.51	D	MARTA did not meet its overall race-neutral DBE goal for FFYs 2015 – 2017. No evidence of race neutral measures implemented.	Submit to the FTA Office of Civil Rights procedures for implementing and documenting race-neutral measures to facilitate DBE and small business participation.	Within 60 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
8.d	Race-Conscious	26.51	D	MARTA did not reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals did not result in exceeding the overall goal. MARTA sets DBE goals on non-federally funded contracts.	Submit to the FTA Office of Civil Rights: •A procedure for determining when the use of race-conscious goals must be reduced; and •Evidence that MARTA's non-federally funded solicitation and contract documents are revised, removing all non-applicable federal requirements and clauses.	Within 60 days of the issuance of the final report
8.e	Good Faith Efforts	26.53	ND	-	-	-
8.f	Protecting Against Termination for Convenience	26.53	ND	-	-	-
8.g	Counting DBE Participation	26.55	ND	-	-	-
8.h	Quotas	26.43	ND	-	-	-
9.	Shortfall Analysis and Corrective Action Plan	26.47	ND	-	-	-

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
10.	TVM	26.49	D	MARTA's TVM procedures are not updated to include the 11/2014 requirement to report to the FTA TVM contract awards within 30 days of the award.	Submit to the FTA Office of Civil Rights: •Procedures for confirming TVM eligibility prior to awarding contracts for transit vehicle purchases; and •Procedures for notifying the FTA within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract, as required by 49 CFR Part 26.49. Notification must be made by entering all required information into FTA's online Transit Vehicle Award Reporting Form found at: https://www.surveymonkey.com/r/vehicleawardreportsurvey .	-
11.	Required Contract Provisions and Enforcement	-	-	-	-	-
11.a	Contract Assurance	26.13	D	The contract assurance statements found in the Centennial, HNTB, Kiewit and Lakeshore prime contracts and D & R and Khafra subcontracts is not verbatim with 49 CFR Part 26.13. There was no contract assurance language found in the D & D Electric subcontract.	Submit to the FTA Office of Civil Rights: •Evidence that the DBE Program Plan is updated to include the complete and accurate language found at 49 CFR part 26.13; and •A procedure to ensure that the correct DBE contract assurance language is contained in every FTA-assisted contract and subcontract and is verbatim and compliant with the DBE regulation.	Within 60 days of the issuance of the final report

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
11.b	Prompt Payment	26.29	D	<p>Prompt payment language in the General Terms and Conditions of the Centennial, Kiewit (2 contracts), and Lakeshore prime contracts and the Khafra subcontract is inconsistent with the language in the DBE section and Program Plan.</p> <p>The D&D Electric subcontract contained no prompt payment language or return of retainage.</p> <p>Return of retainage language in the General Terms and Conditions of the Centennial, Kiewit (2 contracts), and Lakeshore prime contracts and D & R and Khafra subcontracts is inconsistent with the language in the DBE section and the Program Plan.</p>	<p>Submit to the FTA Office of Civil Rights, a procedure for ensuring that prompt payment and return of retainage language placed in every DOT-assisted contract and subcontract is consistent and in compliance with DBE regulations.</p>	<p>Within 60 days of the issuance of the final report</p>

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
11.c	Legal Remedies	26.37	ND	-	-	-
12.	Certification Standards	26.67-26.71	ND	-	-	-
13.	Certification Procedures			-	-	-
13.a	Onsite Visit	26.83	D	The certification file for The Intuition Consulting Firm, LLC did not contain an on-site visit report.	Submit to the FTA Office of Civil Rights a procedure to ensure that on-site visits are conducted and documented in the certification files.	Within 60 days of the issuance of the final report
13.b	Annual Affidavit	26.83	D	MARTA is not processing annual affidavits timely. According to the electronic certification management system, a total of 215 annual affidavits are in queue pending receipt.	Submit to the FTA Office of Civil Rights a procedure to ensure annual affidavits submitted electronically are received and processed timely.	Within 60 days of the issuance of the final report
13.c	Interstate Certification	26.85	ND	-	-	-
13.d	Certification Appeals	26.86	ND	-	-	-
14.	Record Keeping and Enforcements			-	-	-

Item	Requirement of 49 CFR Part 26.	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Corrective Actions	Response Days/Date
14.a	Bidders List and Reporting DBE Participation	26.11	D	<p>MARTA has not maintained a bidders list.</p> <p>MARTA has submitted a late and incorrect semi-annual DBE reports in FFY 2015. Supporting documentation for semi-annual reports was not available for review.</p>	<p>Submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> • Evidence of how vendor/contractor information is collected and maintained to establish a bidders list in accordance with §26.11(c) •A procedure to ensure that semi-annual DBE reports are submitted accurately and timely; and •Evidence of a process for collecting and maintaining supporting documentation used for preparation of semi-annual DBE reports 	Within 60 days of the issuance of the final report
14.b	Monitoring	26.37	D	<p>MARTA's manual monitoring procedures are not updated to correspond with the new electronic compliance management system.</p> <p>No evidence of onsite monitoring conducted</p>	<p>Submit to the FTA Office of Civil Rights:</p> <ul style="list-style-type: none"> •Evidence of a procedure detailing how information collected for DBE monitoring through the electronic monitoring system is reviewed for compliance •Evidence of onsite monitoring and compliance reviews conducted and documented in accordance with established procedures 	Within 60 days of the issuance of the final report

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

Attachment A: FTA Notification Letter to Metropolitan Atlanta Rapid Transit Authority (MARTA)



U.S. Department
Of Transportation
Federal Transit
Administration

Headquarters

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

August 7, 2018

Mr. Jeffrey A. Parker
General Manager/Chief Executive Officer
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road, NE
Atlanta, GA 30324-3311

Dear Mr. Parker:

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 Metropolitan Atlanta Rapid Transit Authority (MARTA) has been selected for a review of its overall DBE program to take place November 28-30, 2018.

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

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, 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 three-day period. FTA has engaged the services of Milligan and Company, LLC (Milligan) of Philadelphia, PA to conduct this compliance review. Milligan 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 **Wednesday, November 28, 2018 at 9:00 a.m. EDT**, to introduce the Milligan team and FTA representatives to MARTA. 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 MARTA's liaison with the review team 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. Electronic copies of documents are preferred. Please upload them to Milligan's file transfer protocol (FTP) site. Your reviewer will reach out to you concerning the use of the FTP site. Please be prepared to designate a point of contact for your agency, for which user access should be provided. You also have the option of sending the documents via email to Sandra Swiacki at sswiacki@milligancpa.com.

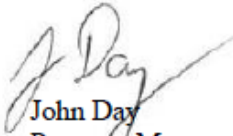
We request the exit conference be scheduled for **Friday, November 30, 2018, 3:00 p.m. EDT**, to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

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 MARTA will be considered public documents subject to release under the Freedom of Information Act, upon request.

MARTA representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Janelle Hinton at 202-366-9259, or via e-mail at janelle.hinton@dot.gov.

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

Sincerely,



John Day
Program Manager for Policy
and Technical Assistance

Enclosure

cc: Yvette Taylor, Regional Administrator, FTA Region IV
Doretha Foster, Regional Civil Rights Officer, FTA Region IV
Shelton Goode, Executive Director, Diversity and Inclusion, MARTA

Enclosure 1

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

1. Current DBE Program Plan (which should include MARTA's organization chart). The reviewers will access MARTA's DBE Program through FTA's TrAMS system, if available.
2. Fiscal years (FYs) 2015 - 2017 and FYs 2018 - 2020 goal methodology submissions. The reviewers will access MARTA's goal submissions through FTA's TrAMS system, if available.
3. MARTA's DBE semi-annual reports for FYs 2015 to present. The reviewers will access MARTA's DBE semi-annual reports through FTA's TrAMS system, if available.
4. Current Memorandum of Understanding or similar documents for MARTA's participation in the Unified Certification Program.
5. Any additional certification criteria/guidelines used by MARTA in determining DBE eligibility, if applicable.
6. Provide the number of DBE applications MARTA has reviewed, approved, and denied each year from FY 2016 through FY 2018. Include the number of DBE applications and the names of applicants that are currently pending review.
7. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts, and worksite locations, where applicable.
8. Provide list of contract records to include:
 - a) the last 15 FTA-assisted contracts awarded by MARTA in FYs 2018/2017
 - b) the last 15 FTA-assisted contracts completed by MARTA in FYs 2018/2017
 - c) the last 15 FTA-assisted contracts with DBE goals awarded by MARTA in FYs 2018/2017
 - d) the last 15 FTA-assisted contracts with DBE goals completed by MARTA in FYs 2018/2017.
9. The identification of firms, if any, that have worked on MARTA's projects and have graduated from MARTA's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified.
10. Information identifying FTA-funded contracts awarded during FYs 2016 to present by MARTA and its subrecipients. The federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts

submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.

11. Good Faith Effort criteria established by MARTA.
12. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms).
13. Small Business element as implemented by MARTA.
14. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer.
15. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years.
16. List of all bids accepted for the RFPs provided in response to Item 14.
17. Shortfall analysis and corrective action plan for the last three (3) years, if applicable.
18. List of all subrecipients and the amount of FTA funds allocated to each subrecipient from 2016 through present.
19. Names of interested parties (external organizations) MARTA has interacted with on DBE program issues.
20. Any complaints received concerning MARTA's DBE program over the past five (5) years.
21. The DBELO official position description.
22. Other pertinent information determined by MARTA's staff to shed light on its DBE compliance efforts.



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

Headquarters

East Building, 5th Floor – TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

May 30, 2019

Jeffrey A. Parker
General Manager/Chief Executive Officer
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road, NE
Atlanta, GA 30324-3311

RE: Disadvantaged Business Enterprise (DBE) Compliance Review Final Report

Dear Mr. Parker:

This letter concerns the Federal Transit Administration's (FTA) DBE Review of the Metropolitan Atlanta Rapid Transit Authority (MARTA) conducted from November 28-30, 2018. Enclosed is a copy of the Final Report, which will be posted on FTA's website on our DBE page. As of the date of this letter, the Final Report is a public document and is subject to dissemination under the Freedom of Information Act of 1974.

FTA's 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 our ongoing oversight efforts, FTA conducts a number of onsite compliance reviews to ensure compliance with the applicable provisions of 49 CFR Part 26. FTA utilizes the findings from these reviews to provide technical assistance to transit agencies in order to achieve compliance with 49 CFR Part 26.

Unless otherwise noted, all corrective actions identified in the Final Report must be undertaken within 60 days of the date of this letter. Once we have reviewed your submissions, we will request either clarification or additional corrective action, or will close out the finding if your response sufficiently addresses the DBE requirements. Please submit your responses to me at john.day@dot.gov.

We appreciate the cooperation and assistance that you and your staff have provided us during this review, and we are confident MARTA will take steps to correct the deficiencies. If you have any questions about this matter, please contact Ed Birce at 202-366-1943 or via email at gulied.birce@dot.gov.

Sincerely,

John Day
Program Manager for Policy
and Technical Assistance

cc: Yvette Taylor, Regional Administrator, FTA Region IV
Dee Foster, Regional Civil Rights Officer, FTA Region IV
Paula Nash, Interim Executive Director, Diversity and Inclusion, MARTA