



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

Administrator

400 Seventh St., S.W.  
Washington, D.C. 20590

Dear Colleague:

The Federal Transit Administration (FTA) has worked hard over the last several years to reduce administrative burdens on grantees in areas such as procurement and to improve the timeliness with which FTA processes grant applications. Therefore, it is with careful consideration of the impact on our transit agency customers that I write today to ask for your help regarding two important matters of concern:

- Transit agency responsibilities with respect to administration and oversight of the Disadvantaged Business Enterprise (DBE) program, including a new one-time reporting requirement; and
- New reporting requirements for annual independent single audits.

Effective administration of these programs and requirements is at the heart of our mutual accountability for the stewardship of taxpayer dollars; it is critical to ensuring the integrity of our transit programs. I ask that you personally work with your staff to review and carry out your agency's continuing and new responsibilities for these two matters.

### **Disadvantaged Business Enterprise Program Responsibilities**

As you know, all FTA grantees who receive planning, capital and/or operating assistance and who anticipate that they will award prime contracts cumulatively exceeding \$250,000 during a Federal fiscal year are required to have in place a Disadvantaged Business Enterprise (DBE) Program (49 CFR Part 26). Contracts to purchase transit vehicles do not count toward the \$250,000 prime contract amount.

Each State is required to have an approved Unified Certification Program (UCP) for certifying that particular contractors are eligible to participate in the DBE program. However, to date, a State UCP has been approved by U.S. DOT in only 24 States. In States without an approved State UCP, each transit agency remains responsible for certifying that its DBE contractors are eligible to participate in the program. Even in States with an approved UCP, transit agencies are required to ensure that contractors who receive awards under their DBE program have been certified as eligible under the State UCP and that these firms continue to be eligible in subsequent years. A site visit is required for all initial DBE certifications.

Indeed, every transit agency has a responsibility to be aware of and take steps to prevent DBE fraud and ensure that all firms participating in the DBE program comply with the law. Your DBE program, as approved by FTA, must include monitoring and enforcement mechanisms to ensure that work committed to DBEs is actually performed

by DBEs. These mechanisms may include periodic site visits during the period of work performance; verification of DBE payroll records; and verification of prime contractor payments to DBEs.

FTA reviews transit agency compliance with these DBE requirements through oversight reviews, including Triennial Reviews, Procurement Reviews, State Management Oversight Reviews, and Civil Rights Reviews. In addition, our regional offices are available, as needed, to provide technical assistance.

Unfortunately, a recent investigation by the Department's Office of the Inspector General raised concerns about the administration of surface transportation DBE programs. Specifically, it found firms that had been inappropriately certified, as well as DBE-eligible firms that were serving as "fronts" for ineligible firms.

Because of these concerns, FTA is taking several important steps, including:

- Offering additional DBE courses through the National Transit Institute, including a new Fraud Detection and Prevention module that was developed in concert with the Office of the Inspector General and is being piloted in two States;
- Incorporating new areas of inquiry into FTA Triennial Oversight Reviews;
- Providing enhanced technical assistance to transit agencies; and
- Conducting in-depth spot reviews of DBE program compliance.

In addition, in order to get a better understanding of the extent to which transit may have potential fraud problems, I am asking each transit agency to take the actions described below.

### **One-Time DBE Reporting Requirement**

**Within 90 days, please submit a letter to your FTA Regional Civil Rights Officer that does the following:**

- 1. For DBEs acting as prime contractors or subcontractors in FY 2004 under your DBE program, please verify that you have reviewed your DBE certification files to confirm that these firms meet the regulatory requirements of 49 CFR Part 26. In particular, please confirm that your records show evidence that:**
  - a. Each firm has been certified as an eligible DBE contractor by the transit agency or by the State UCP agency;**
  - b. Certification site visits were conducted for each DBE; and**
  - c. You have on file an annual affidavit from each certified DBE affirming that the DBE continues to meet the eligibility criteria of the regulation.**

2. **If certification site reviews have not been conducted or annual affidavits for all certified DBE's have not been received, certification site reviews must be conducted and the required annual affidavits must be obtained within the allotted 90 days, confirming in your letter that:**
  - a. **The necessary site reviews have been conducted and the required annual affidavits have been obtained subsequent to receiving this request; or**
  - b. **That you have undertaken the necessary work and will submit verification within an additional 60 days.**

You are not required to report separately on each contractor in this letter. If you have questions or concerns about your ability to certify compliance, please contact and work with your respective regional office. They stand ready to provide additional technical assistance to help you meet this verification requirement.

### **Reporting of Independent Single Audit Results**

The second issue of concern relates to Federally-required independent annual audits. Office of Management and Budget (OMB) Circular A-133, which implements the Single Audit Act, was revised in 2003. Consistent with the requirements of this Circular, FTA requires grant recipients expending \$500,000 or more (previously \$300,000 or more) in Federal financial assistance to secure an independent annual audit of its financial activities. The audit report must be submitted to the Federal Clearinghouse within the earlier of: 30 days after the audit report issuance, or nine months after the end of the audit period.

Until now, FTA has relied on a grantee's annual self-certification of compliance with requirements of the Single Audit Act, and has verified such compliance during the agency's Triennial Review. As a result of a recent audit of the Highway Trust Fund Financial Statements, the U.S. DOT has determined that it is critical to review key information from these audit reports on an annual basis. Therefore, we are instituting the new reporting requirement described below.

### **New Annual Single Audit Reporting Requirement**

**Depending upon the results of your annual independent single audit (conducted in accordance with the Office of Management and Budget Circular A-133), you must now submit the following additional information to FTA on the same day it is transmitted to the Federal Clearinghouse:**

1. If your independent annual single audit contains FTA program findings, a copy of the entire audit report must be submitted to your FTA Regional Office. If your agency receives funds from more than one U.S. DOT agency and FTA is your point-of-contact for all DBE program issues, then you must submit the entire audit report if it contains any findings related to any DOT program.
2. If your independent annual single audit report contains no FTA program findings or other US DOT program findings (see item 1, above), a copy of only the Federal Clearinghouse transmittal sheet must be submitted to your FTA Regional Office.

If you need further information or guidance regarding this new annual audit reporting requirement, please contact your Regional Office.

Thank you for your help in both of these important matters, as we continue to pursue the President's call to be more citizen-centered, customer-focused, and results-oriented.

Sincerely,

Jennifer L. Dorn