

10. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

PURPOSE OF THIS REVIEW AREA

Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

QUESTIONS TO BE EXAMINED

1. Did the recipient submit a current DBE Program for approval?
2. Has the DBE Liaison Officer (DBELO) been designated and given proper resources and authority?
3. Did the recipient submit its latest goal in FTA's Transit Award Management System (TrAMS) by August 1 prior to the beginning of the applicable Federal fiscal year?
4. Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually by the required due dates?
5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?
6. For each of the past three completed Federal fiscal years, if the recipient's DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?
7. If the recipient exceeded its overall goal using contract goals in Federal fiscal years 2022 and 2023, did it make appropriate procurement adjustments?
8. Has the recipient implemented steps to meet the maximum feasible portion of its overall goal race-neutrally?
9. When including a DBE goal in a solicitation, is the recipient ensuring that the contract is only awarded to a bidder that meets the goal or makes good faith efforts to meet the goal?
10. Question removed from the FY23 Contractor Manual.
11. Did the recipient properly report all FTA-funded transit vehicle awards?
12. Does the recipient monitor the performance of contractors and enforce contractual requirements consistent with its approved DBE Program?
13. Does the recipient implement DBE certification standards and procedures in accordance with the DBE regulation? (NOTE: This only applies if the recipient is a certifying member of the state's Unified Certification Program (UCP).)
14. Does the recipient perform oversight of its subrecipients for compliance with the DBE regulation?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Most recent DBE Program, if not uploaded to TrAMS
- Current organizational chart which includes the DBELO

- DBELO job description
- Documentation of implementation of small business element measures
- Shortfall analysis and corrective action plan, if not required to be submitted to FTA
- List of any DBEs terminated/substituted on a project

Recipient Follow-up

- Information demonstrating that the recipient does not meet the threshold for DBE program submission
 - Information that demonstrates when and on what subjects the DBELO and Chief Executive Officer (CEO) have direct and independent communications about the DBE program
 - Documentation of notification to FTA of transit vehicle award(s)
 - Documentation supporting the recipient's assessment that no DBE goal submission was necessary
 - Written procedures for compiling/Preparing the Uniform Report on DBE Awards, Commitments, and Payments
 - Backup documentation for compiling/Preparing selected Uniform Reports on DBE Awards, Commitments and Payments
 - Missing reports that may not have been uploaded to TrAMS
 - Evidence of reduced use of contract goals if DBE contract goals are used and overall agency DBE attainment exceeds overall agency goals
 - Documented implementation of race-neutral measures
 - Written certifications of monitoring, including onsite monitoring for sample contract files
 - Documentation of prompt payment and return of retainage monitoring
 - Certification files
 - Records of training for certification staff
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DBE1. Did the recipient submit a current DBE program for approval?

BASIC REQUIREMENT

Approved DBE programs that meet the requirements of 49 CFR Part 26 are required for all FTA recipients of planning, capital, and/or operating assistance FTA recipients who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year are designated as FTA Tier II recipients and must maintain an abbreviated DBE program..

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Written DBE programs are required for FTA recipients receiving planning, capital and/or operating assistance FTA recipients who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year are designated as FTA Tier I recipients. FTA Tier I recipients must submit and maintain a DBE program that meets all requirements of 49 CFR Part 26.

FTA recipients who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year are designated as FTA Tier II recipients. FTA Tier II recipients must maintain a DBE program meeting the following requirements: reporting and recordkeeping; contract assurances; policy statement; fostering small business participation

through a small business element; and transit vehicle procurements. Tier II recipients do not submit documentation of these requirements to the FTA for approval.

Contracting opportunities are counted in the aggregate, and include FTA-funded purchase orders, capital projects, professional services, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan-funded projects, and contracting activities of subrecipients. Small and micro-purchases are also counted toward this threshold.

The DBE program is not an annual submission and recipients do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted to FTA for approval. Tier I programs with a submission date prior to May 9, 2024 likely do not reflect regulatory updates implemented at that time.

FTA Tier I recipients may be allowed to submit a single plan that has been previously approved by another operating administration to which DBE applies (the Federal Highway Administration (FHWA) or Federal Aviation Administration (FAA)). The recipient still must develop and submit to FTA a distinct overall three-year goal for FTA-funded contracts. (If the DBE contracting threshold is met for FTA funds).

INDICATORS OF COMPLIANCE

- a. *If the recipient meets the threshold for Tier I, did the recipient submit a DBE program for approval?*
- b. *If the recipient meets the threshold for a Tier II, does the abbreviated DBE program meet Tier II requirements?*
- c. *What is the date of the program the recipient last provided?*
- d. *If the Tier I recipient submitted a DBE program and FTA has issued correspondence indicating required revisions, has the recipient made those revisions?*

INSTRUCTIONS FOR REVIEWER

From the listing of FTA-funded procurements requested in the Procurement area and a review in TrAMS of the recipient's FTA awards and projects, determine if the recipient has met the threshold requiring a full Tier I DBE program submission or a locally maintained abbreviated Tier II DBE program submission. For Tier I recipients, review the Civil Rights Status screen in TrAMS to determine if the recipient has submitted a DBE program.

Transit vehicle purchases do not count towards the threshold. *Transit vehicle manufacturer (TVM)* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Entities that perform post-production alterations or retrofitting for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered TVMs.

Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered TVMs. FTA funds used to acquire vehicles that were not manufactured by a TVM, even if used by the recipient for transit purposes, should be included in the threshold calculation.

Request and review any correspondence from FTA to the Tier I recipient on its submission. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that noted revisions or additions were made. This includes revision requests "in review" and "concurrence" letters. Note that even if the program's status in TrAMS is "Concur," the concurrence letter

could indicate issues to be resolved by the recipient, but that did not require further FTA review. FTA's review letter advises recipients that verification that corrections have been made and implemented will be conducted, and instructs recipients to retain documentation that demonstrates the noted areas have been addressed.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it had FTA funds used for in contracting opportunities in a given Federal fiscal year and did not submit the correct Tier I DBE program in TrAMS or prepare a Tier II DBE program.

DEFICIENCY CODE DBE1-1: No approved DBE program

SUGGESTED CORRECTIVE ACTION: The recipient must develop and if Tier I submit its DBE program to TrAMS and notify the FTA Regional Civil Rights Officer (RCRO) once completed.

The recipient is deficient if it received comments from FTA on its DBE program submission but has not made revisions. If the recipient made revisions to its program, but it does not appear that those revisions met the intent of FTA's comments, do not make a deficiency; instead make the RCRO aware for their follow up.

DEFICIENCY CODE DBE1-2: Revisions to DBE program not made

SUGGESTED CORRECTIVE ACTION: The recipient must revise, and if Tier I, submit its DBE program to TrAMS and notify the FTA RCRO once completed.

NOTE TO REVIEWER: If the current DBE Program is dated prior to March 1, 2025, or program revisions noted by FTA were made but do not appear to meet the intent of FTA's comments note that in this section's Issues/Areas of Concerns for FTA Awareness for further follow up by FTA. Tier II recipients are not required to submit the abbreviated DBE program to FTA but must prepare and maintain the program locally.

GOVERNING DIRECTIVE

49 CFR 26.21

- (a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part: (2) All FTA recipients receiving planning, capital and/or operating assistance must maintain a DBE program.
 - (i) FTA Tier I recipients must have a DBE program meeting all the requirements of this part.
 - (ii) Beginning 180 days after the publication of the final rule (October 9, 2024), FTA Tier II recipients must maintain a program locally meeting the following requirements of this part:
 - (A) Reporting and recordkeeping under § 26.11;
 - (B) Contract assurances under § 26.13;
 - (C) Policy statement under § 26.23;
 - (D) Fostering small business participation under § 26.39; and
 - (E) Transit vehicle procurements under § 26.49.
- (b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(b)(2) You do not have to submit regular updates of your DBE program plan if you remain in compliance with this part. However, you must submit significant changes to the relevant OA for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your DBE program until all funds from DOT financial assistance have been expended.

DBE2. Has the DBE Liaison Officer (DBELO) been designated and given proper resources and authority?

BASIC REQUIREMENT

The recipient must designate a DBELO, with direct and independent access to the Chief Executive Officer (CEO) concerning DBE matters. The DBELO is responsible for implementing all aspects of the recipient's DBE program, and must have adequate resources to administer the DBE program.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

The recipient must designate a DBELO with direct and independent access to the CEO concerning DBE matters. The DBELO is responsible for implementing all aspects of the recipient's DBE program and must have adequate resources to administer the DBE program.

Recipients with Tier I DBE programs must develop and implement all requirements of the DBE program, including prompt payment, setting DBE goals, monitoring, and proper counting of DBE participation. Recipients with abbreviated Tier II DBE programs must develop and implement some of the requirements of the DBE program plan, including reporting and record keeping. Adequate staffing levels will vary greatly depending on recipient size and contracting practices and often requires coordinating with other departments such as procurement and legal, as needed, to address issues such as contract-goal setting, race-neutral measures, contract administration, the inclusions of required contract clauses, and monitoring and enforcement of DBE Program requirements. The recipient should ensure sufficient staff are assigned to the DBE program to meet the administrative requirements of the program. Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. It means that the DBELO must not be required to get anyone's consent or sign-off, or to "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, this direct and independent access should be verified through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

INDICATORS OF COMPLIANCE

- a. *Is there currently a DBELO implementing the DBE program?*
- b. *Does the DBELO have direct and independent access to the CEO?*
- c. *Based on the review of the remaining, applicable questions in this section, does it appear that the DBELO has appropriate authority and that adequate resources are dedicated to implementing DBE requirements?*

INSTRUCTIONS FOR REVIEWER

Examine the recipient's DBE program in TrAMS for identification of the DBELO and its position within the agency. The current DBELO should also be listed in the agency's contact information in TrAMS.

Request and review the current organizational chart of the agency for the name and reporting relationship of the DBELO. Request and review the job description for the DBELO for responsibilities and reporting relationships.

During the site visit, confirm current staff assignments and reporting relationships, through actions such as interviews with the DBELO, DBE staff, and the CEO. Confirm that the DBELO has direct and independent access and is not required to get anyone's consent or sign-off, or to "go through channels" to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, verify direct and independent access through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals. Based on responses to this question and the remaining questions in this section of the review, confirm that sufficient staff and resources are dedicated to adequately administer the DBE program.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not currently have a DBELO who is responsible for implementing the DBE program or if the DBELO does not have direct and independent access to the CEO.

DEFICIENCY CODE DBE2-1: Inadequate designation of DBE Officer

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence of corrective actions implemented to designate DBE responsibilities properly.

The recipient is deficient if the DBELO does not currently have sufficient authority or resources to administer the DBE program in compliance with 49 CFR 26.

DEFICIENCY CODE DBE2-2: Insufficient resources to administer the DBE program

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence of corrective actions implemented to designate sufficient resources to the DBE program. This corrective action must be signed by the CEO.

NOTE TO REVIEWER: The deficiency DBE2-2 should only be made after the determination that:

- the recipient is deficient with several of the indicators in the DBE section of the review,
- the underlying cause of those deficiencies is determined to be primarily resource-driven, and
- the RCRO concurs.

It should be determined with the RCRO if the result of making this deficiency is that deficiencies are still made in each respective area or if some or all of those would be represented with this one deficiency.

GOVERNING DIRECTIVE

49 CFR 26.25

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

DBE3. Did the recipient submit its latest goal in TrAMS by August 1 prior to the beginning of the applicable Federal fiscal year?

BASIC REQUIREMENT

Tier I recipients must prepare an overall three-year goal must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. Tier II recipients are only required to develop an overall triennial goal compliant with in 49 CFR 26.45 if it intends to implement a race-conscious component to its program, including utilizing contract goals. Tier IIs are not required to submit their DBE goal methodology to FTA for review and approval.

APPLICABILITY

All Tier I recipients

DETAILED EXPLANATION FOR REVIEWER

Tier I recipients must prepare an overall three-year goal which must be submitted to FTA for review by August 1 preceding the first Federal fiscal year in which the goal will be applied. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. DBE goals must include an assessment of the availability of DBEs or potential DBEs. Recipients are not allowed to simply rely on past participation or past goal methodologies when they establish their goal.

On rare occasions, a recipient may submit a zero percent DBE goal. Such a goal indicates that there are no ready, willing, and able DBEs identified as potential participants on anticipated contracts. It is important for recipients to consider all contracting opportunities funded with its FTA capital, operating, and planning awards during its goal-setting process. The regulation defines a contract as any legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of 49 CFR Part 26, a lease is considered to be a contract.

FTA Tier II recipients who intend to operate a race-neutral DBE program are not required to develop overall goals for FTA for that Federal fiscal year. Tier II recipients who intend to operate a race-conscious component to its program is required to develop a goal methodology, but is not required to submit it to FTA for review and approval.

INDICATORS OF COMPLIANCE

- a. *Did the recipient submit its goal methodology on time?*
- b. *If the recipient did not submit its goal, is there evidence to support that no submission was necessary?*
- c. *If the FTA requested revisions to the goal submission, has the recipient made the revisions?*

INSTRUCTIONS FOR REVIEWER

Review the Tier I recipient's goal submission schedule in TrAMS (Civil Rights Status screen) to determine the appropriate fiscal year for the recipient's submission. Review the Civil Rights Status screen in TrAMS to determine if the recipient's latest overall goal was submitted by August 1 preceding the fiscal year in which its goal was due, or by any other due date provided to them by FTA

Review the Tier I recipient's awards in TrAMS to assess past or projected contracting activity. . Transit vehicle purchases do not count towards the threshold.

Request and review any correspondence from FTA to the recipient on its goal submission. If FTA provided the recipient with comments on the submission, review the recipient's current goal to verify that noted revisions or additions were made. This includes revision requests in "in review" and "concur" letters. Even if the submission status in TrAMS is "Concur," the concurrence letter could indicate issues that should be resolved by the recipient, but did not require further FTA review. FTA's review letter advises recipients that the Comprehensive Review will verify corrections have been made and implemented and instructs recipients to retain documentation that demonstrates the noted areas have been addressed.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not submit its DBE goal by August 1 preceding the first fiscal year when the triennial goal is applicable (or by some other date designated by FTA).

DEFICIENCY CODE DBE3-1: DBE goal submitted late

SUGGESTED CORRECTIVE ACTION: The recipient must implement a procedure and revise its DBE program to ensure that future goal submissions will be submitted by August 1 of the applicable year (or by some other date designated by FTA). The recipient must upload the revised program to TrAMS and notify the FTA RCRO when completed.

The recipient is deficient if it should have submitted a DBE goal but did not.

DEFICIENCY CODE DBE3-2: DBE goal not submitted

SUGGESTED CORRECTIVE ACTION: First, the recipient must submit a request for extension email to FTACivilRightsSupport@dot.gov, using the preapproved email template. Then the recipient must develop and submit a DBE Goal Methodology in TrAMS and OTRAK.

The recipient is deficient if it received comments from FTA on its goal submission but has not made revisions.

DEFICIENCY CODE DBE3-3: Revisions to DBE goal methodology not made

SUGGESTED CORRECTIVE ACTION: The recipient must revise and submit its revised DBE goal methodology in TrAMS and notify the FTA RCRO once completed.

GOVERNING DIRECTIVE

49 CFR 26.45(f)(1)(i)

If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

49 CFR 26.45(a)

(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are an FTA Tier II recipient who intends to operate a race-neutral DBE program, or if you are an FAA recipient who reasonably anticipates awarding \$250,000 or less in FAA prime contract

funds in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA, respectively, for that Federal fiscal year..

49 CFR 26.45(f)

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

DBE4. Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments by the required due dates?

BASIC REQUIREMENT

Tier I recipients are required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TrAMS. Tier II recipients are required to submit a Uniform Report of DBE Awards or Commitments and Payments annually beginning December 1, 2025.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

All Tier I recipients are required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TrAMS. The report addresses the contracting opportunities of the recipient and its subrecipients. Reports are due by June 1 (for the period covering October 1 – March 31) and by December 1 (for the period covering April 1 – September 30). All Tier II recipients are required to submit a Uniform Report of DBE Awards or Commitments and Payments annually in TrAMS. The report addresses the contracting opportunities of the recipient and its subrecipients. Reports are due by December 1 (for the period covering October 1 – September 30). All recipients must use the reporting form provided by FTA.

DBE reports must be entered in the TrAMS DBE reporting module and comments from FTA on those reports must be addressed. Recipients that no longer meet the threshold requiring a goal, but are completing projects under a previous goal, must continue to submit DBE reports until those contracted projects are completed. Reviewers should expect to see a report completed for each six-month period, as it is rare that an active recipient would not have either FTA funded awards, ongoing payments, or completed projects in a six-month period. TrAMS will not issue a DBE report to recipients with N/A for the DBE goal, so FTA has been retaining a “concur” or “in review” status (with a clarifying comment) for recipients that no longer meet the threshold but still have open FTA-funded contracts applicable under a prior goal.

Tracking and Reporting of Purchases

For the purposes of simplifying reporting and tracking, recipients may count multiple, ongoing purchases with a single vendor as a single contract awarded and completed on Uniform Reports (e.g., fuel, vehicle parts, vehicle servicing, or other purchase orders).

INDICATORS OF COMPLIANCE

- a. *Did the recipient submit reports in the TrAMS reporting module on time?*
- b. *If the recipient did not submit one or more report for the past three fiscal years, is there evidence to support that no submission(s) was/were necessary?*

INSTRUCTIONS FOR REVIEWER

Verify that reports are submitted in TrAMS by accessing the Disadvantaged Business Enterprise (DBE) Reports from the Reports tab. Verify that reports for Tier I recipients were submitted by June 1 (for the period covering October 1 – March 31) and December 1 (for the period covering April 1 – September 30). Verify the report for Tier II recipients was submitted December 1. Discuss with the RCRO any issues that have been identified with timely submission of reports.

Review the listing of FTA-funded procurements provided for the Procurement section of the review and projects identified in awards in TrAMS to determine if reports were warranted (based on award or completion of procurements) but not submitted.

Review reports that were due after June 1, 2020 and ensure that the recipient understands that it can count multiple, ongoing purchases with a single vendor as a single contract awarded and completed on its Uniform Reports (e.g., fuel, vehicle parts, vehicle servicing, or other purchase orders).

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not submit one or more reports by the due dates of June 1 (for the period covering October 1 – March 31) and December 1 (for the period covering April 1 – September 30).

DEFICIENCY CODE DBE4-1: Semi-annual DBE reports not submitted or not submitted timely

SUGGESTED CORRECTIVE ACTION: The recipient must submit an implemented procedure to ensure that future reports are submitted on time. The recipient must upload into TrAMS any missing reports.

GOVERNING DIRECTIVE

49 CFR 26.11(a)

You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

49 CFR Appendix B 5.

For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1 - September 30.

49 CFR 26.21(c)

You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

DBE5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?

BASIC REQUIREMENT

Uniform Reports of DBE Awards or Commitments and Payments must include all required information.

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

Recipients of FTA funds are expected to keep accurate data regarding contracts awarded and paid with FTA dollars and report on such per the instructions for completing the Uniform Report of DBE Awards or Commitments and Payments. The Department intends to post a copy of the Uniform Report form on its website (<https://www.Transportation.gov/DBEFORMS>), since the form is no longer included as an appendix to the regulatory text in the Final Rule..

INDICATOR OF COMPLIANCE

- a. *Does a review of FTA information and selected FTA-funded procurements indicate that the recipient is completing the reports accurately?*

INSTRUCTIONS FOR REVIEWER

Review the DBE reports located in the recipient's Records tab in TrAMS for completed reports. Discuss any issues the FTA RCRO has identified with accuracy of reports. During the site visit, obtain information on the process the recipient uses to ensure that all recipient and subrecipient FTA-funded contracting activities are included in the recipient's reports. Verify that the process includes FTA-funded purchase orders, micro-purchases, capital projects, professional services, TIFIA loan-funded projects, and contracting activities of subrecipients, as applicable by cross-referencing procurement and subrecipient lists provided for other areas of the review.

As of May 9, 2024, recipients should begin capturing and incorporating the additional data fields in their procurements which must include the names of DBEs, NAICS codes performed in a contract, the federally assisted contract number(s), and the dollar value of the contract.

The Final Rule mandates that recipients must submit the new entries of the Uniform Report of Awards, Commitments, and Payments (Uniform Report) online. However, recipients are not obliged to submit the data until OA systems are fully operational and updated to receive the data. Once the systems have been updated, recipients must input the data in accordance with the standard Uniform Report submission date(s).

The Department intends to post a copy of the Uniform Report form on its website (<https://www.Transportation.gov/DBEFORMS>), since the form is no longer included as an appendix to the regulatory text in the Final Rule

The new running tally requirement is an important element of the mandatory compliance monitoring imposed on recipients. The running tally ensures that, throughout the life of the contract, the recipient will know whether the DBE is performing the work to which the prime contractor has committed; whether payments to all subcontractors (DBEs and non-DBEs) are timely; and whether DBEs are performing a commercially useful function.

For each DBE commitment, a recipient must use a running tally providing for a frequent comparison of payments made to a listed DBE relative to the progress of work. This includes payments for this work to the prime contractor to determine whether the contractor is on track in meeting its DBE commitment and whether any projected shortfall exists which requires that the prime contractor document good faith efforts to meet the contract goal pursuant to § 26.53(g).

For achieving overall goals, a recipient must use a running tally providing for frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards. This will enable the recipient to determine whether its current implementation of race-conscious contract goals is projected to be sufficient to meet its annual goal. The running tally will also enable the recipient to make informed decisions concerning goals to be advertised according to the recipient's established contract goal-setting process. While there is no "one-size-fits-all" interval for running tally checks, the Department believes that a recipient must know what is going on with DBE participation on projects at all times.

During the site visit, to verify the recipient's process and the accuracy of reports, select two FTA-funded (non-transit vehicle manufacturer (TVM)) procurements from the procurement listing provided for the Procurement area of the review and obtain a list of procurements from the subrecipients to be visited. Examine report back-up documentation and procedures for the appropriate report submission to demonstrate that DBE reporting information concerning the selected awards (lines 8 and 9) is accurate. Transit vehicle purchases should not be included in these reports.

Generally, the amount in cell 8(A) must be greater than the amount in 9(A), but there are rare situations where it is acceptable for 9(A) to exceed 8(A). If a recipient's Uniform Report shows 9(A) greater than 8(A), discuss with the RCRO whether the report is accurate.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if its reports do not include applicable FTA-funded contracting activity undertaken by itself and any subrecipients and it cannot demonstrate how these reports reconcile to procurement records for the procurements selected for this section.

DEFICIENCY CODE DBE5-1: DBE uniform reports contain inaccuracies and/or are missing required information

SUGGESTED CORRECTIVE ACTION: The recipient must submit corrected reports, along with implemented procedures for correctly completing Uniform Reports of DBE Awards or Commitments and Payments. The recipient must submit a revised DBE Program to correctly describe how it will implement accurate reporting.

GOVERNING DIRECTIVE

(c) You must effectively implement the following running tally mechanisms:

- (1) With respect to achieving your overall goal, you must use a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether your current implementation of contract goals is projected to be sufficient to meet your annual goal. This mechanism should inform your decisions to implement goals on contracts to be advertised according to your established contract goal-setting process.
- (2) With respect to each DBE commitment, you must use a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1-September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30. If the report is due to the FAA, data should cover the entire fiscal year.
6. Provide the name and address of the recipient.
7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific race-conscious and race-neutral projections (both of which include sex-conscious/neutral projections). The race-conscious projection should be based on measures that focus on and provide

benefits only for DBEs. The use of contract goals is a primary example of a race-conscious measure. The race-neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the total number of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts subcontracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the number of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBEs are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of race-neutral methods. See the definition of race-neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through race-neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round the percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of

subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all subcontracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of subcontracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in subcontracts to DBEs.

9(D). From the total number of subcontracts awarded or committed in item 9(B), specify the number of subcontracts awarded or committed to DBEs.

9(E). From the total dollar amount of subcontracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using race-conscious measures.

9(F). From the total number of subcontracts awarded or committed to DBEs this period, provide the number of subcontracts awarded or committed to DBEs using race-conscious measures.

9(G). From the total dollar amount of subcontracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using race-neutral measures.

9(H). From the total number of subcontracts awarded/committed to DBEs this period, provide the number of subcontracts awarded to DBEs using race-neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round the percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round the percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Sex of Contracts Awarded to DBEs This Period

11-17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise, the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The “Non-Minority” category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either “women” OR eligible for the DBE