

FINAL REPORT

FISCAL YEAR 2023 TRIENNIAL REVIEW

of

**Merrimack Valley Regional Transit Authority
(MEVA)
Haverhill, MA
ID: 1374**

Performed for:

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

Prepared By:

Qi Tech, LLC

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I. Executive Summary

This report documents the Federal Transit Administration's (FTA) Triennial Review of the Merrimack Valley Regional Transit Authority (MEVA) of Haverhill, MA. 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 Qi Tech, LLC. 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 MEVA'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 MEVA 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 MEVA'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. There was one repeat deficiency from the FY 2016 and FY 2019 Triennial Reviews in the area of Disadvantaged Business Enterprise.

Deficiencies were found in the areas listed below.

Review Area	Deficiencies	
	Code	Description
Procurement	P12-4	Contract files lacking signed Buy America certifications
Disadvantaged Business Enterprise	DBE5-1*	DBE uniform reports contain inaccuracies and/or are missing required information
	DBE8-1	Inadequate implementation of race-neutral measures
	DBE8-2	Small business element not implemented
	DBE9-2	Inadequate good faith efforts determination
	DBE12-5	Recipient does not implement DBE termination/substitution provisions
Public Transportation Agency Safety Plans	PTASP1-5	ASP not approved by Safety Committee
	PTASP2-6	Safety Committee is not responsible for minimum requirements

* Denotes repeat deficiency

II. Review Background and Process

1. Background

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. The review concentrated on procedures and practices employed since the recipient's previous Triennial Review in 2019; however, coverage was extended to earlier periods as needed to assess the policies in place and the management of award funds. The specific documents reviewed and referenced in this report are available at the FTA's Region 1 office or the recipient's office.

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. Due to the COVID-19 Public Health Emergency, a virtual site visit was conducted of each recipient. In addition, the review was expanded to address the recipient's compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 relief funds received through the CARES Act, CRRSAA of 2021, and the ARP Act of 2021. 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 November 23, 2022, indicating a review would be conducted. While the recipient prepared its response to the RIR, the regional office and review team conducted the scoping meeting on February 24 and 27, 2023. Regional office staff provided electronic files as necessary to the reviewer 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 to the recipient on May 30, 2023, an agenda package indicating the issues that would be discussed, records to be reviewed, and interviews to be conducted.

The virtual site visit portion of the review began with an entrance conference on March 30, 2023, at which the reviewers and regional staff discussed the purpose of the Triennial Review and the review process. The reviewers conducted additional interviews and reviewed documentation to evidence the recipient's compliance with FTA requirements.

A Section 5307 operations/management contractor, The Merrimack Valley Area Transportation Company, a subsidiary of DGR Management Inc., was reviewed virtually to provide an overview of activities related to the FTA-funded project.

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 July 7, 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*: 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*: An area is considered deficient if any of the requirements within the area reviewed were not met.
- *Not Applicable*: 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 Merrimack Valley Regional Transit Authority (MEVA, but previously known as MVRTA) is a regional transit authority established in 1974 in accordance with Chapter 161B of the Massachusetts General Laws to provide a public transit system. MEVA provides transit service in the northeast corner of Massachusetts. Jurisdictions served include the cities of Lawrence, Methuen, Haverhill, Amesbury, and Newburyport; and the towns of Andover, Boxford, Groveland, Georgetown, Merrimac, Newbury, North Andover, North Reading, Rowley, Salisbury, and West Newbury.

MEVA's service area population is 384,375 and is included in the Boston Urbanized Area. MEVA's operations are overseen by an advisory board made up of one member from each of the 16 communities the agency serves. The advisory board is responsible for hiring an administrator, setting fares, establishing service levels, and authorizing real-estate purchases.

DGR Management, Inc. is MEVA's management contractor. The Merrimack Valley Area Transportation Company, a subsidiary of DGR Management, Inc., is MEVA's fixed-route service operator. Special Transportation Services, a sub-corporation of DGR Management Inc., is the contractor providing ADA complementary paratransit operations. MEVA's complementary ADA paratransit service is known as "MiniMEVA."

MEVA provides local fixed-route, paratransit, and non-ADA demand-response services. MEVA operates a network of 25 fixed routes and demand-response services within the 284-square-mile Merrimack Valley area. The local fixed-route service operates six days a week. Weekday service runs from 5:00 a.m. to 8:00 p.m. and Saturday service runs from 7:00 a.m. to 7:30 p.m. ADA complementary paratransit operates the same days and hours as the fixed-route service.

Since March 1, 2022, the fixed routes and MiniMEVA paratransit services are fare-free. Prior to that date, the basic adult fare for bus service was \$1.25. A reduced fare of \$0.60 was offered at all times to riders age 60 and over, persons with disabilities, and Medicare card holders. The prior fare for ADA paratransit service was \$2.00 per one-way trip within 3/4 of a mile of any MEVA bus route. MEVA operates a fleet of 60 buses for fixed-route service. Special Transportation Services operates a fleet of 35 vans for its ADA complementary paratransit. All vehicles were purchased with FTA funds.

MEVA has five federally funded facilities: a bus garage and administrative facility located in Haverhill; a transit center located in Amesbury; a multimodal transit center and parking garage located in Lawrence; surface parking facilities located in Lawrence; and a structured parking garage in Haverhill.

2. Award and Project Activity

Below is a list of MEVA's open awards at the time of the review.

Award Number	Award Amount	Year Executed	Description
MA-2016-017-00	\$541,080	2016	MVRTA FY2017 CAPITAL & SHORT RANGE PLANNING
MA-2019-001-00	\$1,645,910	2019	MVRTA FY2019
MA-2019-016-00	\$4,605,225	2019	FY2020 ADA, OPERATING, PM, PLANNING and Bike Racks
MA-2020-018-00	\$16,914,813	2020	MVRTA CARES ACT OPERATING EXPENSES
MA-2020-026-00	\$371,280	2020	MVRTA-AUTOMATED PASSENGER COUNTERS
MA-2021-002-00	\$695,040	2021	MVRTA FY21 PROJECTS
MA-2021-021-00	\$264,353	2021	MVRTA FY21 SECURITY UPGRADES
MA-2022-002-00	\$5,825,882	2022	MVRTA ARPA OPERATING ASSISTANCE AND RECOVERY
MA-2022-011-00	\$10,946,038	2022	MVRTA FY22 Operating, Planning, Vehicles, Equipment & Facility Repair
MA-2022-025-00	\$1,271,164	2022	MVRTA FY2022 FLEX GRANT
MA-2023-002-00	\$4,146,400	2023	MVRTA RIVERBANK STABILIZATION PHASE II AND ACQUISTION OF (8) BUSES
MA-2023-010-00	\$6,149,420	2023	MEVA FY23 Capital POP: Vehicles, Equipment, Facility Repair & Planning

MEVA received Supplemental Funds for operating assistance in award numbers MA-2020-018-00 and MA-2022-002-00. This is not MEVA's first time receiving operating assistance from the FTA.

Projects Completed

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

- Fiscal Year 2019:
 - Contracted for Architectural and Engineering services to assist with the permitting process for the Riverbank Stabilization Project.
 - Refurbished four vehicle lifts at the Maintenance Facility located in Haverhill, MA.
- Fiscal Year 2020:
 - Purchased three new hybrid buses.
 - Purchased and installed vehicle and station bike racks.
 - Completed COVID-19 mitigation projects - Personal Protective Equipment (PPE) and driver barriers.

- Fiscal Year 2021:
 - Implemented an Automatic Passenger Counter system.
 - Refurbished security cameras at three of MEVA's facilities.
 - Continued with additional COVID-19 mitigation projects - PPE and driver barriers.
 - Purchased 16 Ford E2 type replacement vans for paratransit service.
- Fiscal Year 2022:
 - Purchased engines for five bus midlife repower projects.
 - Purchased nine BRT style replacement buses.
 - Initiated construction of the Riverbank restoration project at the MEVA Administrative/Maintenance Facility in Haverhill, MA.
 - Engaged contracted services for the system rebranding contract for design and implementation of the system branding campaign.

Ongoing Projects

MEVA is currently implementing the following noteworthy projects:

- Completing and closing out contracts of the Riverbank Stabilization Project at MEVA's Administrative/Maintenance Facility in Haverhill, MA.
- Overseeing the completion of the system rebranding project.

Future Projects

MEVA plans to pursue the following noteworthy projects in the next three to five years:

- Undertake the implementation of its recent FY22 Low-No Ferry award. MEVA will use the funding to restore historic ferry service to the Merrimack River. The service will provide additional access to the Northshore of Boston beach communities and serve as an alternative public transportation route.
- Reconfigure the McGovern Transportation Center in Lawrence, MA into MEVA's sole transit hub and prepare the depot for future alternative fuel vehicles.

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 MEVA, 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 MEVA, 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 MEVA, 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.

This section only applies to recipients that have subrecipients; therefore, the related requirements are not applicable to the Triennial Review of MEVA.

5. Technical Capacity – Project Management

Basic Requirement: The recipient must be able to 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 MEVA, 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 MEVA, no deficiencies were found with the FTA requirements for Transit Asset Management.

7. Satisfactory Continuing Control

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

Finding: During this Triennial Review of MEVA, 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 MEVA, 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 MEVA, a deficiency was found with the FTA requirements for Procurement.

Deficiency Description:

Contract files lacking signed Buy America certifications (P12-4)

49 CFR 661.6 requires contractors that apply or bid for an award exceeding \$150,000 to file the required Buy America certification 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 certificate shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b).

One of the five procurements reviewed, the procurement of Cummins Diesel Engines procured on 5/16/2022, did not have evidence that a signed Buy America Certification was received. MEVA updated its Procurement Policies and Procedures to address the requirement to collect Buy America certifications and provided documentation of a more recent procurement demonstrating that their updated process was implemented.

Corrective Action and Schedule: For the deficiency *Contract files lacking signed Buy America certifications (P12-4)*, by October 2, 2023, MEVA must submit to the FTA regional office information documenting that the Cummins Diesel Engines procured on 5/16/2022 complies with the Buy America provisions.

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 Triennial Review of MEVA, deficiencies were found with the USDOT requirements for DBE.

Deficiency Description:

Semi-annual Uniform Reports of DBE Awards or Commitments and Payments not completed accurately (DBE5-1)

Per 49 CFR 26.37(c), the recipient must have a mechanism on the running tally of actual DBE UNIFORM attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In the reports of DBE participation to the Department (FTA), you must display both commitments and attainments. Per 49 CFR Part 26 Appendix B “INSTRUCTIONS FOR COMPLETING THE REPORT OF DBE AWARDS/ COMMITMENTS AND PAYMENTS,” recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or Federal Transit Administration (FTA) to which this report will be submitted.

For this review, the semi-annual reports for December 2021 and June 2022 were examined to assess the accuracy of the data entries. The semi-annual reports were reviewed against MEVA's 2019-2022 procurement list. The semi-annual report discrepancies were: (1) a contract in the amount \$1,169,987 was in the December 2021 semi-annual report, however, the actual contract record was not found on the procurement list; (2) a construction contract was awarded on January 21, 2022 in the amount of \$2,482,387, however, the contract award was not included in the June 2022 semi-annual report; and (3) a service contract awarded in August 2022 in the amount of \$1,045,387 was on the procurement list but not included in the December 2022 semi-annual report. In addition, the semi-annual reports for June 2019 through December 2022 incorrectly included the payment made to subcontractors as new awards. MEVA acknowledged the issues and stated they could not explain the errors because the staff member who completed the semi-annual reports no longer works at MEVA. The semi-annual reports requiring corrections are for FY 2019 through FY 2022.

DBE5-1 is a repeat finding from both the FY 2016 and FY 2019 Triennial Reviews. Technical assistance was provided to the new DBELO regarding best practices to track procurements for completion of the semi-annual reports and how to complete the semi-annual report accurately.

Corrective Actions and Schedule: For the deficiency, *Semi-annual Uniform Reports of DBE Awards or Commitments and Payments not completed accurately (DBE5-1)*, by November 30, 2023, MEVA must submit corrected FY 2019 through FY 2022 Uniform Reports of DBE Awards or Commitments and Payments in TrAMS and notify the FTA Office of Civil Rights (FTA TCR) once those corrected reports have been submitted.

In addition, by November 30, 2023, MEVA must submit a revised DBE Program plan to the FTA TCR to correctly describe how it will implement procedures for correctly completing the reports.

Deficiency Description:

Inadequate implementation of race-neutral measures (DBE8-1)

Per 49 CFR 26.51(a), the recipient must meet the maximum feasible portion of the overall goal by using race-neutral means of facilitating race-neutral DBE participation. The DBE Program plan and FY 2022-FY 2025 DBE Goal and Methodology do not describe MEVA's race-neutral measures. In addition, MEVA was not able to provide a list of race-neutral measures undertaken during the review period nor documentation of implementation of any race-neutral measures.

Corrective Actions and Schedule: For the deficiency, *Inadequate implementation of race-neutral measures (DBE8-1)*, by November 30, 2023, MEVA must submit to the FTA TCR an implementation plan, which includes coordination with the MEVA's procurement office, for applying race-neutral measures, and evidence that these measures have been implemented.

In addition, by November 30, 2023, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the race-neutral measures.

Deficiency Description:

Small business element not implemented (DBE8-2)

Per 49 CFR 26.39(c), the recipient must actively implement DBE program elements to foster small business participation. Doing so is a requirement of good faith implementation of the DBE program. MEVA's DBE Program does not describe small business measures. The documentation with the Recipient Information Request (RIR) included two documents titled "10.d Small Business Outreach Example." One document was a transportation provider vendor list, and the second document was a website snapshot on doing business with MEVA. During the review, MEVA was not able to provide adequate documentation of fostering small business participation.

Corrective Actions and Schedule: For the deficiency, *Small business element not implemented (DBE8-2)*, by November 30, 2023, MEVA must submit to the FTA TCR evidence of implementing its small business participation strategies, which includes coordination with MEVA's procurement office.

In addition, by November 30, 2023, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the small business elements.

Deficiency Description:

Inadequate good faith efforts determination (DBE9-2)

Per 49 CFR 26.53(b)(c)(d), when procuring a good or service with an established DBE contract goal, the contract award must be to the bidder/offeror who makes good faith efforts to meet it. The procurement process must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things: (1) Documents that it has obtained enough DBE participation to meet the goal; or (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. To count toward meeting a goal, each DBE firm must be certified in a North American Industry Classification System (NAICS) code applicable to the kind of work the firm would perform on the contract. The procurement process must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

The solicitation document for the Riverbank Restoration contract identified the contract as having a 5% DBE race-conscious goal. The solicitation incorrectly cited 49 CFR 23 as the authorizing DBE Program regulation. The correct authorizing DBE regulation is 49 CFR 26. The award documents indicate the award was made to the bidder meeting the 5% DBE race-conscious goal. However, MEVA did not provide documentation to support that MEVA verified that the bidder met the DBE goal with certified DBEs and that the listed DBEs had the appropriate NAICS codes to perform the work the DBEs were listed to complete.

Correction Actions and Schedule: For the deficiency, *Inadequate good faith efforts determination (DBE9-2)*, by November 30, 2023, MEVA must submit to the FTA TCR a method for determining "good faith efforts" in compliance with the regulation and/or evidence that it has included documentation in applicable procurement files.

In addition, by November 30, 2023, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the methods for determining “good faith efforts.”

Deficiency Description:

Recipient does not implement DBE termination/substitution provisions (12-5)

Per 49 CFR 26.53(f):

- (1)(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
- (2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.
- (4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The DBE rule at 26.53(f) states that a contractor may not terminate a DBE listed in an award without the prior written consent of the recipient. The DBE Program plan and contract provision must address that unless MEVA consents to terminate/substitute a listed DBE, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The DBE Program plan, the Procurement and Purchasing Manual, and the Riverbank Restoration contract were reviewed for the provisions on terminating or substituting a DBE. The three documents do not describe in detail the procedural requirements MEVA and the contractor must take prior to terminating or substituting a DBE listed on a contract. MEVA acknowledged that the documents do not contain the procedural requirements on termination or substitution of a DBE on a contract.

Correction Actions and Schedule: For the deficiency, *Recipient does not implement DBE termination/substitution provisions (12-5)*, by November 30, 2023, MEVA must submit to the FTA TCR its procedures for ensuring good cause and due process provisions for termination or substitution of DBEs.

In addition, by November 30, 2023, MEVA must submit a revised DBE Program plan to the FTA TCR to correctly describe how it will implement the termination and or substitution provisions.

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 MEVA, no deficiencies were found with the FTA requirements for Title VI.

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 MEVA, no deficiencies were found with the USDOT requirements for ADA – General.

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: During this Triennial Review of MEVA, no deficiencies were found with the USDOT requirements for ADA – Complementary Paratransit.

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 MEVA, no deficiencies were found with the FTA requirements for Equal Employment Opportunity.

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: During this Triennial Review of MEVA, no deficiencies were found with the FTA requirements for School Bus.

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. Recipient may operate charter only when the service meets a specified exception defined in rule.

Finding: During this Triennial Review of MEVA, no deficiencies were found with the FTA requirements for Charter Bus.

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 MEVA, 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 MEVA, no deficiencies were found with the FTA requirements for Drug and Alcohol Program.

19. Section 5307 Program Requirements

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

Recipients shall develop, publish, 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 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 MEVA, no deficiencies were found with the FTA requirements for Section 5307 Program Requirements.

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 title to the leased vehicles.

This section only applies to recipients that receive Section 5310 funds directly from FTA; therefore, the related requirements are not applicable to the Triennial Review of MEVA.

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.

This section only applies to recipients that receive Section 5311 funds directly from FTA; therefore, the related requirements are not applicable to the Triennial Review of MEVA.

22. Public Transportation Agency Safety Plans (PTASP)

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

Finding: During this Triennial Review of MEVA, deficiencies were found with the FTA requirements for PTASP Requirements.

Deficiency Description:

ASP not approved by Safety Committee (PTASP1-5)

Per the requirements stated in 49 U.S.C. § 5329(d), a transit agency that receives Section 5307 funding and serves a large urbanized area must establish a Safety Committee by July 31, 2022. Once established, the Safety Committee should begin work to meet its responsibilities as soon as practicable. If a transit agency is not yet compliant with the new PTASP requirements, FTA expects the Safety Committee to approve and update the agency's ASP, incorporating applicable PTASP requirements in 49 U.S.C § 5329(d), by December 31, 2022. MEVA's PTASP documentation did not include evidence of approval by the Safety Committee.

Corrective Action and Schedule: For the deficiency *ASP not approved by Safety Committee (PTASP1-5)*, by October 6, 2023, MEVA must submit to the FTA regional office evidence that the Safety Committee approved its Agency Safety Plan.

Deficiency Description:

Safety Committee is not responsible for minimum requirements (PTASP2-6)

Outlined in 49 U.S.C. 5329(d)(5) are the duties which must be undertaken by the Safety Committee. Information provided did not document the required duties of a Safety Committee: (1) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the recipient's safety risk assessment; (2) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (3) identifying safety deficiencies for purposes of continuous improvement.

Corrective Action and Schedule: For the deficiency *Safety Committee is not responsible for minimum requirements (PTASP2-6)*, by October 6, 2023, MEVA must submit to the FTA regional office evidence that the Safety Committee is responsible for, at a minimum:

(1) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the MEVA's safety risk assessment; (2) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (3) identifying safety deficiencies for purposes of continuous improvement.

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 MEVA.

V. Summary of Findings

Review Area	Finding	Deficiency Code(s)	Corrective Action(s)	Response Due Date(s)	Date Closed
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	ND				
7. Satisfactory Continuing Control	ND				
8. Maintenance	ND				
9. Procurement	D	P12-4: Contract files lacking signed Buy America certifications	For the Cummins Diesel Engine procurement for which a Buy America certification was not obtained, MEVA must submit to the FTA regional office information documenting that the procurement complies with the Buy America provisions.	October 2, 2023	
10. Disadvantaged Business Enterprise	D	DBE5-1*: DBE uniform reports contain inaccuracies and/or are missing required information	MEVA must submit corrected FY 2019 through FY 2022 Uniform Reports of DBE Awards or Commitments and Payments in TrAMS and notify the FTA Office of Civil Rights (FTA TCR) once those corrected reports have been submitted. In addition, MEVA must submit a revised DBE Program plan to the FTA TCR to correctly describe how it will implement procedures for correctly completing the reports.	November 30, 2023 November 30, 2023	
		DBE8-1: Inadequate implementation of race-neutral measures	MEVA must submit to the FTA TCR an implementation plan, which includes coordination with MEVA's procurement office, for applying race-neutral measures, and evidence that these measures have been implemented. In addition, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the race-neutral measures.	November 30, 2023 November 30, 2023	

Review Area	Finding	Deficiency Code(s)	Corrective Action(s)	Response Due Date(s)	Date Closed
		DBE8-2: Small business element not implemented	MEVA must submit to the FTA TCR evidence of implementing its small business participation strategies, which includes coordination with MEVA's procurement office. In addition, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the small business elements.	November 30, 2023 November 30, 2023	
		DBE9-2: Inadequate good faith efforts determination	MEVA must submit to the FTA TCR a method for determining "good faith efforts" in compliance with the regulation and evidence that it has included documentation in applicable procurement files. In addition, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the methods for determining "good faith efforts."	November 30, 2023 November 30, 2023	
		DBE12-5: Recipient does not implement DBE termination/substitution provisions	MEVA must submit to the FTA TCR procedures for ensuring good cause and due process provisions for the termination or substitution of DBEs. In addition, MEVA must submit a revised DBE Program plan to the FTA TCR to describe the procedural steps on termination/substitution of a DBE.	November 30, 2023 November 30, 2023	
11. Title VI	ND				
12. Americans with Disabilities Act (ADA) - General	ND				
13. ADA – Complementary Paratransit	ND				
14. Equal Employment Opportunity	ND				
15. School Bus	ND				
16. Charter Bus	ND				
17. Drug Free Workplace Act	ND				
18. Drug and Alcohol Program	ND				
19. Section 5307 Program Requirements	ND				
20. Section 5310 Program Requirements	NA				
21. Section 5311 Program Requirements	NA				

Review Area	Finding	Deficiency Code(s)	Corrective Action(s)	Response Due Date(s)	Date Closed
22. Public Transportation Agency Safety Plans	D	PTASP1-5: ASP not approved by Safety Committee	MEVA must submit to the FTA regional office evidence that the Safety Committee approved its Agency Safety Plan.	October 6, 2023	
		PTASP2-6: Safety Committee is not responsible for minimum requirements	MEVA must submit to the FTA regional office evidence that the Safety Committee is responsible for, at a minimum: (1) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the MEVA's safety risk assessment; (2) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (3) identifying safety deficiencies for purposes of continuous improvement.	October 6, 2023	
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 deficiency

VI. Attendees

Name	Title	Phone Number	E-mail Address
<i>Merrimack Valley Regional Transit Authority</i>			
Noah S. Berger	Administrator	978-469-6878 Ext 130	nberger@ mevatransit.com
Bonnie Mahoney	Chief Compliance Officer	978-469-6878 Ext 139	bmahoney@mevatransit.com
Phil Clayton	Administrative Assistance	978-469-6878 Ext 135	pclayton@ mevatransit.com
Mary Ann Bergeron	Director of Finance	978-469-6878 Ext 132	mbergeron@ mevatransit.com
Christina Minicucci	Director of Development	978-469-6878 Ext 128	cminicucci@mevatransit.com
Niorka Mendez	Director of Communications	978-469-6878 Ext 116	nmendez@mevatransit.com
<i>Merrimack Valley Area Transportation Company, a subsidiary of DGR Management, Inc.</i>			
Nicole M. Rohan	President	508-450-0701	nrohan.dgr@gmail.com
Dan Flaherty	Assistant General Manager of Maintenance	978-469-6878 Ext 125	dflaherty@mevatransit.com
Juan Guillermo	Assistant General Manager Fixed Route Operations	978-469-6878 Ext 118	jguillermo@mevatransit.com
Amy Jenkins	Director of Paratransit Operations	978-469-6878 Ext 140	ajenkins@ mevatransit.com
Jaymi Swarbrick	Director of Administration	978-469-6878 Ext 114	swarbrick@ mevatransit.com
<i>FTA</i>			
Peter Butler	Regional Administrator	617-494-2729	peter.butler@dot.gov
Michelle Muhlanger	Deputy Regional Administrator	617-494-2630	michelle.muhlanger@dot.gov
Matt Keamy	Program Management and Oversight Director	617-494-3038	matthew.keamy@dot.gov
Alex Hammond	General Engineer	617-494-2304	alexander.hammond@dot.gov
Bert Pechhold	General Engineer	617-494-4914	bert.pechhold@dot.gov
Nicholas Sun	Division Chief, Civil Rights Oversight	312-705-1267	nicholas.sun@dot.gov
Nathaniel Fowler	Program Analyst	202-366-3232	nathaniel.fowler@dot.gov
<i>Qi Tech, LLC</i>			
Bobby Killebrew	Reviewer	512-350-9912	bobby_killebrew@qitechllc.com
Olivia Fonseca	Reviewer	916-261-2246	olivia_fonseca@qitechllc.com

VII. Appendices

Civil Rights Corrective Action Procedures:

Please submit corrective actions for all Civil Rights deficiencies to the following email address and copy your FTA Region I Program Manager:

FTACivilRightsSupport@dot.gov

1. A separate email should be sent to address each deficiency separately with attached supporting documentation.
2. Email Subject Line: FY 23 CORTAP Review Corrective Actions – Findings Code – Recipient Name/Acronym + TrAMS ID

Example: FY23 CORTAP Review Corrective Actions – DBE5-1 – Merrimack Valley Regional Transit Authority/MEVA #1374

3. The body of the email should contain a short summary of the corrective action.
4. Supporting documents should be sent as PDF files. Do not send MS Word or Excel spreadsheets.