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## **PERFORMANCE EVALUATION**

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### **Evaluation of WMATA's Disadvantaged Business Enterprise Program**

### **Final Report**



**Internal Operations No. 15-002  
December 23, 2014**

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**Washington Metropolitan Area Transit Authority  
Office of Inspector General**

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# M E M O R A N D U M



## **FINAL PERFORMANCE EVALUATION REPORT** Internal Operations No. 15-002

**SUBJECT:** Evaluation of WMATA's Disadvantaged Business Enterprise Program      **DATE:** December 23, 2014

**FROM:** OIG – Helen Lew /SI/

**TO:** CPRO – John Shackelford

This **Final Performance Evaluation Report** presents the results of our evaluation of the Washington Metropolitan Area Transit Authority's (WMATA) Disadvantaged Business Enterprise (DBE) Program. The purpose of the evaluation was to conduct an independent assessment of the DBE program's performance and offer suggestions for improvement, as appropriate.

The objectives of the evaluation were to determine whether: (1) WMATA's DBE program performance was producing results that were consistent with the program's goals and objectives; and (2) the DBE program was effectively serving the program's beneficiaries.

In conducting our evaluation, we sought to facilitate collaborative working relationships and effective communication with the DBE staff and other interested parties. We interacted with professionalism and respect, worked to carry out our evaluation with a minimum of disruption, and performed our work thoroughly, objectively, and with consideration of management's point of view. Throughout the review, we fostered open communications at all levels and kept management advised of our work. Management was cooperative and responsive throughout the evaluation. The information we provide in this report is intended to be helpful to WMATA management in meeting its DBE performance goals and objectives.

**Washington  
Metropolitan Area  
Transit Authority**

### **BACKGROUND**

WMATA, as a recipient of federal funds through the Federal Transit Administration (FTA), has implemented a DBE program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs." In accordance with the regulations, WMATA has developed policies and procedures to administer the DBE program in their Policy Instruction (P/I) 8.3/1, the WMATA DBE Program Plan and the Procurement Procedures Manual (PPM).

WMATA's DBE program is managed by the Manager, Administrative Services, who also serves as the DBE Liaison Officer (DBELO). The DBELO is responsible for implementing all aspects of the DBE Program Plan, developing and monitoring the DBE program, and ensuring that WMATA complies with all provisions of 49 CFR Part 26. In addition, the DBELO has direct and independent access to the General Manager/Chief Executive Officer (GM/CEO) concerning DBE program matters. The DBE group is divided in two parts: Program Certification and Program Compliance. There are nine DBE positions: one DBE Liaison Officer, five DBE Specialists, one Senior DBE Specialist, one DBE Program Assistant, and one Coordinator, Small Business Programs.

The specific objectives of the DBE program as promulgated by DOT (49 CFR 26.1) are to:

- Ensure nondiscrimination in the award and administration of the DOT-assisted contracts.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that WMATA's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Assist the development of firms that can compete successfully in the marketplace outside the DBE program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.<sup>1</sup>

According to DOT regulations, WMATA is required to set overall goals to represent a "level playing field" – the amount of DBE participation they could realistically expect in the absence of discrimination. The goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs to participate on DOT-assisted contracts. WMATA's DBE group has responsibility for managing the number of ready, willing and able contractors.

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<sup>1</sup> WMATA's DBE Program Plan does not include this objective. Management deleted it and replaced it with, "To maximize the opportunity for Small Business concerns to participate and compete in WMATA's Small Business Program both as Prime Contractors and Subcontractors."

The Board is responsible for establishing the DBE percentage goals triennially. They accomplish this based upon information provided to them by the DBELO. WMATA's overall DBE goal is currently set at 25 percent for the Federal Fiscal Years (FFY's) 2014-2016 which began on October 1, 2013, and will end on September 30, 2016. The 25 percent is further subdivided by regulation into race-conscious<sup>2</sup> and race-neutral<sup>3</sup> goals. The subdivided goals were established as follows: 19 percent to be achieved through race-conscious measures and 6 percent to be achieved through race-neutral measures.

The DOT goal-setting rules apply to all third-party contracts funded in whole or in part with federal funds. This does not mean, however, that every procurement or contract must be reviewed for DBE participation. The rules give WMATA flexibility in when and how they establish individual contract goals. Certain types of procurements (e.g., off-the-shelf commodities) may not have subcontracting opportunities or be appropriate for DBE goal-setting.

The DBE rules that apply to all contracts also include guidance and flexibility throughout 49 CFR Part 26 as to how grantees can comply with this part, without subjecting every procurement contract to an individual review for DBE participation. If, for example, WMATA can meet its overall goal through race-neutral means, then contract goal-setting will not be necessary. Where goal-setting is necessary, the rules do not require goals for every contract, nor that every procurement action is to be reviewed for goal-setting purposes.

DOT regulations state that it does not matter whether the federal funds are for planning, capital or operating assistance, third-party contracts funded in whole or in part with DOT funds, are subject to the DBE regulations in 49 CFR Part 26. However, a contract that is funded entirely with local funds – without any federal funds – is not subject to the DBE requirements under this rule. The policy applies to federally funded contracts that meet the following threshold levels: (1) Service, Supply and Equipment Contracts greater than \$100,000 and (2) Construction and Construction-related contracts greater than \$500,000.

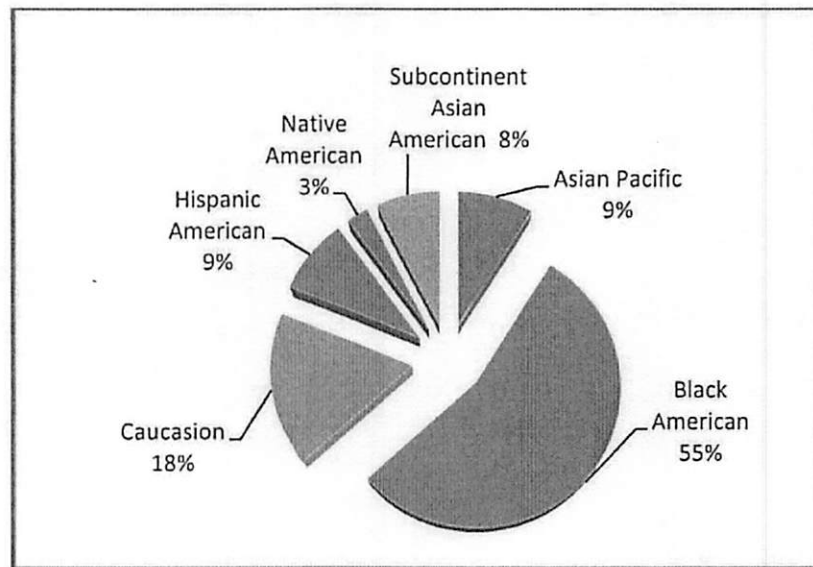
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<sup>2</sup> According to DOT regulation 49 CFR Part 26, "race-conscious" is defined as a measure or program that is focused specifically on assisting only minority-owned DBEs, including women-owned DBEs.

<sup>3</sup> According to DOT regulation 49 CFR Part 26, "race-neutral" is defined as a measure or program that is, or can be, used to assist all small businesses. For the purpose of this part, *race-neutral* includes gender-neutrality.

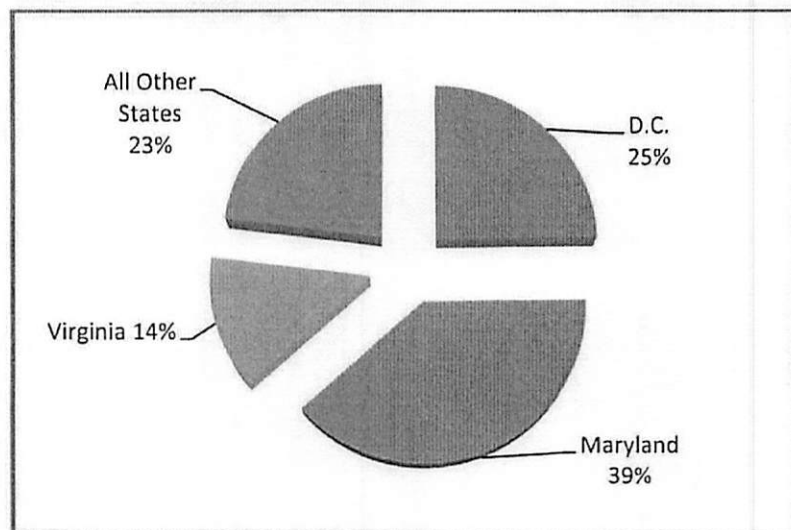
As of September 2014, WMATA had 1,154 certified DBEs in the Directory. The ethnicity of the DBEs ranged from a low of 3 percent Native Americans to a high of 55 percent Black Americans. Males made up 58 percent of the Directory followed by 42 percent females. Chart 1 shows the ethnicity of WMATA's DBE Directory as of September 2014:

CHART 1 – DBE ETHNICITY



The largest percentage of certified DBEs was located in Maryland, followed by D.C., and then Virginia, as of September 2014, is shown in Chart 2:

CHART 2 – DBE PERCENTAGE BY STATE



## **Prior Audit**

The FTA Office of Civil Rights conducted a compliance review of WMATA's DBE Program and submitted its final report entitled, "Washington Metropolitan Area Transit Authority Disadvantaged Business Enterprise (DBE) Compliance Review Final Report," in November 2012. The primary purpose of the compliance review was to determine the extent to which WMATA had implemented the requirements of 49 CFR Part 26, as represented to FTA in WMATA's DBE Program Plan. The results of the FTA compliance review identified 13 deficiencies. WMATA management accepted all findings and provided implementation dates through August 2013.

## **EVALUATION SUMMARY**

WMATA management does not know whether the DBE program is producing results consistent with its objective. This is because DBE reports issued to WMATA management and the Board of Directors (Board) only included information on the attainment of goal commitments, with status reports reflecting new anticipated target rates, not actual achievement of the goal itself.

WMATA management does not have sufficient information on how well the program is performing in serving its beneficiaries. This is because the evaluation found no formal program efforts to develop DBEs, some barriers to DBE selection, and the absence of sufficient program performance metrics to effectively monitor and report on the status of DBE program activities and products.

Based on the above evaluation results, OIG made two recommendations to the Chief Procurement Officer (CPRO), and offered eight suggestions to the DBE manager that will improve DBE program performance and assist program beneficiaries.

The suggestions contained in this report were developed with management and DBE staff. They **do not** require a Corrective Action Plan and were only offered for consideration. WMATA management should assess each suggestion, determine its viability, and weigh the value of the suggestion versus the costs of implementation. OIG will not monitor or track Management responses to the suggestions.

We provided a draft of this report to the CPRO for review and comment on November 24, 2014. In the CPRO's December 16, 2014, response to the draft report, Management indicated agreement with the report recommendations and stated in part that DBE reporting metrics would be revised to include actual performance of the most recent completed Federal Fiscal Year 2014, and that DBE actual performance statistics would be included in their monthly reports. Management also responded that the Office of Procurement will partner with the

Chief Performance Officer (CPO) to develop additional performance indicators and measures where necessary by June 2016. Management addressed OIG's eight suggestions by indicating either concurrence, their future plans to address the suggestions or provided an alternative solution for the suggestion.

The complete text of Management's response is included as an Attachment to this report.

## **EVALUATION RESULTS**

### **OIG Evaluation Objective 1 - Program Performance**

Objective one was to determine whether "WMATA's DBE program performance was producing results that are consistent with the program's goals and objectives." Our review disclosed the DBE performance reports issued during the evaluation period to WMATA's GM/CEO and the Board did not include information on actual performance. Our examination of the reports and supporting documents determined the reports only reflected expected variances in the anticipated goal target, and not actual achievement of the goal itself.

We examined the DBE performance reports submitted to management. A June 20, 2014, memorandum to the GM/CEO reported a 31.97 percent "goal attainment." However, this was not "attainment" in the conventional sense; rather, it was reporting an increase in the stated target from 25 percent to a new target of 31.97 percent. We found similar language in the Quarterly Financial reports from the Office of Management and Budget Services (OMBS), wherein the FY 2013 Fourth Quarter Financial report stated "Our overall (DBE) goal is 25%. Currently, we have achieved a DBE goal of 33.75%." Again, in this example, "achievement" did not mean actual accomplishment. It was merely reporting an increase in the target from 25 percent to a new 33.75 percent "target." Other reports presented to management during the evaluation period disclosed similar wording.

We calculated the DBE target percentages and real-time actual results from 20 active contracts obtained in two samples. The first sample contained 11 contracts from FFY 2013 and the second sample contained nine contracts from FFY 2014. The DBE target for the FFY 2013 sample was 26.85 percent and actual achievement was 14.83 percent. For the first three quarters of FFY 2014, the DBE target for the sample was 20.83 percent and actual achievement was 2.12 percent.

Title 49, Part 26, Appendix B instructions, provides guidance to recipients of DOT federal financial assistance for the proper completion of the Uniform Report of DBE Awards or Commitments and Payments Form. Instructions require recipients to submit this report semi-annually. The DOT report requires information on the total dollar amounts awarded to Prime Contractors on closed contracts and the actual total dollars paid to the DBEs. The instructions also require recipients to calculate the actual DBE achievement percentage rate for the closed contracts.

During the evaluation, we requested copies of the nine FTA semi-annual reports from the DBE group for FFY 2010 to FFY 2014 through March 30, 2014. The DBE Senior Specialist provided copies of seven of the nine reports. Our review of the seven reports found actual goal achievements were reported in two FTA semiannual reports. Specifically, the FFY 2012, December 13, 2012, report showed a 14.45 percent achievement which was based upon the actual performance of two completed contracts totaling \$12,214,464; and the FFY 2013, June 1, 2013, report showed an 18.41 percent achievement which was based upon the performance of five completed contracts, totaling \$99,992,885.<sup>4</sup> The DBELO also provided us a copy of her projection of the FFY 2014 performance results. The report projected achievement of 10.31 percent, based upon the performance of 47 contracts totaling \$395,820,184. According to the DBELO, actual results were generally not included in DBE performance reports to management, because she was not comfortable with the accuracy of the data collected.

DOT provides guidance for monitoring performance in 49 CFR Part 26, §26.37, wherein it requires recipients of federal funds to implement appropriate mechanisms to provide a running tally of actual payments made to DBE firms. We also found DOT's Final Rule on the Disadvantaged Business Enterprise: Program Implementation Modifications, 4910-9X, published September 2014, is requesting additional information on actual DBE payments over and above what was previously required.

The Final Rule expanded FTA payment reporting requirements to include payments on active contracts. For the first time, the FTA will begin looking at real-time payment information, in addition to the closed contract payment information requirement already in place. According to DOT, this is to provide a better snap-shot of monies actually paid to DBEs compared to the dollars awarded to DBEs, but not yet paid during the reporting period.

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<sup>4</sup> WMATA's Procurement Procedures Manual, August 2014, Section 18 – Contract Compliance and Administration, 18-18 - Closeout of Contract Files, Page 274: A completed contract is one where all articles and services have been delivered, all payments have been made, all administrative actions accomplished and completed, and all aspects of contractual performance have been accomplished, terminated or otherwise disposed of by contract modification.



DOT states the payment data on completed contracts will allow recipients to better evaluate success in meeting contract goals and over time, may provide some indication of how well yearly goals are being met. The new FTA reporting change requires WMATA to begin tracking actual participation effective October 1, 2014. The first report to FTA from the DBELO using the revised form will be due June 1, 2015, for the period October 1, 2014 through March 31, 2015.

Our review disclosed the WMATA DBE staff had not implemented an effective formal payment tracking process to provide a running tally of actual DBE attainments for all open contracts. Our review of 20 DBE files found vendor prompt payment reports were not always submitted to DBE Specialists as required. Specifically, we found four Prime Contractor and five DBE Subcontractor prompt payment reports missing from the DBE files. Management would benefit from collaborating with the Office of Procurement and Materials, project management, and the Office of Accounting to develop a formal policy and procedure to track both award commitments and actual payments.

## **OIG Evaluation Objective 2 - Serving the DBE Program's Beneficiaries**

Objective two was to determine whether "the DBE program was effectively serving the program's beneficiaries." As stated earlier in the report, the evaluation found WMATA had only identified one program goal to implement and track performance; the DBE program's 25 percent participation rate. We found that management had not developed any other program performance goals or objectives on their own initiative. The DBELO's reason for this was there were no other "required" goals or objectives in the DOT regulation. As a result, management does not have complete performance information on how well the program is doing in serving the DBELO program's beneficiaries.

The DOT regulation has 70 pages of guidance on how to establish a DBE program. Beginning in Subpart A of the regulation, the recipient is introduced to seven fundamental program objectives. The objectives, as detailed in the Background section of the report, ask recipients to: ensure nondiscrimination in DBE awards; create a level playing field and fair competition; ensure the program is narrowly tailored in compliance with applicable law; ensure DBE firms meet eligibility standards; help remove barriers for DBE firm participation; assist in the professional development of DBE firms; and provide overall program flexibility to recipients in establishing and providing opportunities for DBEs. Recipients that need further guidance can reference the FTA Best Practices Procurement Manual.

Our review of PRMT DBE Policies and Procedures, and WMATA's DBE Program Plan, disclosed management has appropriate guidance in place that mirrors DOT regulations that ensure fair treatment of contractors, as well as, procedures to ensure DBE contractors are properly certified to do the work. Moreover, WMATA's DBE program adequately addressed two of the seven objectives: the

nondiscrimination in DBE awards objective and adherence to eligibility standards objective. However, the other five DOT objectives related to fair competition, compliance with applicable law, removal of barriers, DBE development, and program flexibility needed additional attention.

Management would benefit from linking the applicable provisions of the DOT regulation (49 CFR Part 26) to each of the seven program objectives. This will help identify vital performance metrics to help manage the program. Management should consider including the last objective as written in 49 CFR Part 26, in lieu of deleting it in favor of "To maximize the opportunity for Small Business Concerns to participate and compete in WMATA's Small Business Program both as Prime Contractors and Subcontractors."

Using the information management gained from linking the guidance to each of the objectives as suggested above, the DBELO could begin working with the CPO to develop a DBE Dashboard.<sup>5</sup> Some suggested metrics management may want to consider include: variances in the annual target rate, actual goal achievement for closed and active contracts, DBE utilization rate, workload (the number of active contracts and closed contracts), prompt payment results, the outcomes of a Professional Development Program, and statistics regarding the DBE Directory including changes in ethnicity groups and gender, among others. In addition, we suggest that management implement appropriate internal controls to ensure the accuracy and completeness of the data collected.

The following specific conditions were disclosed during the evaluation:

**DOT objective: "Assist the development of firms that can compete successfully in the marketplace outside the DBE program."**

During our review, we found there were no formal programs at WMATA to develop DBEs into Prime Contractors. The DBE regulations in 49 CFR Part 26 suggest that recipients establish mentor-protégé or Business Development programs. Under DOT authority, recipients may develop their own Business Development program or cooperate with private-sector mentor-protégé plans. The guidelines suggest that a well-run mentor-protégé program can be an important asset to a recipient's efforts to ensure equal opportunities for DBEs.

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<sup>5</sup> Dashboard Insight, Alexander Chiang, Research Director: A dashboard is a visual display of the most important information needed to achieve one or more objectives; consolidated and arranged on a single screen or page so the information can be monitored at a glance. It shows the most important performance indicators/performance measures to be monitored. It is not designed exclusively for executives but rather should be used by the general workforce as effective dashboards are easy to understand and use.

According to DOT, besides providing important experience and training to emerging companies, such a program could be an additional source of race-neutral DBE participation to the recipients. The DBELO, however, advised us they had no plans to implement either of these programs because they are only DOT suggestions and not specifically required. Management should develop a professional DBE development program and present it to the FTA for approval to address the intent of this objective.

The DBELO had developed a Small Business Enterprise (SBE) Program in April 2014. However, at the time of our review, management had not prepared an implementation plan or program performance measures. Management would benefit from developing appropriate goals, oversight activities, and reports necessary to measure SBE performance.

**DOT objective: "Help remove barriers to the participation of DBEs in DOT-assisted contracts."**

We found two matters that fall under this objective. These included (1) reduced opportunities for work, and (2) late payments.

### **1. Reduced Opportunities for Work**

With the additional staffing this past year, DBE Specialists have been able to increase the number of certified DBEs in the DBE Directory through scheduling various events with prospective contractors to solicit new firms to apply for certification. The events have been successful in adding new DBEs to the Directory. The success of these outreach events, however, has actually diluted the benefit to the DBE firms in the Directory. This is because these outreach events were conducted without a commensurate effort to increase the number of DBE contracts. As a result, management has actually reduced the utilization rate of DBEs, resulting in more applicants with less opportunity for work.

Utilization rate is a measure of program effectiveness. We examined the current database of certified DBEs to determine how many of the DBEs in the directory were being provided work. The analysis documents the program's current outreach efforts are reducing the DBEs opportunity to work.

For example, the number of certified DBEs in the directory at the end of FFY 2013 (October 1, 2012 - September 30, 2013) was 911. The number of contracts awarded to DBEs during that period was 91; making the utilization rate 9.9 percent ( $91 \div 911$ ), which means there were 820 ( $911 - 91$ ) DBE vendors that were not awarded contracts or 90 percent of the available DBEs were not offered work.

For the first three quarters of FFY 2014, (October 1, 2013 through June 30, 2014), there were 1,060 certified DBEs in the directory. The number of contracts awarded was 45; making the utilization rate 4.2 percent ( $45 \div 1,060$ ), which means there were 1,015 ( $1,060 - 45$ ) DBE vendors that were not awarded contracts or 96 percent of the available DBEs were not offered work.

The number of DBEs not offered work over last year increased by 195 firms (1,015-820). This is due to the success of the outreach events. We expect that number to grow through Quarter 4 of FFY 2014 and into the next reporting year if the DBE outreach events continue as currently scheduled. Management would benefit from incorporating the utilization rate measurement to assist in adjusting the number of DBE outreach events.

We also looked at the individual contractors awarded work during FFY 2013 to assess how well the awards were spread across the certified firms in the Directory. A review of the data disclosed 86 percent of the award dollars were given to only 12 of 91 firms awarded contracts; with 77 percent of the awards going to just two firms.

## **2. Late Payments**

We conducted a test of late payments after the potential problem was raised by the DBELO. The review disclosed some problems with the timeliness of payments on some of the invoices. We tracked payments from WMATA to the Prime Contractors on three invoices pulled from a random selection of 20 contracts. We were only able to obtain copies of invoices for 18 of the 20 contracts. We found 44 percent of the Prime Contractors had their first invoices paid within a 30 day period; 50 percent of the second invoices; and 38 percent of the third invoices. This resulted in late payments to some of the DBEs. Three of the DBE firms in our sample were paid 32, 39, and 66 days after they submitted their invoices to the Prime Contractors. The lack of prompt payments to Prime Contractors can constitute a very real barrier for DBEs to effectively compete in the marketplace.

The cause of WMATA's slow payments process may be the invoice approval process. In researching the issue, the Accounts Payable Manager stated that capital improvement payments go through a lengthy review process, involving two checklists: an accounting period checklist and an OMBS checklist. In addition, she said that since the March 2014 FTA Financial Management Oversight (FMO) Review, more items have been added to the payment approval checklists and they have grown larger. In addition to the checklists, she said, there has been another review step added by OMBS before the invoices are approved for final payment. As a result, the Manager said the approval process continues to grow.

Under 49 CFR Part 26, DOT states all grantees must include a provision in their DOT-assisted contracts requiring Prime Contractors to make prompt payments to their subcontractors, DBE and non-DBE alike. Section §26.29 requires grantees to establish a contract clause which requires Prime Contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment that the grantee makes to the Prime Contractor. However, DOT allows the number of days specified in the prompt payment clause for the payment of subcontractors may be less than 30 days, at the grantee's discretion. WMATA has elected a more aggressive prompt payment requirement. They established 10 days as the prompt payment requirement for Prime Contractors to pay their subcontractors upon receipt of payment from WMATA.

Our evaluation found that FTA regulations did not address a requirement for grantees to pay their Prime Contractors within a certain period of time; only that the Prime Contractors pay their subcontractors timely. Neither did we find a WMATA general accounting policy that addressed a specific timeline for paying Prime Contractors, e.g., pay within 30 days. WMATA would benefit from paying contractors in a manner similar to the requirements in §26.29 for Prime Contractors to pay subcontractors.

**DOT objective: "Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs."**

Management needs better analytical tools in order to make effective staffing and program adjustments if they want to give the program the flexibility envisioned in the regulation. DBE staff we interviewed told us they do not have an Information Technology (IT) application to provide them the data necessary to effectively manage the program. The DBELO and staff told us the previous DBE IT application met all of their data needs, but since it required payment of an annual maintenance fee, it was canceled after the program was transferred to PRMT. Access to good data would assist management in making program adjustments regarding the utilization of their resources, products and activities.

The DBE staff is requesting specific data enhancements in the following areas: demographic queries, links to PeopleSoft payment data, real-time performance metrics, and letter production and scheduling capabilities, among others. Management would benefit from preparing a formal IT requirements document for in-house development and approval in order to meet some of those data needs until a more permanent solution becomes available.

**DOT objective: "Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts."**

Information on the firms listed in WMATA's DBE Directory is supposed to be accurate, ensuring all certified DBEs have an equal opportunity to be selected. This helps ensure fair competition. The Directory gives interested Prime Contractors a means to identify a firm's industry codes and provides them with the necessary contact information. However, we found some errors in the Directory, and the types of errors identified could limit some DBEs from being selected.

We examined a random selection of 16 DBE contract files. A comparison was made of information in the physical hard copy files maintained in the DBE files, against the information in the DBE database. Eight files were selected from 2013 and eight from 2014. Our review of the 2013 sample found: four incomplete business descriptions; one incorrect company name; one incorrect contact name; and one incorrect telephone number. Our review of the 2014 sample found: two incorrect North American Industry Classification System (NAICS) codes and two incorrect email addresses. The evaluation found there was no process in place to validate the information entered into the Directory.

Section 49 CFR §26.31 requires WMATA to maintain a directory of DBE firms that have been certified to do work as DBEs. The information required for the Directory includes the name, address, phone number, and the types of work the firm has been certified to perform as a DBE. The primary purpose of the Directory is to show eligibility. Management would benefit from developing appropriate internal controls to provide assurances DBE firm information in the Directory is reliable, accurate and complete.

**DOT objective: "Ensure that the WMATA's DBE program is narrowly tailored in accordance with applicable law."**

As stated earlier in the report, we found DBE status reports to management and the Board showed attainment of new "targets" at 31.97 percent and 33.75 percent that exceeded the 25 percent goal. DOT regulations states in section 26.51(f) that the [DBE] program is to be "...narrowly tailored to overcome the effects of discrimination..." Advising recipients, "If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal."

In accordance with DOT regulations, it is management's responsibility to monitor DBE performance results to ensure they do not exceed the goal. Even though WMATA was not in violation of the regulation because the new target numbers did not actually result in exceeding the goal, management should appropriately monitor DBE performance results to accomplish the goal.

## **OTHER MATTERS OF INTEREST**

### **Feedback from DBE Subcontractors, Prime Contractors and Employees**

Fourteen DBE Subcontractors were interviewed about their satisfaction with WMATA's DBE program. The number of years they have been working with WMATA ranged from less than a year to over 20 years. In general, they appeared to be satisfied with the work provided to them by WMATA. Only minor issues were reported with some ideas to improve the program.

For example, comments provided included: WMATA should reduce the number of units in some of their contracts to make it feasible for the smaller DBEs to bid on them; consider awarding best value and not always the lowest bidder; provide greater access to IT contracts for the smaller DBEs; provide training assistance on estimating projects and bid preparation; and do more to assist the DBEs compete successfully.

Interviews with the nine WMATA DBE staff raised several concerns. These included: the lack of DBE program goals beyond the one goal currently in place; the inaccuracy of the DBE database; the inability to access the data needed to readily report program results to the Board and management; minimal executive support for the program; a lack of tools to do their jobs; and the embarrassment of adding more DBEs to the Directory without work to award to them. They also offered suggestions to improve DBE firm participation through: more aggressive efforts by the Contracting Officers and Program Managers to unbundle the larger contracts; increase the use of licensed DBE resellers; and doing a better job of writing IT contracts that would enable smaller DBE IT companies the opportunity to bid on them.

Four Prime Contractors were interviewed about the process they used to find qualified DBE Subcontractors, as well as their satisfaction with WMATA's DBE Directory. The number of years they have been working with WMATA ranged from 6 to 20 years. Each Prime Contractor said that they were mostly satisfied with the DBE Directory and had used the DBE Directory to locate qualified DBEs on prior occasions.

However, the Prime Contractors raised a few issues. One of the Prime Contractors said on their current contract, they selected a DBE they had a prior working relationship with instead of using WMATA's Directory, because there were very few qualified DBEs in the Directory who could meet their specialized work requirements. Another Prime Contractor told us if WMATA did not require the use of their DBE Directory to locate qualified DBEs, they would use a different way because using the Directory was cumbersome. One Prime Contractor suggested WMATA could provide more information on DBEs. Specifically, they would like to know the last time the DBE was contracted to do work for WMATA.

Management would benefit from periodically reaching out to program beneficiaries to obtain formal feedback on how well WMATA is doing and then using the information as necessary to make resource or program adjustments to meet the changing needs of the DBE firms.

### **DBE Directory**

According to 49 CFR Part 26, section 26.81(g), WMATA and other DOT recipients in the state must participate in a Unified Certification Program (UCP). The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program. WMATA and the District Department of Transportation (DDOT) meet monthly to certify all of the DBEs located in DC. The certified DBEs are added to each organization's Directory. According to the DBELO, they do their best to mirror each other's Directory. However, section 26.81(g) specifically requires a unified DBE Directory.<sup>6</sup>

Under the old DOT regulations, a firm that wanted to work for the State highway agency, two airports, and three transit agencies in the same State, for example, had to complete six application forms and endure six certification processes. This cumbersome process created burdens on applicants and inefficiently used recipient resources.

As a result, DOT changed the regulations in February 2002. Now, all transit, airport, and highway recipients in each State are required to develop a UCP. The UCP is to provide "one-stop shopping" for DBE firms applying for certification in each State. The applicant fills out one form, goes through one application process and, if certified, can work as a DBE for any DOT recipient in the State. This program was to be fully operational no later than August 2003.

WMATA would benefit from partnering with DDOT to find a way to integrate the two DBE Directories into one to provide contractors with the one-stop-shopping envisioned by the regulation.

## **RECOMMENDATIONS AND SUGGESTIONS**

We recommend that the Chief Procurement Officer: (1) prepare written reports to WMATA management, the Board, and FTA on the actual DBE program performance results in compliance with DOT regulations; and (2) partners with the Chief Performance Officer to develop performance indicators and measures for a new DBE Dashboard.

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<sup>6</sup> 49 CFR Part 26, section 26.81(g): Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.



In addition, we have some suggestions for the DBE Liaison Officer (DBELO). The suggestions were generally collaborative in nature; developed with management, DBE staff, and/or contractor and subcontractor input; or a result of our document and data analysis.

Specifically, we suggest the DBELO:

- Collaborate with PRMT, project management, and the Office of Finance to develop a formal mechanism to track both award commitments and actual payments. As a part of this process, management may want to consider including invoice dates and amounts, and payment dates and amounts. This will provide the data needed for the FTA semiannual reports, and provide information on the timeliness of payments for analysis and follow-up as warranted.
- Develop a DBE Mentor Protégé Program or Professional Development Program in accordance with DOT, 49 CFR Part 26, guidance (Page 9).
- Develop appropriate goals, oversight activities, and reports necessary to measure and monitor SBE performance. Some metrics to consider include: variances in the annual target rate, actual goal achievement for closed and active contracts, DBE utilization rate, workload (monitor the total number of active contracts and closed contracts, including an aging analysis), number of onsite visits, prompt payment results for all open contracts, DBE Professional Development Program outcomes, and statistics regarding the DBE Online Directory including changes in ethnicity groups, among others.
- Implement appropriate internal control verification procedures to ensure the accuracy and completeness of all data collected. Consideration could be given to implementing metrics for each of the seven DOT objectives.
- Develop a plan to increase the utilization of DBE firms.
- Prepare a formal IT requirements document for in-house development and approval in order to meet some of the data needs until a more permanent option becomes available.
- Work with DDOT and WMATA's IT Application Developers to find a way to integrate the two DBE Directories into one to provide Prime Contractors with the one-stop-shopping envisioned by the regulation.
- Periodically reach out to program beneficiaries to obtain formal feedback on how well WMATA is doing and then use the information as necessary to make resource or program adjustments to meet the changing needs of the DBE firms.

## **EVALUATION OBJECTIVES, SCOPE AND METHODOLOGY**

The specific objectives of the evaluation were to determine whether: WMATA's DBE program performance was producing results that were consistent with the program's goals and objectives; and the DBE program was effectively serving the program's beneficiaries. The scope of the review was FFY 2013 and FFY 2014 through June 30, 2014. FFY was used because WMATA's annual DBE goal is linked to the FTA's reporting cycle and not WMATA's fiscal year. Work was conducted at WMATA headquarters and the DBE offices located at the Material Supply Facility in Landover, Maryland.

Subsequent to the entrance conference, a review was conducted of WMATA's DBE Program Plan and Procurement Procedures Manual. DOT 49 CFR Part 26 Regulations also were reviewed and requirements were compared to WMATA's program activities. OIG efforts focused on identifying and reviewing DBE program goals and objectives and determining if information used for evaluating and reporting results was reliable and complete. We reviewed reports of DBE activities presented to the Board in order to assess if the information was properly stated. All reported numbers were reviewed and support documentation was checked. We looked for opportunities for process improvements that could lead to enhanced operations and program results.

Interviews were conducted with the nine DBE staff regarding program administration, record keeping, monitoring activities, and management oversight. A survey instrument was developed and utilized to ensure consistency in the gathering of information. The results were input into spreadsheets and evaluated. A judgmental sample of DBE contracts was pulled for the audit period. A total of 20 contracts were selected. The active files for the selected contracts were requested from the DBE Specialists and also pulled from the group's central files, as necessary. A file checklist was prepared to record selected data and the files were examined for accuracy and completeness. The data in the files was compared to the information in the DBE monthly reports. Using another judgmental sample, a total of 16 DBE firms were selected. The active files for the selected firms were requested from the DBE Specialists and also pulled from the group's database, as necessary. A file checklist was prepared to record selected data and the files were examined for accuracy and completeness. The data in the files was compared to the DBE Directory.

Contacts were made with four Prime Contractors and 14 DBE Subcontractors. A survey instrument was developed and used to obtain information on the DBE Subcontractors experience working on WMATA contracts. A survey instrument was also developed for the Prime Contractor interviews. The results were input into a consolidated spreadsheet and evaluated. OIG worked with the Office of Accounting personnel to pull invoices for the Prime Contractors in the sample and payment records were examined from PeopleSoft. The DBE invoices were obtained from the DBE firms. The utilization rate of DBEs in WMATA's certified database was calculated for the audit period. Board Resolutions were reviewed

to identify past decisions relative to the DBE program. We also worked collaboratively with the CPO throughout the evaluation to identify potential areas for improvement.

The Evaluation was performed in compliance with the Council of the Inspectors General on Integrity and Efficiency's, *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the evaluation to obtain sufficient and appropriate evidence to provide a reasonable basis for our conclusions based on our evaluation objectives. We believe that the information obtained provides a reasonable basis for our conclusions based on our evaluation objectives. OIG held an Exit Conference on November 4, 2014, to discuss the preliminary results with WMATA management.

### **ADMINISTRATIVE MATTERS**

Corrective actions proposed (resolution phase) and implemented (closure phase) by the affected Departments/Offices will be monitored and tracked through the OIG's Audit Accountability and Resolution Tracking System. Department policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth specific action items and target completion dates necessary to implement final corrective actions on the findings and recommendations contained in this report.

We appreciate the cooperation and assistance extended by management and staff during the evaluation. Should you or your staff have any questions, please contact Andrew Clemmons, Assistant Inspector General for Audit on (202) 962-1014, or myself on (202) 962-2515.

Attachment

cc: GM/CEO – R. Sarles  
CFO – D. Anosike  
CPO – A. Burnside  
CHOS – B. Richardson  
COUN – K. Pett

# Attachment

## M E M O R A N D U M



**SUBJECT:** Evaluation of WMATA's Disadvantaged Business Enterprise Program –  
Management Response

**FROM:** GM/CEO – Richard Sarles

**TO:** OIG – Helen Lew

Attached is management's response to the OIG Evaluation of WMATA's Disadvantaged Business Enterprise Program.

Washington  
Metropolitan Area  
Transit Authority

RECEIVED  
Ripstein  
KC



# M E M O R A N D U M

SUBJECT: Evaluation of WMATA's Disadvantaged Business Enterprise Program DATE: December 16, 2014

FROM: CPRO – John Shackelford *Shackelford*

THRU: CFO – Dennis Anosike *Anosike*

TO: GM/CEO – Richard Sarles

The subject draft report, Evaluation of WMATA's Disadvantaged Business Enterprise (DBE) Program, was issued on November 24, 2014. The report includes (2) recommendations and (8) suggestions. Management provides the following response as outlined below.

## **Recommendation from OIG:**

We recommend that The Chief Procurement Officer: (1) prepare written reports to WMATA management, the Board, and Federal Transit Administration (FTA) on the actual DBE program performance results in compliance with Department of Transportation (DOT) regulations; and (2) partners with the Chief Performance Officer to develop performance indicators and measures for a new DBE Dashboard

## **Management Response:**

(1) The DBE reporting metrics will be revised to include actual performance of the most recent completed Federal Fiscal Year (FFY) 14. DBE actual performance statistics will be included with the monthly DBE goal update. WMATA will continue to provide to FTA the semiannual Uniform Report of DBE Commitments/Awards and Payments in accordance with 49 CFR Part 26 Appendix B; Version 6(a). This report does not require the status of goal attainment by fiscal year.

(2) The Office of Procurement will partner with the Chief Performance Officer to develop additional performance indicators and measures where necessary by June 2016.

## **Suggestion 1 from OIG:**

Collaborate with Procurement, project management, and the Finance Department to develop a formal mechanism to track both award commitments

**Evaluation of WMATA's Disadvantaged  
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Page 2**

and actual payments. As a part of this process, management may want to consider including invoices dates and amounts, and payment dates and amounts. This will provide the data needed for the FTA semiannual reports, and provide information on the timeliness of payments for analysis and follow-up as warranted.

**Management Response:**

The proposed Contract Life Cycle Management (CLM) system will have the capacity to track WMATA's supply chain activities and report on procure to pay metrics including planning, sourcing and commitment vs actual payments along with the dates and amounts related to award, receipts, invoices and payments. The system, scheduled for March 2016 will have automated notifications functionality based on milestone dates and pre-defined workflow for all levels of approvals.

**Suggestion 2 from OIG**

Develop a DBE Mentor Protégé Program or Professional Development Program in accordance with DOT, 49 CFR Part 26, guidance.

**Management Response:**

Consistent with 49 CFR 26.39, the WMATA's DBE Program Plan opted to forego a formal Business Development Plan (BDP) and the decision was accepted and approved by FTA. However, the DBE program office continues to support development of DBE firms through existing resources. Specifically, as a member of the Metropolitan Washington Unified Certification Program (MWUCP), DBE firms have access to DDOT's Business Opportunity & Workforce Development Center (BOWD). BOWD, which is funded by the Federal Highway Administration, helps small business entrepreneurs successfully compete for procurement contracts in transportation construction. Small businesses are referred to the U.S. Department of Transportation's Office of Small and Disadvantaged Business Utilization (OSDBU) and U.S. Small Business Administration (SBA) for on-line technical and managerial classes and in person business development assistance. Lastly, the DBE program office offers training classes regularly, supported by subject matter experts to address topics such as IT resellers, banking, bonding, and benefits.

**Suggestion 3 from OIG:**

Develop appropriate goals, oversight activities, and reports necessary to measure and monitor Small Business Enterprise (SBE) performance. Some metrics to consider for the DBE Program include: variances in the annual target rate, actual goal achievement for closed and active contracts, DBE utilization rate, workload (monitor the total number of active contracts and closed contracts, including an aging analysis), number of onsite visits, prompt payment results for all open contracts, DBE Professional Development Program outcomes, and statistics regarding the DBE Online Directory including changes in ethnicity groups, among others.

**Management Response:**

Management concurs with Suggestion 3.

The SBE program is a race neutral set aside program that does not require goals but activity will be included in WMATA's report towards the race neutral goal. The number of SBE awarded contracts will be included with the monthly DBE goal update.

Metrics for tracking DBE commitments and payments will be established within 30 days of implementation of CLM to track DBE awards for active and closed contracts. On-site visits and prompt payment reports will continue to be manually monitored by the DBE Manager. Effective November 3, 2014, the Uniform Report of DBE Commitments/Awards and Payments now requires a more detailed break out identifying ethnicity and gender of DBE's awarded contracts. This report will be used to monitor changes in race, gender and ethnicity of the MWUCP's DBE Program participants.

**Suggestion 4 from OIG**

Implement appropriate internal control verification procedures to ensure the accuracy and completeness of all data collected. Consideration could be given to implementing metrics for each of the seven DOT Objectives.

**Management Response:**

The DBE Program office unit will utilize the new CLM for tracking compliance, DBE participation, payment schedules, and all other contract measures. CLM will track the entire life span of a contract which will significantly improve transparency, and accountability in the administration of the contract. Metrics will be discussed with the Chief Performance Officer.

**Suggestion 5 from OIG**

Develop a plan to increase the utilization of DBE Firms.

**Management Response:**

The DBE program office collaborates with Procurement (PRMT) and program offices on procurement planning and solicitation; and further partners with program offices to determine the percentage of each contract that can be performed by DBE firms.

The DBE office also conducts training for all contract administrators and program offices on the best approach and process to prepare the DBE Goal Setting worksheet. At the training, the rationale, factors for consideration and the importance of setting DBE goals as well as the need to utilize DBE firms is emphasized.

Unbundling large contracts in a manner that will allow DBE's to better compete and adhere to approved Plan of Contracts are key components of the plan. The plan will also address barriers that impede DBE firms from participating in contracts. All WMATA contracts over \$100,000 are subject to full and open competition and FTA reviews WMATA Simplified Acquisitions to ensure that there are no split procurements. The OIG report referenced a vendor feedback that some contracts be split so that they could be awarded to DBE firms. This action would violate the principle of *full and open competition*, by giving the appearance of improper Simplified Acquisitions.

**Suggestion 6 from OIG**

Prepare a formal IT requirements document for in-house development and approval in order to meet some of the data needs until a more permanent option becomes available.



**Management Response:**

The Authority's CLM initiative will manage all of WMATA's procurement needs. As an integrated solution on the existing PeopleSoft Financials Supply Chain Management platform, the system will have the functionality to capture data needed for DBE/SBE management and reporting. DBE will have the capability to produce FTA semiannual reports, DBE prompt payment reports, actual vs planned DBE/SBE goal achievement and monitor DBE participation percentages on contracts.

The CLM Project team will work with DBE to finalize all requirements related to DBE/SBE/SBLPP vendor registration/certification process, maintenance and renewals, goal setting criteria, and reporting needs. The implementation of the CLM system is scheduled for completion by end of March 2016.

**Suggestion 7 from OIG**

Work with DDOT and WMATA's IT Application Developers to find a way to integrate the two DBE Directories into one to provide Prime Contractors with the one-stop-shopping envisioned by the regulation.

**Management Response:**

A joint taskforce is currently evaluating the mutual requirements of each agency with respect to one public directory that would be identified as the MWUCP's Directory. Subsequently, DDOT shelved the DDOT/WMATA directory project pending further discussion. WMATA is still committed to this project and will revive it when discussions resume.

**Suggestion 8 from OIG**

Periodically reach out to program beneficiaries to obtain formal feedback on how well WMATA is doing and then use the information as a resource for program adjustments to meet the changing needs of the DBE firms.

**Management Response:**

DBE regularly conducts outreach to survey participating DBE's regarding WMATA's program performance. Recently, multiple DBEs were invited to

**Evaluation of WMATA's Disadvantaged  
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provide feedback with the comment period concluding by the end of January 2015.

A monthly newsletter is distributed to the DBE directory. It provides solicitation information, recognition of fellow DBE vendors and upcoming training opportunities and events. The newsletter will continue to be used as a tool to solicit questions, comments and suggestions. We also offer Vendor Day on a monthly basis where business leaders are invited to come in and meet one-on-one with a internal project specialist to discuss concerns that relate specifically to their business.



Washington  
Metropolitan Area  
Transit Authority

# M E M O R A N D U M

SUBJECT: DBE OIG Corrective  
Action Milestones

DATE: March 9, 2015

FROM: PRMT – John Shackelford

THRU: CFO – Dennis Anosike

TO: OIG – Helen Lew

This Corrective Action Plan is in response to the Office of the Inspector General's November 24, 2014 report titled *Evaluation of WMATA's Disadvantaged Business Enterprise (DBE) Program* as well as discussions with the Audits and Investigations Committee.

## Recommendation for OIG:

We recommend that the Chief Procurement Officer (CPRO): (1) prepare written reports to WMATA management, the Board of Directors, and the Federal Transit Administration (FTA) on the actual Disadvantaged Business Enterprise (DBE) program performance results in compliance with Department of Transportation (DOT) regulations and (2) partners with the Chief Performance Officer (CPO) to develop performance indicators and measures for a new DBE Dashboard.

## Management Response and CAP Schedule:

1. The DBE reporting metrics will be revised to include actual performance of the most previous completed Federal Fiscal Year – FFY 2014. DBE actual performance statistics will be included with the monthly DBE goal update. WMATA will continue to provide to FTA the semiannual Uniform Report of DBE commitments/Awards and Payments in accordance with 49 CFR Part 26 Appendix B; Version 6(a). This report does not require the status of goal attainment by fiscal year. The following delivery milestones are established:
  - (a) Actual performance for FY2014 will be submitted with PRMT's monthly report beginning with the February 2015 report.
  - (b) Actual performance towards the current FFY goal will be submitted with PRMT's monthly report. This process is already in place.
  - (c) The Uniform Report of DBE Commitments is due and will be submitted to FTA June 2015 and December 2015.
  - (d) PRMT is capturing actual WMATA accounts payable payment detail for both Prime Contractors and their DBE Subcontractors and validating the

**DBE OIG Corrective Action Milestones**  
**Page 2**

data by using monthly confirmation reports from the Prime Contractors and from the DBEs.

- (e) PRMT is contacting all Prime Contractors that are reflecting zero payments to their DBEs to ascertain why and when payments will commence.
  - (f) PRMT will work with program managers and supervisors to have DBE payment status included as part of the Capital project reviews to the General Manager.
2. The Office of Procurement is partnering with the Chief Performance Officer to develop additional performance indicators and measures where necessary. The collaborative efforts began January 12, 2015. The following delivery milestones are established:
- (a) The CPRO and the CPO will collaboratively capture and report performance indicators and metrics associated with DBE goals and attainments no later than April 17, 2015; and
  - (b) The CPRO and the DBE Manager will commence tracking of the performance indicators commencing March 1, 2015 and the CPRO and DBE Manager will be prepared to share report results with senior leaders, as needed, commencing July 1, 2015.
3. The data reports will be available for review by interested parties e.g., OIG as of August 1, 2015.