



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

REGION III  
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Pennsylvania, Virginia,  
West Virginia

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July 13, 2023

Mr. Samuel Lathem  
Chairman, Board of Directors  
Delaware River & Bay Authority  
20 Lockview Drive  
Bear, DE 19701

**Re: Fiscal Year 2023 Triennial Review – Final Report**

Dear Mr. Lathem:

I am pleased to provide you with a copy of this Federal Transit Administration (FTA) report as required by 49 U.S.C. Chapter 53 and other Federal requirements. The enclosed final report documents the FTA's Fiscal Year (FY) 2023 Triennial Review of the Delaware River & Bay Authority (DRBA) in New Castle, Delaware. Although not an audit, the Triennial Review is the FTA's assessment of DRBA's compliance with Federal requirements, determined by examining a sample of award management and program implementation practices. As such, the Triennial Review is not intended as, nor does it constitute, a comprehensive and final review of compliance with award requirements.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, a virtual site visit was conducted for this Triennial Review. In addition, the review was expanded to address DRBA's compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021, and the American Rescue Plan (ARP) Act of 2021.

The Triennial Review focused on DRBA's compliance in 23 areas. Deficiencies were found in six (6) areas: Transit Asset Management (TAM), Procurement, Title VI, Americans with Disabilities Act (ADA) – General, Equal Employment Opportunity (EEO), and Section 5307. This was DRBA's first Triennial Review.

Subsequent to the site visit, DRBA provided corrective action responses to address and close one (1) deficiency noted in the Procurement area of the report that follows.

As part of this year's Triennial Review of DRBA, the FTA incorporated Enhanced Review Focuses (ERFs) in the Technical Capacity, Title VI, and EEO areas. The purpose of an ERF is to conduct a more comprehensive review of underlying or contributing issues identified during the pre-assessment stage of the Triennial Review. Deficiencies resulting from the ERFs are presented in the Technical Capacity, Title VI, and EEO areas of the report that follows.

Thank you for your cooperation and assistance during this Triennial Review. If you need any technical assistance or have any questions, please do not hesitate to contact Mr. David Burns, General Engineer, by email at [david.burns@dot.gov](mailto:david.burns@dot.gov).

Sincerely,

Terry Garcia Crews  
Regional Administrator

Enclosure

cc: Tom Cook  
Michelle Warner

**FINAL REPORT**

**FISCAL YEAR 2023  
TRIENNIAL REVIEW**

**of**

**Delaware River & Bay Authority  
DRBA  
New Castle, DE**

**ID: 7363**

Performed for:

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
REGION 3**

Prepared By:

**Calyptus Consulting Group, Inc**

**Desk Review/Scoping Meeting Date: March 1-2, 2023  
Virtual Site Visit Entrance Conference Date: May 2, 2023  
Virtual Site Visit Exit Conference Date: May 8, 2023  
Draft Report Date: June 6, 2023  
Final Report Date: July 13, 2023**

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## I. Executive Summary

This report documents the Federal Transit Administration's (FTA) Triennial Review of the Delaware River & Bay Authority (DRBA) of New Castle, Delaware. The FTA wants to ensure that awards are administered in accordance with the requirements of Federal public transportation law 49 U.S.C. Chapter 53. The review was performed by Calyptus Consulting Group, Inc. During the virtual site visit, the Reviewer discussed the administrative and statutory requirements and reviewed Recipient documents.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, the FTA conducted a virtual site visit for this Triennial Review. In addition, the FTA expanded the review to address DRBA's compliance with the administrative relief and flexibilities that the FTA granted, and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021, and the American Rescue Plan (ARP) Act of 2021. The FTA also requested the DRBA share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The FY2023 Triennial Review focused on DRBA's compliance in 23 areas. Deficiencies related to the COVID-19 Relief funds have been clearly identified as part of the deficiency description in the respective review area. This was DRBA's first Triennial Review.

As part of this year's Triennial Review of DRBA, the FTA incorporated Enhanced Review Focuses (ERFs) in the Technical Capacity, Title VI, and Equal Employment Opportunity (EEO) areas. The purpose of an ERF is to conduct a more comprehensive review of underlying or contributing issues identified during the pre-assessment stage of the Triennial Review. Deficiencies resulting from the ERFs are presented in the Technical Capacity, Title VI, and EEO areas of this report.

Deficiencies were found in the areas listed below.

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
Transit Asset Management	TAM1-1: TAM plan not prepared	DRBA has not developed a TAM plan as required and is not a participant in a group plan.	The recipient must provide to the FTA regional office its TAM plan.	10/10/2023
Procurement	P1-1: Procurement policies and procedures not evident	DRBA does not have compliant procurement policies and procedures to guide staff in agency procurements.	The recipient must develop and submit to the FTA regional office procurement policies that include all required provisions. The recipient must provide to the FTA regional office evidence that it has sought out and will attend procurement training for conducting FTA funded procurements.	10/10/2023

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
	P4-2: No verification that excluded parties are not participating/ no requirement for prime contractor to flow down exclusion requirements to lower tiers	Files for engine replacement and installation did not contain a suspension and debarment clause in the solicitation, a signed verification from the bidder that it was not suspended or debarred, or a SAM check.	The recipient must submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions. The recipient must submit to the FTA regional office procedures for requiring its prime contractor to flow down exclusion requirements.	Closed
	P5-1: Incomplete written documentation of procurement history	Written documentation of procurement history not apparent in files for replacement engine and installation.	The recipient must submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.	10/10/2023
	P11-1: Missing FTA clauses	No FTA clauses included in files for engine replacement and installation.	Submit to the FTA regional office revised procurement procedures that include a process for annually searching for and including all FTA-required third-party contract clauses through use of a clause checklist or other mechanism, and ensuring that these clauses are included in its contracts.	10/10/2023
	P12-2: Lobbying certifications not included in procurement solicitations or signed by bidders	Files for replacement engines and installation did not contain signed lobbying certifications.	The recipient must submit to the FTA regional office procedures for obtaining signed lobbying certifications.	10/10/2023
Title VI	TVI2-1: Language Assistance Plan (LAP) implementation deficiencies	DRBA's Title VI program does not include a Language Assistance Plan as required; no LAP is in place.	The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> documentation of preparing and implementing a LAP.	10/10/2023

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
Americans with Disabilities Act (ADA) - General	ADA-GEN1-1: Insufficient ADA complaint process	DRBA's ADA complaint process is not easily found and accessible on its website; ADA complaint procedures do not clearly provide information to the public on how to file an ADA complaint; ADA complaint procedures do not provide the contact information for the designated employee or office coordinating complaints; ADA complaint procedures do not provide any detail regarding prompt response or documentation of the response to any individual filing a complaint, including the reason for the response.	<p>1) The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> evidence that the process for filing an ADA complaint has been relocated on its website to be easier to locate and accessible to the public.</p> <p>2) The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> that it has advertised the name or title, address, telephone number, and email address of the employee designated to coordinate ADA complaints.</p> <p>3) The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> ADA complaint procedures that require a prompt response to the individual filing the complaint.</p> <p>4) The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> ADA complaint procedures that provide for documentation of the response to the individual filing the complaint, including the reason for the response</p>	10/10/2023
Equal Employment Opportunity	EEO3-2: Recipient personnel not performing required EEO responsibilities	DRBA's EEO Officer is not concurring in the hiring or promotion processes.	The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> evidence of corrective actions taken to implement the EEO program with appropriately designated personnel.	10/10/2023
Section 5307	5307:1-1: No metropolitan transportation planning agreement	DRBA is not party to an agreement with the MPO.	The recipient must submit to the FTA regional office a fully executed agreement with the MPO, state(s), and transit providers that specifies the cooperative procedures for carrying out metropolitan transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.	10/10/2023

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
	5307.3-2: Public comment policy missing required elements	DRBA's public comment policy does not define a major service reduction or a process for soliciting and considering public comments.	The recipient must submit to the FTA regional office a public comment policy that was amended to address the missing element: definition of a major service reduction and the process for soliciting and considering public comments prior to a fare increase or major service reduction.	10/10/2023

Subsequent to the site visit, DRBA provided corrective action responses to address and close one (1) deficiency noted in the Procurement area of the report that follows.

## **II. Review Background and Process**

### **1. Background**

The United States Code, Chapter 53 of Title 49 (49 U.S.C. 5307(f)(2)) requires that “At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient’s program, specifically referring to compliance with statutory and administrative requirements...” The FTA performs this Triennial Review in accordance with its procedures (published in FTA Order 9010.1B, April 5, 1993).

The Triennial Review includes a review of the recipient’s compliance in 23 areas. The basic requirements for each of these areas are summarized in Section IV. The FTA contracts with experienced Reviewers to lead and conduct the Triennial Reviews, in partnership with the staff of the regional office.

This report presents the findings from the Triennial Review of the recipient. This is DRBA’s first Triennial Review.

### **2. Process**

The Triennial Review includes a pre-review assessment, a desk review and scoping meeting with the FTA regional office, and a site visit to the recipient’s location. The FTA also requested that the recipient share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The fiscal year (FY) 2023 process began with the regional office transmitting a notification of the review and a Recipient Information Request (RIR) to the recipient on December 1, 2022, indicating a review would be conducted. While the recipient prepared its response to the RIR, the regional office and review team conducted a desk review and scoping meeting was held on March 1-2, 2023. Regional office staff provided electronic files as necessary to the Reviewers who also accessed recipient information in the FTA electronic award management (TrAMS) and oversight (OTrak) systems. Following the desk review and scoping meeting, the Reviewer and the recipient corresponded and exchanged information and documentation in preparation for the virtual site visit. Prior to the virtual site visit, the Reviewer sent an agenda package to the recipient on April 18, 2023, indicating the issues that would be discussed, records to be reviewed, and interviews to be conducted. The virtual site visit to DRBA occurred from May 2, 2023 (entrance conference) to May 8, 2023 (exit conference).

The virtual site visit portion of the review began with an entrance conference, at which the Reviewer and regional staff discussed the purpose of the Triennial Review and the review process. The Reviewer conducted additional interviews and reviewed documentation to evidence the recipient’s compliance with FTA requirements.

Upon completion of the virtual site visit, the Reviewer and the FTA regional office staff provided a summary of preliminary findings to the recipient at the exit conference on May 8,

2023. Section VI of this report lists the individuals participating in the site visit.

### 3. Metrics

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are:

- Not Deficient (ND): An area is considered not deficient if, during the review, nothing came to light that would indicate the requirements within the area reviewed were not met.
- Deficient (D): An area is considered deficient if any of the requirements within the area reviewed were not met.
- Not Applicable (NA): An area can be deemed not applicable if, after an initial assessment, the recipient does not conduct activities for which the requirements of the respective area would be applicable.

### **III. Recipient Description**

#### **1. Organization**

The Delaware River and Bay Authority (DRBA or Authority) is a bi-state agency created in 1962 by compact, as amended in 1990, between the States of Delaware and New Jersey with the consent of the Congress of the United States.

The purpose of the DRBA is to operate crossings between the States of Delaware and New Jersey across the Delaware River or Bay. The first of these crossings, the twin spans of the Delaware Memorial Bridge, extend across approximately two miles of the Delaware River, just north of the mouth of the Delaware Bay. At the southern end of Delaware Bay, the Cape May-Lewes Ferry traverses the seventeen miles between Cape May, New Jersey and Lewes, Delaware.

The Authority is also responsible for developing transportation, terminal, and commerce facilities throughout Delaware and in the counties of Cape May, Cumberland, Gloucester, and Salem in New Jersey and in furtherance of these objectives operates the Forts Ferry Crossing along with five regional airports within its service area.

A 12-member Board of Commissioners govern the Authority, with six members each appointed by the State of Delaware and the State of New Jersey.

The Authority is financially self-sustaining and charges tolls, fares, and other fees necessary to operate its facilities and provide services to the public at large. Funds received cover operating expenses, debt issued for capital improvements, and construction and maintenance of its facilities. Debt outstanding is a pledge of the DRBA's credit. The Authority cannot pledge the credit of either state or any municipality, nor does it receive or levy any taxes or assessments. Within the context of programmatic agencywide objectives, the DRBA establishes various financial schedules and classifications designed to ensure that the agency can sustain its operations and projects, future planning, and fund debt service. The Authority maintains various reserve funds, the General Fund, Debt Service Reserve and Reserve Maintenance Fund which were established in accordance with applicable statutes, Resolutions and Trust Agreements. The Authority utilizes industry metrics for establishing targets and maintaining balances, reserve funds, as well as other debt-related ratios, including the Additional Bonds Test and Debt Service Coverage (as defined in the Trust Agreement).

#### **2. Award and Project Activity**

DRBA had no open awards at the time of the review.

## **Projects Completed**

In the past few years, DRBA completed the following noteworthy project using FTA funds:

- Purchased and installed replacement Ferry engine for Cape May, New Jersey and Lewes, Delaware Ferry service.

## **Future Projects**

DRBA plans to pursue the following noteworthy project in the next three to five years using FTA funds:

- New Ferry Motor Vessel Planning, Design, and Eventual Construction.

## **IV. Results of the Review**

### **1. Legal**

Basic Requirement: The recipient must promptly notify the FTA of legal matters and additionally notify the USDOT Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

Finding: During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Legal.

### **2. Financial Management and Capacity**

Basic Requirement: The recipient must have financial policies and procedures; an organizational structure that defines, assigns and delegates fiduciary authority; and financial management systems in place to manage, match, and charge only allowable costs to the award. The recipient must conduct required Single Audits, as required by 2 CFR part 200, and provide financial oversight of subrecipients.

Finding: During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Financial Management and Capacity.

### **3. Technical Capacity – Award Management**

Basic Requirement: The recipient must report progress of projects in awards to the Federal Transit Administration (FTA) and close awards timely.

Finding: During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Technical Capacity – Award Management.

### **4. Technical Capacity – Program Management & Subrecipient Oversight**

Basic Requirement: States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Sections 5310, 5311, and 5339 funds must develop and submit a State Management/Program Management Plan to the FTA for approval. Recipients must enter into an agreement with each subrecipient, obtain required certifications from subrecipients, report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards, and ensure subrecipients comply with the terms of the award.

Finding: The FTA requirements for Technical Capacity – Program Management & Subrecipient Oversight were not applicable to DRBA during this Triennial Review.

## **5. Technical Capacity – Project Management**

**Basic Requirement:** The recipient must implement the FTA-funded projects in accordance with the award application, the FTA Master Agreement, and applicable laws and regulations using sound management practices.

**Finding:** During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Technical Capacity – Project Management.

## **6. Transit Asset Management**

**Basic Requirement:** Recipients must comply with 49 CFR part 625 to ensure public transportation providers develop and implement transit asset management (TAM) plans.

**Finding:** During this Triennial Review of DRBA, one (1) deficiency was found with the FTA requirements for Transit Asset Management.

**Deficiency Description:** TAM plan not prepared (TAM1-1)

The DRBA has not developed a TAM plan and is not participating in a group TAM plan as required.

### *49 CFR 625.3 Applicability*

*This part applies to all recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used for providing public transportation.*

### *49 CFR 625.5 Definitions*

*Tier I provider means a recipient that owns, operates, or manages either (1) one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or (2) rail transit.*

*Tier II provider means a recipient that owns, operates, or manages (1) one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.*

### *49 CFR 625.25*

*Transit Asset Management Plan Requirements.*

*(a) General.*

*(1) Each Tier I provider must develop and carry out a TAM plan that includes each element under paragraph (b) of this section.*

*(2) Each Tier II provider must develop its own TAM plan or participate in a group TAM plan. A Tier II provider's TAM plan and a group TAM plan only must include elements under paragraphs (b)(1) through (4) of this section.*

Corrective Action and Schedule: By October 10, 2023, DRBA must submit to the FTA regional office its TAM plan.

## **7. Satisfactory Continuing Control**

Basic Requirement: The recipient must ensure that FTA-funded property will remain available and used for its originally authorized purpose throughout its useful life until disposition.

Finding: During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Satisfactory and Continuing Control.

## **8. Maintenance**

Basic Requirement: Recipients must keep federally-funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

Finding: During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Maintenance.

## **9. Procurement**

Basic Requirement: The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to Federal procurements, those policies and procedures must still be compliant with all Federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements. For example, the FTA does not require each State DOT to have policies and procedures separate from the state education department.

Finding: During this Triennial Review of DRBA, five (5) deficiencies were found with the FTA requirements for Procurement.

Deficiency Description #1: Procurement policies and procedures not evident (P1-1)

The DRBA does not have compliant procurement policies and procedures that meet Federal requirements.

*2 CFR 200.317*

## *Procurements by states*

*When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.*

### *2 CFR 200.318 General procurement standards*

*(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.*

*(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.*

*(c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.*

*(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.*

*(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.*

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal

*concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.*

*2 CFR 200.319 Competition*

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.*
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:*
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;*
  - (2) Requiring unnecessary experience and excessive bonding;*
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;*
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;*
  - (5) Organizational conflicts of interest;*
  - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and*
  - (7) Any arbitrary action in the procurement process.*
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.*
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:*
  - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the*

*technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and*

*(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.*

*(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.*

*(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).*

*2 CFR 200.320 Methods of procurement to be followed.*

*The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.*

*(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:*

*(1) Micro-purchases*

*(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.*

*(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.*

*(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.*

(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases -(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a noncompetitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

- (i) In order for sealed bidding to be feasible, the following conditions should be present:
- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (ii) If sealed bids are used, the following requirements apply:
- (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be rejected if there is a sound documented reason.
- (2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:
- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
- (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
- (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of

*fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.*

*(c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:*

- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);*
- (2) The item is available only from a single source;*
- (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;*
- (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or*
- (5) After solicitation of a number of sources, competition is determined inadequate.*

*2 CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms*

*(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.*

*(b) Affirmative steps must include:*

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;*
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;*
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;*
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and*
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.*

## *2 CFR 200.323 Procurement of recovered materials*

*A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.*

## *2 CFR 200.324 Contract cost and price*

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.*
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.*
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.*
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.*

## *2 CFR 200.325 Federal awarding agency or pass-through entity review*

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or passthrough entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.*

*(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:*

- (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;*
- (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;*
- (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;*
- (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or*
- (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.*

*(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.*

- (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;*
- (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.*

## *2 CFR 200.326 Bonding requirements*

*For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:*

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.*

*(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.*

*(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.*

## *2 CFR 200.327 Contract provisions*

*The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.*

Corrective Actions and Schedule: By October 10, 2023, DRBA must develop and submit to the FTA regional office procurement policies that include all required provisions. The recipient must provide to the FTA regional office evidence that it has sought out and will attend procurement training for conducting FTA funded procurements.

Corrective Action Follow-up by DRBA: As of the date of this letter, DRBA's Procurement Manager and several other DRBA staff persons have registered for and attended FTA's procurement webinar that occurred on July 13, 2023.

Deficiency Description #2: No verification that excluded parties are not participating/ no requirement for prime contractor to flow down exclusion requirements to lower tiers (P4-2)

The procurement files for the replacement engine and installation did not contain a suspension and debarment clause, a signed suspension and debarment certification, or a SAM check as required.

## *49 U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS*

*(1) IN GENERAL. Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.*

*(2) CRITERIA. Before making an award to a contractor under paragraph (1), a recipient shall consider:*

*A. the integrity of the contractor;*

*B. the contractor's compliance with public policy;*

*C. the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and*

*D. the contractor's financial and technical resources.*

**2 CFR 180.300**

*What must I do before I enter into a covered transaction with another person at the next lower tier?*

*When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:*

*(a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person.*

**2 CFR 180.310**

*What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?*

*(a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate. (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.*

**2 CFR 1200.220**

*What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?*

*In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).*

**Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2**

*Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.*

Corrective Action(s) and Schedule: By October 10, 2023, DRBA must submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions. The recipient must submit to the FTA regional office procedures for requiring its prime contractor to flow down exclusion requirements.

Corrective Action Follow-up by DRBA: On June 21, 2023, DRBA provided a written response in follow-up to its review of the draft Triennial Review report. The response included evidence that DRBA did include in its solicitation for drydocking and installation, a suspension and debarment certification form which includes the flow down requirement. The form was to be completed by vendors and submitted with their proposal documents. A copy of the signed form submitted by the vendor awarded the contract was attached in DRBA's written response. This documentation was not provided at the virtual review however, it does demonstrate DRBA's compliance with the requirement and as such, this deficiency is closed.

Deficiency Description #3: Incomplete written documentation of procurement history (P5-1)

The procurement files for the replacement engine and installation did not contain a written history of the procurement as required.

2 CFR 200.318(i)

*The non-Federal entity must maintain records sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.*

*Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2*

*Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.*

Corrective Action(s) and Schedule: By October 10, 2023, DRBA must submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.

Corrective Action Follow-up by DRBA: In the written response received from DRBA on June 21, 2023, a narrative containing the details of the procurement history for drydocking and installation was provided. This narrative is the same information provided during the virtual review. While there is no dispute surrounding these details, the requirement is that a recipient must maintain a written documentation of procurement history sufficient to detail all elements, including those provided in DRBA's narrative. The documents contained in the procurement files for drydocking and installation that were provided for review did not on their own, present a clear picture of the details surrounding the procurement's history. DRBA should develop a mechanism for clearly maintaining a written record of procurement history, such as a separate form or a narrative document that ties all relevant information together in one place. This

deficiency remains open until DRBA submits to the FTA regional office evidence that it has implemented a mechanism of its own choosing to maintain written documentation of procurement history as required, and that procurement staff have been trained on the use of this mechanism.

Deficiency Description #4: Missing FTA clauses (P11-1)

The procurement files for the replacement engine and installation did not contain FTA clauses as required.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

*In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.*

*(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

*(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.*

*(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”*

*(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to*

*the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.*

*(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*

*(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.*

*(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).*

*(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.*

*(J) See §200.322 Procurement of recovered materials—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.*

FTA Master Agreement (28), Section 16.d.

*Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:*

- (1) Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)*
- (2) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.*
- (3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”*
- (4) Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR*

*Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.*

*(5) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*

*(6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.*

*(7) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).*

(8) *Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:*

- (i) *Complies with federal debarment and suspension requirements; and*
- (ii) *Reviews the SAM at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.*

(10) *Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.*

200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) *Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:*

- (1) *Procure or obtain;*
- (2) *Extend or renew a contract to procure or obtain; or*

(3) *Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).*

(i) *For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation,*

*Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).*

*(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.*

*(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.*

*(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.*

*FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles.*

*(a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: 90 (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and (2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.*

*FTA Master Agreement (25) Section 34. Safe Operation of Motor Vehicles. (b) Distracted Driving, Including Text Messaging While Driving.*

*The Recipient agrees to comply with: (1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225); (2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award; (ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and (iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special*

*Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.*

*FTA Master Agreement (28) Section 39(b).*

*Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.*

*(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.*

*(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.*

*(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.*

**Corrective Actions and Schedule:** By October 10, 2023, DRBA must submit to the FTA regional office procurement procedures that include a process to annually search for and include all FTA-required third-party contract clauses through use of a clause checklist or other mechanism and ensures that these clauses are included in its contracts.

Deficiency Description #5: Lobbying certifications not included in procurement solicitations or signed by bidders (P12-2)

The procurement files for the replacement engine and installation did not contain lobbying certifications in the solicitations or signed certifications submitted by bidders.

*49 CFR 26.49 (a)*

*If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section.*

*Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*

*Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.*

*49 CFR 661.6*

*Certification requirements for procurement of steel or manufactured products. If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate FY2023 Contractors Manual – Procurement 9-63 certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part.*

*49 CFR 661.12*

*Certification requirement for procurement of buses, other rolling stock and associated equipment. If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in §661.13(b) of this part.*

*FTA Circular 9030.1E Chapter V 11.*

*h. The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with 49 CFR Part 26.*

Corrective Action and Schedule: By October 10, 2023, DRBA submit to the FTA regional office procedures for obtaining signed lobbying certifications.

## **10. Disadvantaged Business Enterprise (DBE)**

**Basic Requirement:** Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.

**Finding:** During this Triennial Review of DRBA, no deficiencies were found with the USDOT requirements for DBE.

## **11. Title VI**

**Basic Requirement:** The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

**Finding:** During this Triennial Review of DRBA, one (1) deficiency was found with the FTA requirements for Title VI.

**Deficiency Description:** Language assistance implementation deficiencies (TVI2-1)

As a new FTA recipient, DRBA submitted its Title VI program in TrAMS on March 30, 2020, as required. At the time of the Triennial Review, DRBA's Title VI plan had not yet been reviewed by FTA. To complete an appropriate review and establish a baseline of DRBA's understanding of FTA's requirements under Title VI, an Enhanced Review Focus (ERF) was conducted. Within the ERF, reviewers conducted a precursory review of DRBA's Title VI program using the FTA Office of Civil Rights Title VI program review tool and instructions. DRBA's Title VI program did not include a Language Assistance Plan (LAP) as required.

*FTA Circular 4702.1B Chapter III.9.b Developing a Language Assistance Plan*

*After completing the Four Factor Analysis, the recipient shall use the results of the analyses to determine which language assistance services are appropriate. Additionally, the recipient shall develop an assistance plan to address the identified needs of the LEP population(s) it serves. The DOT LEP Guidance recognizes that certain recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written plan. However, FTA has determined it is necessary to require its recipients to develop an assistance plan in order to ensure compliance. FY2023 Comprehensive Review Contractors Manual – Title VI 11-6*

*FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR14*

*A recipient must follow its locally developed Title VI Program, which includes a Language Access Plan. The plan will describe how the recipient provides language assistance services by language to the LEP populations it serves, including during temporary service reductions. Per*

*FTA Circular 4702.1B, Chapter III, Section 9, examples of vital documents that must be translated include a notice of a person's rights under Title VI and "other documents that provide access to essential services." Failure to translate vital information could result in a recipient denying an LEP person access to services and discrimination on the basis of national origin.*

**Corrective Action(s) and Schedule:** By October 10, 2023, DRBA must prepare and submit to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report) documentation of preparing and implementing a LAP.

## **12. Americans with Disabilities Act (ADA) – General**

**Basic Requirement:** Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

**Finding:** During this Triennial Review of DRBA, one (1) deficiency was found with the USDOT requirements for ADA – General.

**Deficiency Description:** Insufficient ADA complaint process (ADA-GEN1-1)

A review of DRBA's complaint process and website found the following: ADA complaint process is not easily found and accessible on its website; ADA complaint procedures do not clearly provide information to the public on how to file an ADA complaint; ADA complaint procedures do not provide the contact information for the designated employee or office coordinating ADA complaints; ADA complaint procedures do not provide any detail regarding prompt response or that documentation of the response will be provided to any individual filing a complaint, including the reason for the response.

*49 CFR 27.121(b) Compliance information*

*(b) Compliance reports. Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years.*

*49 CFR 37.17 Designation of responsible employee and adoption of complaint procedures.*

*(a) Designation of responsible employee. Each public or private entity subject to this part shall designate at least one person to coordinate its efforts to comply with this part.*

*(b) Adoption of complaint procedures. An entity shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 27, 38 and 39. The procedures shall meet the following requirements:*

*(1) The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under paragraph (a) of this section, must be sufficiently advertised to the public, such as on the entity's Web site; FY2023 Comprehensive Review Contractors Manual – ADA General 12-5*

*(2) The procedures must be accessible to and usable by individuals with disabilities;*

*(3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response.*

**Corrective Action(s) and Schedule:** By October 10, 2023, DRBA must submit to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report) evidence that the process for filing an ADA complaint has been relocated on its website to be easier to locate and accessible to the public.

The recipient must submit evidence to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report) that it has advertised the name or title, address, telephone number, and email address of the employee designated to coordinate ADA complaints.

The recipient must submit to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report) ADA complaint procedures that require a prompt response to the individual filing the complaint.

The recipient must submit to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report) ADA complaint procedures that provide for documentation of the response to the individual filing the complaint, including the reason for the response.

### **13. ADA – Complementary Paratransit**

**Basic Requirement:** Under 49 CFR 37.121(a), each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. “Comparability” is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

**Finding:** USDOT requirements for ADA – Complementary Paratransit were not applicable to DRBA during this Triennial Review.

## **14. Equal Employment Opportunity**

Basic Requirement: The recipient must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program or activity receiving Federal financial assistance under the Federal transit laws.

Finding: During this Triennial Review of DRBA, one (1) deficiency was found with the FTA requirements for Equal Employment Opportunity.

Deficiency Description: Recipient personnel not performing required EEO responsibilities (EEO3-2)

As a new FTA recipient, DRBA submitted its EEO program in TrAMS on March 30, 2020, as required. At the time of the Triennial Review, DRBA's EEO program had not yet been reviewed by FTA. To complete an appropriate review and establish a baseline of DRBA's understanding of FTA's requirements for Equal Employment Opportunity, an Enhanced Review Focus (ERF) was conducted. Within the ERF, reviewers conducted a precursory review of DRBA's EEO program using the FTA Office of Civil Rights EEO program review tool and instructions and provided this information to FTA's Office of Civil Rights. A deficiency was found in DRBA's implementation of its EEO program as its EEO Officer is not concurring in the hiring and promotion process as required.

*FTA Circular 4704.1A Ch. 2.2.3 Designation of Personnel Responsibility*

*The designation of an agency's EEO Officer responsible for EEO program management and oversight reflects the agency's EEO commitment. As such, FTA requires agencies to designate an executive as EEO Officer who will report to and is directly responsible to the agency's CEO/GM. FTA requires agencies to name the EEO Officer and publicize the individual's contact information in all internal and external communications regarding the agency's EEO program. This will include publishing the EEO Officer's contact information prominently in both print and electronic communications, such as the agency's website.*

*FTA requires the EEO Officer's program responsibilities to include...Concurring in the hiring and promotion process; ... Investigating complaints of EEO discrimination; Providing EEO training for employees and managers;*

*Although the EEO Officer is primarily responsible for implementing an agency's EEO program, all officials, managers, and supervisors are responsible for ensuring EEO and must not discriminate based on a protected class. All managers—from the supervisor of the smallest unit to the Board Chair or CEO/GM—bear responsibility for ensuring that agency EEO program policies and programs are carried out. EEO responsibilities for agency officials, supervisors and managers include: Participating actively in periodic audits of all aspects of employment to identify and remove barriers obstructing the achievement of specified goals and objectives; Holding regular discussions with other managers, supervisors, employees, and affinity groups to*

*ensure agency policies and procedures are being followed. Affinity groups are those formed around a shared interest or common goal, to which individuals formally or informally belong.*

**Corrective Action(s) and Schedule:** By October 10, 2023, DRBA must submit to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report) evidence of corrective actions taken to implement a process or policy that ensures the EEO Officer is able to provide input and concurrence on the DRBA's hiring and promotion processes and procedures.

## **15. School Bus**

**Basic Requirement:** Recipients are prohibited from providing school bus service in competition with private school bus operators unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally-funded equipment or facilities cannot be used to provide exclusive school bus service.

**Finding:** FTA requirements for School Bus were not applicable to DRBA during this Triennial Review.

## **16. Charter Bus**

**Basic Requirement:** Recipients are prohibited from using the FTA-funded equipment and facilities to provide charter service that unfairly competes with private charter operators. Recipients may operate charter only when the service meets a specified exception defined in rule.

**Finding:** FTA requirements for Charter Bus were not applicable to DRBA during this Triennial Review.

## **17. Drug Free Workplace Act**

**Basic Requirement:** Recipients are required to maintain a drug free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.

**Finding:** During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Drug-Free Workplace Act.

## **18. Drug and Alcohol Program**

**Basic Requirement:** Recipients receiving Section 5307, 5309, 5311, or 5339 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

Finding: During this Triennial Review of DRBA, no deficiencies were found with the FTA requirements for Drug and Alcohol Program.

## 19. Section 5307 Program Requirements

Basic Requirement: Recipients must participate in the transportation planning process in accordance with FTA requirements and the metropolitan and statewide planning regulations.

Recipients shall develop, publish, and afford an opportunity for a public hearing on, and submit for approval a program of projects (POP).

Recipients are expected to have a written, locally-developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

For fixed-route service supported with Section 5307 assistance, fares charged to seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than one half the peak hour fares.

Finding: During this Triennial Review of DRBA, two (2) deficiencies were found with the FTA requirements for Section 5307 Program Requirements.

Deficiency description: No metropolitan transportation planning agreement (5307:1-1)

DRBA is a new FTA recipient, and this was the first Triennial Review conducted for this agency. To establish a baseline of DRBA's understanding of FTA's requirements in general, an overall Technical Capacity Enhanced Review Focus (ERF) was conducted. Within the ERF, reviewers conducted an in-depth review of DRBA policies, processes, and procedures, and conducted more substantial interviews with DRBA's relevant staff. Under Section 5307 Program Requirements, DRBA did not understand that they were required to have an agreement with the MPO.

*23 CFR 450.314(a) and (h) Metropolitan Planning Agreement*

*(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO(s), the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement among all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see §450.324) and the metropolitan TIP (see §450.326), and development of the annual listing of obligated projects (see §450.334).*

*(h) (1) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward*

*attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plan for the NHS for each of the following circumstances:*

- (i) When one MPO serves an urbanized area;*
- (ii) When more than one MPO serves an urbanized area; and*
- (iii) When an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA.*

*(2) These provisions shall be documented either:*

- (i) As part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section; or*
- (ii) Documented in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.*

**Corrective Action and Schedule:** By October 10, 2023, DRBA must submit to the FTA regional office a fully executed agreement with the MPO, state(s), and transit providers that specifies the cooperative procedures for carrying out metropolitan transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.

**Deficiency description:** Public comment policy missing required elements (5307:3-2)

DRBA provided its public comment policy however, the policy does not provide a definition of a major service reduction as required and did not include a process for soliciting and considering public comments prior to a fare increase or major service reduction.

*FTA Circular 9030.1E, Chapter VI, Program Management and Administrative Requirements*

*1.a.(12) The recipient is responsible for defining a major service reduction. The policy should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction and should describe how the recipient will conduct such meetings and how the recipient will consider the results of such meetings in the process of changing fares and service. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided.*

*FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR2*

*Under FTA's Title VI Circular 4702.1B, transit providers that operate 50-or-more fixed route vehicles in peak service and are located in an urbanized area (UZA) with a population of 200,000 or more, must perform a service equity analysis whenever they make a major service change. The service equity analysis evaluates the impacts of the proposed service changes on Title VI-protected populations and low-income populations. Temporary service changes in*

*response to an emergency do not rise to the level of a major service change, so a service equity analysis is not required. Similarly, FTA exempts all temporary fare changes enacted as a result of an emergency from the fare equity analysis requirement. However, if a transit agency chooses to make permanent any changes made during an emergency, or if changes last longer than 12 months (service) or 6 months (fare), then the transit agency must perform a service or fare equity analysis.*

*FTA does expect that all transit agencies take reasonable measures to implement temporary service or fare changes equitably to prevent unintentional discrimination. FTA does not require a transit agency to document this process, get board approval prior to implementing changes, or share documentation on the changes with FTA, but FTA recommends that transit agencies document the rationale for specific service reductions, as well as steps taken to ensure equitable reductions in service, in the event someone files a complaint.*

*Changes directly or indirectly related to an emergency, including ridership and budget reductions, that continue longer than 12 months (service) or 6 months (fare), or are planned in advance as permanent require an equity analysis. As outlined in the Title VI Circular Chapter IV, Section 7, any major service change that lasts longer than 12 months is considered permanent and requires a service equity analysis. This timeframe applies to major service changes initially enacted in response to the COVID-19 public health emergency. Similarly, any fare change - even if initially enacted in response to an emergency - that lasts longer than 6 months is considered permanent and requires a fare equity analysis. Further, transit agencies must prepare an equity analysis during the planning process for planned major service changes or fare changes consistent with the Circular.*

**Corrective Action and Schedule:** By October 10, 2023, DRBA must submit to the FTA regional office a public comment policy that was amended to address the missing element: definition of a major service reduction and the process for soliciting and considering public comments prior to a fare increase or major service reduction.

## **20. Section 5310 Program Requirements**

**Basic Requirement:** Recipients must expend Section 5310 funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all subrecipient leases of Section 5310-funded vehicles. Leases of Section 5310-funded vehicles must include required terms and conditions. Either the recipient or subrecipient must hold the title to the leased vehicles.

**Finding:** Section 5310 Program Requirements were not applicable to DRBA during this Triennial Review.

## **21. Section 5311 Program Requirements**

Basic Requirement: States must expend Section 5311 funds on eligible projects to support rural public transportation services and intercity bus transportation.

Finding: Section 5311 Program Requirements were not applicable to DRBA during this Triennial Review.

## **22. Public Transportation Agency Safety Plan (PTASP)**

Basic Requirement: Recipients must comply with the Public Transportation Agency Safety Plan (PTASP) regulation (49 CFR Part 673) to ensure public transportation providers develop and implement an Agency Safety Plan (ASP).

Finding: FTA requirements for PTASP were not applicable to DRBA during this Triennial Review.

## **23. Cybersecurity**

Basic Requirement: Recipients that operate rail fixed guideway public transportation systems must certify compliance with the requirements for establishing a cybersecurity process under 49 U.S.C. § 5323(v), a new subsection added by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 7613 (Dec. 20, 2019).

This section only applies to recipients that operate rail fixed guideway public transportation systems; therefore, the related requirements are not applicable to the Triennial Review of DRBA.

## V. Summary of Findings

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
1. Legal	ND					
2. Financial Management and Capacity	ND					
3. Technical Capacity – Award Management	ND					
4. Technical Capacity – Program Management and Subrecipient Oversight	NA					
5. Technical Capacity – Project Management	ND					
6. Transit Asset Management	D	TAM1-1	TAM plan not prepared	The recipient must provide to the FTA regional office its TAM plan.	10/10/2023	
7. Satisfactory Continuing Control	ND					
8. Maintenance	ND					
9. Procurement	D	P1-1	Procurement policies and procedures not evident	The recipient must develop and submit to the FTA regional office procurement policies that include all required provisions. The recipient must provide to the FTA regional office evidence that it has sought out and will attend procurement training for conducting FTA funded procurements.	10/10/2023	
		P4-2	No verification that excluded parties are not participating/ no requirement for prime contractor to flow down exclusion requirements to lower tiers	The recipient must submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions. The recipient must submit to the FTA regional office procedures for requiring its prime contractor to flow down exclusion requirements.	10/10/2023	7/12/2023
		P5-1	Incomplete written documentation of procurement history	The recipient must submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.	10/10/2023	

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
		P11-1	Missing FTA clauses	Submit to the FTA regional office revised procurement procedures that include a process for annually searching for and including all FTA-required third-party contract clauses through use of a clause checklist or other mechanism and ensuring that these clauses are included in its contracts.	10/10/2023	
		P12-2	Lobbying certifications not included in procurement solicitations or signed by bidders	The recipient must submit to the FTA regional office procedures for obtaining signed lobbying certifications.	10/10/2023	
10. Disadvantaged Business Enterprise	ND					
11. Title VI	D	TVI2-1	Language Assistance Plan (LAP) implementation deficiencies	The recipient must prepare and submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> documentation of preparing and implementing a LAP.	10/10/2023	
12. Americans with Disabilities Act (ADA) – General	D	ADA-GEN1-1	Insufficient ADA complaint process	<ol style="list-style-type: none"> <li>1) The recipient must submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> evidence that the process for filing an ADA complaint has been relocated on its website to be easier to locate and accessible to the public.</li> <li>2) The recipient must submit evidence to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> that it has advertised the name or title, address, telephone number, and email address of the employee designated to coordinate ADA complaints.</li> <li>3) The recipient must submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> ADA complaint procedures that require a prompt response to the individual filing the complaint.</li> <li>4) The recipient must submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> ADA complaint procedures that provide for documentation of the response to the individual filing the complaint, including the reason for the response.</li> </ol>	10/10/2023	
13. ADA – Complementary Paratransit	NA					

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
14. Equal Employment Opportunity	D	EEO3-2	Recipient personnel not performing required EEO responsibilities	The recipient must submit to the FTA Office of Civil Rights via <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> a process or policy that ensures the EEO Officer is able to provide input and concurrence on the DRBA's hiring and promotion processes and procedures.	10/10/2023	
15. School Bus	NA					
16. Charter Bus	NA					
17. Drug-Free Workplace	ND					
18. Drug and Alcohol Program	ND					
19. Section 5307 Program Requirements	D	5307:1-1	No metropolitan transportation planning agreement	The recipient must submit to the FTA regional office a fully executed agreement with the MPO, state(s), and transit providers that specifies the cooperative procedures for carrying out metropolitan transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.	10/10/2023	
		5307:3-2	Public comment policy missing required elements	The recipient must submit to the FTA regional office a public comment policy that was amended to address the missing element: definition of a major service reduction and the process for soliciting and considering public comments prior to a fare increase or major service reduction.	10/10/2023	
20. Section 5310 Program Requirements	NA					
21. Section 5311 Program Requirements	NA					
22. Public Transportation Agency Safety Plan	NA					
23. Cybersecurity	NA					

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are: Deficient (D)/Not Deficient (ND)/Not Applicable (NA)

\* Denotes repeat deficiencies

## VI. Attendees

Name	Title	Phone Number	E-mail Address
<b><i>Delaware River &amp; Bay Authority (DRBA)</i></b>			
Thomas Cook	Executive Director	302-571-6301	<a href="mailto:thomas.cook@drba.net">thomas.cook@drba.net</a>
Victor Ferzetti	Chief Financial Officer	302-571-6442	<a href="mailto:victor.ferzetti@drba.net">victor.ferzetti@drba.net</a>
Michelle Warner	Legal Counsel	302-571-6002	<a href="mailto:michelle.warner@drba.net">michelle.warner@drba.net</a>
Emily Weaver	Legal Assistant	302-571-6412	<a href="mailto:emily.weaver@drba.net">emily.weaver@drba.net</a>
Charlotte Crowell	Chief Human Resources Officer	302-571-6397	<a href="mailto:charlotte.cowell@drba.net">charlotte.cowell@drba.net</a>
Andrew Ritchie	Employee Relations and Compliance Manager	302-571-6477	<a href="mailto:andrew.ritchie@drba.net">andrew.ritchie@drba.net</a>
Monica Cramer	Senior Accountant	302-571-6329	<a href="mailto:monica.cramer@drba.net">monica.cramer@drba.net</a>
James Danna	Controller	302-571-6331	<a href="mailto:james.danna@drba.net">james.danna@drba.net</a>
Travis Crawford	Procurement Manager	302-571-6353	<a href="mailto:travis.crawford@drba.net">travis.crawford@drba.net</a>
Heath Gehrke	Director of Ferry Operations	609-889-7220	<a href="mailto:heath.gehrke@drba.net">heath.gehrke@drba.net</a>
Michael Lynch	Port Engineer	609-889-7250	<a href="mailto:michael.lynch@drba.net">michael.lynch@drba.net</a>
<b><i>FTA</i></b>			
Terry Garcia-Crews	Regional Administrator	215-656-7100	<a href="mailto:Teresa.GarciaCrews@dot.gov">Teresa.GarciaCrews@dot.gov</a>
Tony Cho	Director, Office of Program Management & Oversight	215-656-7100	<a href="mailto:Tony.Cho@dot.gov">Tony.Cho@dot.gov</a>
Anne Marie Coughlin	Director, Office of Financial Management & Program Oversight	215-656-7249	<a href="mailto:AnneMarie.Coughlin@dot.gov">AnneMarie.Coughlin@dot.gov</a>
Anthony Romero	Procurement Specialist (Consultant)	215-656-7100	<a href="mailto:Anthony.Romero.CTR@dot.gov">Anthony.Romero.CTR@dot.gov</a>
<b><i>Calyptus Consulting</i></b>			
Sherry Snyder	Lead Reviewer	617-577-0042	<a href="mailto:ssnyderconsulting@outlook.com">ssnyderconsulting@outlook.com</a>
Jameson Beekman	Reviewer	617-577-0042	<a href="mailto:jamesonb@calyptusgroup.com">jamesonb@calyptusgroup.com</a>

## VII. Appendices

### Civil Rights Corrective Action Submission

All Civil Rights corrective actions should be submitted to the FTA Office of Civil Rights via [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) in the following format:

- A separate email should be sent to address each deficiency separately with attached supporting documentation.

Do not submit MS Word or Excel spreadsheets.

- Supporting documents should be sent as .pdf files in the following format:

Region Number-Grantee Name-TrAMSRcipID-Finding Code.pdf

For example, **Region3- DRBA -1419-DBE6-1.pdf**

- **Email Subject Line:** TR FY23 Corrective Action: Grantee Name-Recipient ID, Deficiency Code, and Deficiency Title

For example, **Triennial Review FY23 Corrective Action: DRBA -1419, DBE6-1 DBE Shortfall Analyses**

The body of the email should contain a short summary of the corrective action.