April 11, 2014

Transit Vehicle Manufacturers

Re: FY 2015 DBE Goal and Program Reminders

Dear TVM:

The Federal Transit Administration (FTA) is pleased to report noticeable improvement in transit vehicle manufacturers' (TVM) Disadvantaged Business Enterprise (DBE) program and goal submissions. FTA is writing today, however, to outline lingering concerns with TVMs' bids, goal methodology, consultation, and publication efforts. In addition, this letter serves as notice regarding FTA's future disapproval process and upcoming deadlines.

Recall that in January 2012, the FTA Administrator contacted TVMs and expressed concern regarding serious flaws in DBE submissions and the low projections for DBE participation. He cautioned that failure to comply with DBE requirements would result in disapproval and ineligibility to bid on FTA-assisted vehicle procurements. Pursuant to the DBE rule, TVMs may bid on vehicle procurements after submitting a DBE goal to FTA and when “FTA has approved it or not disapproved it.” 49 C.F.R. 26.49(c). FTA became aware of certain TVMs submitting bids on FTA-assisted contracts when the TVM had not first submitted a goal to FTA. Please be advised that FTA is in the process of counseling FTA grantees that the consequence of such actions could result in FTA declining to participate in the procurement.

We are also taking this opportunity to remind you that all TVMs must submit a DBE goal methodology to FTA by August 1\textsuperscript{st} of each fiscal year and identify any significant changes to program plans. The methodology must include, at a minimum, the following elements: (1) a detailed list of contracting and subcontracting opportunities; (2) an explanation of the geographic market area; (3) the relative availability of DBEs compared to all firms; (4) an explanation of the Step 2 adjustment; (5) the breakdown and explanation of race-neutral and race-conscious measures; (6) meaningful consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability and disparity between disadvantaged and non-disadvantaged businesses; and (7) evidence the goal was published in at least one general circulation media, one minority-focused media, and one trade publication.

Regarding the last two points above—consultation and publication—be advised that the U.S. Department of Transportation (DOT) recently proposed eliminating the publication requirement. While this proposal has not yet been finalized, the proposal itself signals DOT’s interest and emphasis on the consultation process. TVMs should actively engage stakeholders, such as state departments of transportation and transit agency DBE liaison officers, advocacy organizations
and officials within a TVM’s stated geographic market area, DBEs, small businesses, and
general contractor groups. The goal-setting process lends itself to this level of interaction with
the public and is necessary to ensure a narrowly tailored, but fair DBE goal.

To that end, FTA will require TVMs to produce evidence of their consultation efforts. In the
past, it was sufficient to simply provide a narrative of consultation efforts supplemented with an
example of what was sent out to the public. Starting with the August 1, 2014 submission, you
must submit evidence of your consultation efforts, such as the names and titles of persons/groups
contacted, photocopies of your correspondence requesting comments and the responses received,
minutes and sign-in sheets from meetings held, and the dates/times of telephone conversations
and the information discussed during these calls. You must provide a narrative of how the
information gathered impacted your goal methodology.

Even though the DOT has proposed doing away with the publication requirement, until it is a
final rule, TVMs must still publish a notice announcing the DBE goal. You must ensure that your
notice is published in a general circulation media, minority-focused media, and a trade
publication for 30 days and allow the public to view and comment on the goal methodology
during normal business hours at your principal office for 45 days from the date of the notice. See
generally 49 C.F.R. 26.45(g). Please be warned that publishing the DBE goal notice in the
American Public Transportation Association (APTA) magazine or with DBE goodfaith.com
alone will not satisfy this DBE requirement.

We are also providing you notice that starting August 1, 2014, should your submission not meet
the requirements, FTA will identify the deficiencies that preclude the issuance of an approval
letter and will instead issue an “In Review letter.” This letter will provide you up to 60 days to
come into compliance. If after the 60th day, your program and/or goal cannot be approved, you
will be issued a disapproval letter and if your company is listed on the approved list, it will be
removed. You may continue to work on your submission, and at the point at which your
company meets the requirements, you will be issued an approval letter and placed on the
approved list posted on FTA’s TVM website.

Finally, as of April 16, 2014, DOORS will no longer exist and so you should plan to submit
paper copies of your semi-annual reports (due June 1st and December 1st). You can submit your
semi-annual reports electronically to Theresa.Robinson.ctr@dot.gov. Until a new electronic
system is developed, we will require paper submissions

DBE technical assistance tools and training videos are currently posted on the FTA website for
your viewing. FTA will also host a series of DBE webinar trainings throughout April and May of
each fiscal year and post additional training material to our website.

Please mark your calendar for these upcoming training and deadlines:

Training:

DBE Webinar Training for TVMs  April 23, 2014
DBE Webinar Training for TVMs  April 30, 2014
DBE Reporting Webinar for TVMs  May 7, 2014
DBE Reporting Webinar for TVMs  May 21, 2014

Deadlines:

DBE Uniform Report Due  June 1, 2014
Publish FY 2015 DBE Goal  June 15, 2014
FY 2015 DBE Goal Due to FTA  August 1, 2014

Thank you for your ongoing support of and participation in the DOT DBE program. Your success in this program helps small businesses owned by socially and economically disadvantaged individuals compete in this industry and FTA looks forward to continuing our partnership. Should you have specific questions or concerns, you may contact Britney Berry at britney.berry@dot.gov.

Sincerely,

Linda Ford, Director
Office of Civil Rights