

CHICAGO TRANSIT AUTHORITY

Disadvantaged Business Enterprise Program

Compliance Review

Prepared for the Regional Transportation Authority

*December 2012*

*Conducted and Prepared By:*  
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I. General Information

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October 15, 2012 – October 19, 2012

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## II. Executive Summary

This Report provides the Regional Transportation Authority (RTA) and Chicago Transit Authority (CTA) with detailed information about the implementation and administration of CTA's DBE Program, including those areas that require changes in order to become or remain compliant and those areas that could benefit from improved efficiencies. The engagement, which was conducted over a five-month period, included a risk evaluation, interviews with staff and management, site visits, review and analysis of certification and compliance files, and a review of other documents such as policies, procedures, and prior external reviews. The review considered the scope of prior audits and reviews during overlapping time periods so as not to duplicate efforts or provide conflicting recommendations.

In addition, Ringold surveyed several DBE Programs across the country to better understand if there are practices that can benefit CTA in overcoming some of the obstacles and challenges the agency has encountered in implementing its program, e.g., review of percentage of ownership during size standard determinations. Some of the lessons learned by these jurisdictions and practices they have implemented were considered by Ringold in its overall analysis and when providing recommendations in this Report.

The essence of this Report is a detailed discussion of CTA's compliance with each provision of the governing regulation 49 CFR Part 26, management's response to areas identified as partially or fully non-compliant, and Ringold's short-term and intermediate recommendations. It is important to note that Ringold is not an authoritative body and its recommendations are not mandates. The decision to implement any of the recommendations made by Ringold is at the sole discretion of CTA. CTA may determine that other corrective actions are more effective or better suited to its needs, or that no corrective action is necessary.

Please refer to the Summary Findings Table of this Report for a quick reference of the overall results.

In summary, twenty-two (22) areas were reviewed including internal controls, with ten (10) areas without deficiencies and twelve (12) areas where CTA's current program did not fully comply with the requirements of the regulations. Three (3) of these non-compliant areas are the result of technical requirements, such as timely filing of reports, requests for extensions or updating of the Program Manual. Such technical gaps can be easily remedied with improved procedures such as checklists. There were nine (9) areas with substantive Findings that may require a change in operations, formalization of policies and/or procedures, an increase in staffing and/or the development of more stringent internal controls. Section VIII

provides detailed observations and Findings for each regulatory provision and, where applicable, Management Responses. While some Findings are the result of prior lack of knowledge regarding the requirements or lack of standardization, the majority of the substantive Findings can be categorized into two broad areas:

- 1) Goal methodology, calculation, and reporting. It is important to note that CTA has commissioned a disparity study that will provide data to remedy some of these issues. Others will require additional corrective action plans; and
- 2) Staffing based issues. Many of the non-compliant areas were the result of inadequate staffing, including ineffective monitoring, certification timeframes, site visits, and general oversight. These can be remedied over time with hiring of additional professional personnel, effective training of staff, and standardization of practices. The rate of personnel turnover at the management level may also materially impact the ability to effectively implement the DBE Program, and organizational structure could potentially cause conflicts of interest.

A draft of this Report was delivered to CTA's management and CTA has begun the process of implementing new procedures. As a result, some of the Findings detailed in Section VIII represent the environment at the time of the review and may not include areas where CTA has initiated corrective action plans.

### **III. Jurisdiction and Authorities**

The Chicago Transit Authority (CTA) is a recipient of Federal Transit Administration (FTA) funding assistance and is therefore subject to the Disadvantaged Business Enterprise (DBE) Program compliance conditions associated with the use of these funds pursuant to 49 CFR Part 26. The regulation defines each of the components that must be included in a recipient's DBE Program.

The Regional Transportation Authority (RTA) was established in 1974 to oversee local transportation operators in the six-county Chicago metropolitan area. In 1983, the RTA Act was amended with substantial changes made to the RTA's organization, funding, and operations. The amended Act created three "service boards" known as the Chicago Transit Authority (CTA), Metra commuter rail, and Pace suburban bus. The RTA's primary responsibilities became financial and budget oversight of CTA, Metra and Pace, and regional transit planning issues. RTA, in its oversight capacity, engaged Ringold Financial Management Services, Inc. (Ringold) to review the DBE Program as administered by CTA and deliver a Report on its regulatory compliance.

#### IV. Purpose and Objectives

##### A. Non-Discrimination as Specified in 49 CFR Part 26 (Objective of DBE Program)

To ensure nondiscrimination in the award and administration of U.S. Department of Transportation (DOT) assisted contracts; To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts; To ensure that the Department's DBE Program is narrowly tailored in accordance with applicable law; To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs; To help remove barriers to the participation of DBEs in DOT-assisted contracts; To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

##### B. RTA Engagement

The purpose of this engagement and review was for Ringold Financial Management Services, Inc. (Ringold) to independently assess the effectiveness of internal controls and processes, evaluate compliance with the applicable regulations, identify leading practices that can be implemented to improve processes, and detect gaps to be addressed by management.

Ringold was not engaged to determine the appropriateness of any particular CTA contract or the legitimacy or eligibility of any firm that has been certified as a disadvantaged business under the DBE Program.

Specifically, Ringold reviewed, evaluated and determined:

1. Whether internal controls are adequate to meet program objectives and ensure DBE funds are effectively utilized to meet the program's objectives; and
2. Whether the management approach used to implement the DBE Program is adequate to ensure DBE funds are effectively utilized to meet the Federal program's objectives.

To accomplish this two-prong objective, Ringold agreed to examine the current CTA DBE Program, including policies, procedures, organizational structure, controls, and practices; determine compliance with regulatory requirements, including corrective action measures implemented or planned; identify potential areas for improvement and best practices; and submit a report to RTA and CTA.

## V. Background Information

The Chicago Transit Authority (CTA) is an independent governmental agency created by state legislation. CTA began operating in 1947 and in 1952 became the predominant Chicago transit provider, operating the nation's second largest public transportation system. With more than 1.6 million rides daily, 1,781 buses and 1,200 rail cars, the CTA is a regional transit system that serves 40 suburbs, in addition to the City of Chicago, and provides 83 percent of the public transit trips in the six-county Chicago metropolitan area either with direct service or connecting service to the two other transit systems, Metra and Pace.

The CTA's procurement program includes policies and procedures to demonstrate its continued commitment to the success of minority and women-owned businesses by promoting contracting opportunities to Disadvantaged Business Enterprises (DBE) in accordance with the Federal regulations governing the program.

The U.S. Department of Transportation implemented the DBE Program in 1980 with the goal of helping to ensure that DOT contracted projects are awarded fairly and eligible firms are not disadvantaged by unlawful discrimination. Congress enacted the first statutory DBE provision in 1983, applying primarily to small minority-owned firms and later, in 1987, the program was expanded to women-owned firms.

In response to a 1995 Supreme Court ruling that such programs be narrowly tailored, new DBE Program regulations were implemented in 1999 that provided specific requirements designed to create a level playing field on which DBEs might compete fairly for procurement opportunities.

## VI. Project Scope

The overall project scope was developed by Ringold after a series of planning sessions with RTA and CTA. The final Ringold scope considered the stated RTA objectives, the Federal DBE regulations and industry standards to ensure compliance with DBE Program requirements. The Ringold scope also incorporated 17 distinct program categories identified by RTA in its engagement document. As included in the Ringold contract, those 17 categories include the following:

- a. Non-discrimination requirements
- b. Objectives and Policy Statement
- c. Recordkeeping and reporting requirements
- d. Maintenance of bidders list
- e. DBELO officer designation
- f. Use of DBE financial institutions

- g. Prompt payment requirement
- h. Illinois Unified Certification Program DBE Directory
- i. Monitoring and enforcement mechanisms
- j. Small business participation
- k. Overall goals
- l. Transit vehicle manufacturers goals
- m. Contract goals
- n. Documentation of good faith efforts
- o. Review how DBE participation is counted towards goals
- p. Certification standards and procedures
- q. Review means (attracting/recruiting) used to facilitate DBE participation

While the 17 categories listed in the Project Scope broadly cover the compliance requirements of the DBE regulations, this Report uses a format that lists each of the specific provisions as they are identified in the Federal Regulation in an effort to help CTA recognize and isolate compliance needs. Ringold has rearranged and unbundled these 17 categories to align directly with the regulatory provisions. As Section VIII details, this Report lists each of the distinct provisions of the regulation, identifying whether the provision was included in the Ringold review and, if so, the observations, findings, and CTA's Management response for each, as well as Ringold's recommendations. This format will allow CTA to quickly assess its risk and additional needs.

In developing the review plan, Ringold used a risk-based approach for its evaluation taking into consideration the overall impact and the likelihood of occurrence. The resulting risk rating was scaled from five to one with ratings 5-4 identified as high, 3-2 as medium, and 1 as low.

Every provision was included in the Task 1 Risk Evaluation but only those that were deemed high or medium risk were included in the expanded, in-depth review. The review considered all activities and contracts from January 1, 2010 through October 31, 2012. As stated more specifically in the section on Acceptance Criteria below, Ringold relied on external audits and reviews previously performed on behalf of CTA and RTA within the timeframe of this review, as appropriate, to reduce redundancies. As an example, the scope of review by Ringold excludes any areas deemed compliant in the FTA's October 2011 Report. It should be noted that while the FTA Final Report was submitted in October 2011, the content reflected site visits for the time period of November 8-10, 2010. CTA submitted its response on December 1, 2011 and is awaiting additional FTA comments.

## VII. Approach and Methodology

### A. Acceptance Criteria Considerations

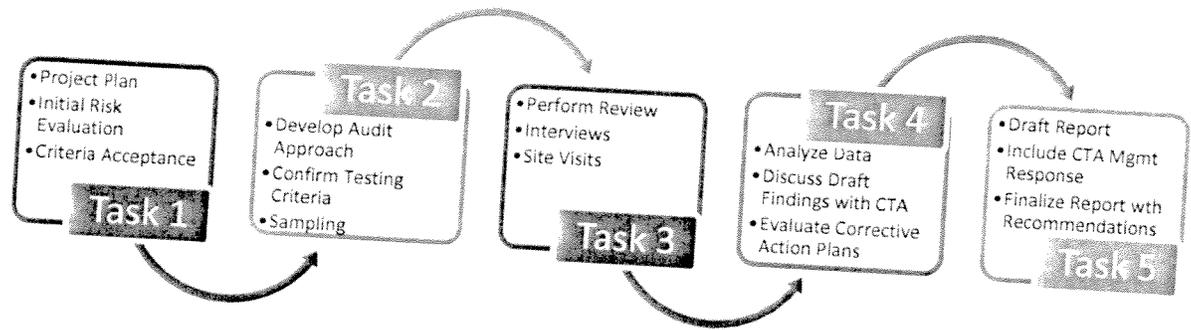
As part of the project approach, and to avoid duplication of efforts and conflicting analyses, certain results where areas were considered compliant by other external reviewers were accepted without further review by Ringold. The Acceptance Criteria Considerations included previous DBE reviews performed by a government entity such as the Federal Transit Administration or by an independent firm if the review was approved by the Board and/or appropriate parties, performed in accordance with 49 CFR Part 26, performed after June 1, 2010, and had a Scope, Methodology and Approach that were clearly identified and acceptable.

The Acceptance Criteria Considerations also included major changes that have taken place subsequent to the DBE Review (leadership, major policy changes etc.) that would have an impact on the acceptance and reliance on a specific area that was deemed compliant.

The specific reviews, audits, and other documentation included in the Acceptance Criteria Considerations were:

1. October 2011 Review and Report by FTA (Site Visit November 8-10, 2010)
2. Triennial Review -- Draft 2010
3. Other Relevant Documents (FTA Responses, etc.)

## B. Five-Step Task Process



The approach for this review used a five-task process, including an initial risk evaluation, development of the plan, performance of the reviews, an analysis of the results, and submission of a final report with recommendations and management response. This five-task process is more specifically as follows:

### 1. Initial Risk Evaluation.

The goal of Task 1 was to conduct a risk evaluation of the CTA program against current DBE regulations and determine appropriate areas for testing and validation, including those identified as high and medium risk. Task 1 included understanding project expectations, project and communication planning; outlining the project scope, approach, timeline and deliverable; management and staff interviews; first level document reviews including prior internal and external audits and reviews, contrasting existing stated program against regulations; and analyzing data. The outcome of Task 1 was an assessment of the status of the program and which areas required additional or more in-depth review. This assessment used a risk-based approach for its evaluation taking into consideration the overall impact and the likelihood of occurrence. The resulting risk rating was scaled from five to one as follows:

- 5 - 4 risk rating = High. Program element requires additional testing and validation to ensure compliance and could result in immediate or material loss.
- 3 - 2 risk rating = Medium. Program element requires limited testing and validation to determine whether risk has been mitigated and could negatively affect the efficiency and effectiveness of operations/financial reporting.
- 1 risk rating = Low. Program element does not require any further review to ensure compliance and/or no material effect.

Those areas included in further review were assessed high or medium risk. Tasks 2 through 5 were performed based on this risk evaluation and with the approval of RTA.

2. Development of Review Plan.

Ringold developed a plan that included a review of the existing data from previous audits and reviews to determine if such data is included in the Acceptance Criteria; a review of regulatory and agency policies and procedures; identification of testing criteria and sampling methodology; interviews with management and staff; sample testing and validation of processes and practices; and observations during the site visits.

3. Perform Review.

Ringold conducted the reviews in accordance with the developed plan including an identification of control weaknesses and/or gaps that posed a significant risk to reaching CTA's objectives or material monetary risk. Ringold also performed file reviews that included use of testing, analytical procedure, and criteria defined in the Ringold review program.

4. Review Results.

As part of the Task 4 analysis, Ringold reviewed the results of data and determined if such data supported the regulatory requirements or represented gaps, deficiencies, or opportunities for improvement. Also, during the analysis of Task 4, Ringold compared and contrasted the Federal Regulation to CTA's policies, compared CTA's policies to its procedures, and compared procedures to practice.

5. Report Development and Project Close-out.

Ringold developed a Draft Report for discussion purposes that included initial findings with an opportunity for CTA to provide clarifying information, implement corrective action plans, and/or provide management responses prior to submission of a Final Report.

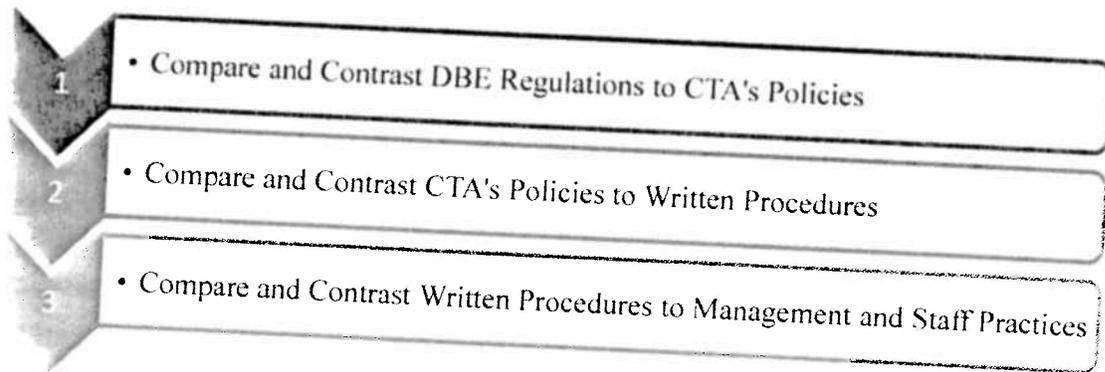
### C. Sampling

The sampling method used risk-based criteria for projects, prime contractors, and DBE certified firms. Specifically, Ringold considered:

1. DOT funded contracts between January 2010 and October 2012;
2. High-risk contracts based on the type or size of the project, for example, construction, vehicle procurement, or professional services;
3. Entity structure of the contractor, for example, single entity or joint venture;
4. History of the contractor and/or project, such as sanctions or investigations (no contractors identified during this review);
5. Certified firms from high risk industries;
6. DBE certified firms that were debarred or firms denied certification by other entities such as Cook County or City of Chicago (no firms identified during this review); and
7. Other risk criteria identified during the review process.

**For each file included in the sample, Ringold conducted a substantive and procedural review.**

## VIII. Findings, Recommendations, Management Responses



The following findings, recommendations, and CTA's management responses result from the Ringold review and analyses of each of the requirement provisions detailed in 49 CFR Part 26. As mentioned in Section V above related to the Project Scope, Ringold has listed each of the program's requirements in a manner that aligns with the Federal Regulation. This alignment will allow CTA to compare and contrast compliance with each provision and readily determine areas appropriate for correction and/or

improvement. This rearrangement does not eliminate any of the categories listed in the Project Scope originally identified in the Engagement Contract.

For each regulatory provision, Ringold has analyzed whether CTA's DBE Program's written policies reflect the current requirements of the regulation, whether the written procedures reflect the policies, and whether management and staff practices reflect written procedures.

In addition, each noted Provision includes the Ringold recommendation, if appropriate, based on gaps and/or best practices. Lastly, each noted Provision also includes the CTA's management response, with corrective actions, acceptance or process modifications, if provided.

#### A. Internal Control Review

CTA's management is responsible for establishing and maintaining effective internal controls over its DBE Program with the requirements of the laws, regulations, rules, and Provisions set forth in 49 CFR Part 26. In planning and performing this Compliance Review, Ringold considered CTA's internal controls related to 49 CFR Part 26 for the purpose of reporting on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of CTA's internal control over compliance.

Our consideration of internal control over compliance is for the limited purpose described in the preceding paragraph and is not designed to identify all deficiencies in internal control over compliance that might be significant deficiencies or material weakness and, therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as discussed below, we identified two deficiencies in internal control over compliance that we consider to be a material weakness.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a Federal program on a timely basis.

A material weakness in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material

noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. A reasonable possibility exists when the likelihood of the event is reasonable, possible, or probable that the future event or events are likely to occur.

We consider the two deficiencies in internal control over compliance as described below to be a material weakness.

#### Findings:

During this review, **there were** deficiencies found in CTA's internal controls that were considered material weakness as defined above.

1. CTA is required under 49 CFR Part 26 to have adequate staff to administer the DBE Program. Ringold determined that the CTA certification department consists of three full-time staff members who are not able to comply with the requirement to make a certification determination within 90 days of receiving all the information requested.
2. Ringold observed inconsistencies with the approved contract goal-setting documentation in the files reviewed and the actual goals put into the B2GNOW software that is used for monitoring and reporting purposes. The goals in B2GNOW were lower than the approved goal setting documents in the file, and there was no documentation related to the difference reflected in CTA's monitoring system. This lack of control can cause deficiency in accurately counting DBE participation and accurately reporting this information as required under 49 CFR Part 26.

#### Recommendation/Corrective Actions:

1. CTA should analyze its full program and specifically those areas deemed deficient in this and other external reviews to determine if its resources are sufficient to properly execute the requirements of the program including oversight and monitoring.
2. CTA should implement procedures, including checklists, to ensure contracts are being monitored.
3. CTA should utilize B2GNOW more thoroughly, including ensuring that all contracts are uploaded in the system.

## CTA Management Response

1. CTA has had, and will continue to have, an Agency-wide goal to complete all certification files within the FTA time range of 90 days. To address the Certification team's ability to respond to applicants within the required 90-day time frame, the Diversity Department has taken the following steps.
  - a. Since June 2012, CTA has implemented a performance management program for the DBE Department which specifically addresses the time frame of certification.
  - b. A new DBE certification manager position was created in August 2012, and the new manager will start December 17, 2012.
  - c. The DBE certification team utilizes an online tool for workflow management of certification files.
2. Because corrective action has been taken and new procedures have been created to ensure CTA is in compliance with the 90-day turnaround, CTA feels that the issue of addressing its DBE Program to determine if its resources are sufficient is no longer a problem. Therefore, no more formal activity is required.
3. We concur with the Finding that we should utilize B2Gnow more thoroughly. The Findings have been reviewed with management and staff. Corrective action has been taken and meetings have occurred to discuss and create procedures to ensure cross verification of Oracle contracts and active B2G contracts.

## 49 CFR 26 Subpart A: General

- ✦ § 26.1 Non-discrimination Objectives
- ✦ § 26.3 Applicability
- ✦ § 26.5 Terms and Definitions
- ✦ § 26.7 Discriminatory Actions Forbidden
- ✦ § 26.9 Process for Guidance and Interpretations
- ✦ § 26.15 Applying for Exemptions or Waivers

*Ringold reviewed the regulations and requirements of the above provisions and considered these requirements when developing the strategy and plan for this review.*

◆ § 26.11 Recordkeeping and Reporting

- (a) CTA must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.
- (b) CTA must continue to provide data about its DBE Program to the Department as directed by DOT operating administrations.
- (c) CTA must create and maintain a bidders' list.

Discussion and Observations:

During this review, **there were no** deficiencies found with Recordkeeping and Reporting Requirement.

During the review of CTA's system, Ringold discovered that some projects/contracts were not in the B2GNOW system. Subsequently, Ringold determined that CTA is transitioning from one system to another. During the transition period, CTA continues to use both systems to track data and complete its Uniform Reports. Between the two systems, all projects/contracts were included in the Uniform reports.

◆ § 26.13 Assurances for Recipients and Contractors

Each financial assistance agreement with DOT must include non-discrimination language similar to that included in the regulation, and CTA must take all reasonable steps to assure non-discrimination in the award and performance of any DOT-assisted contract or in the administration of its DBE Program.

Findings:

During this review, **there were** deficiencies found in the requirements of Assurances for Recipients and Contractors.

The CTA's DBE Program's financial assistance agreements, as implemented in March 2012, include contract assurance language in compliance with this provision. The financial assistance agreement language correctly states the non-discrimination clause, and the agreements indicate that this clause is placed in every DOT-assisted contract and subcontract.

Ringold examined eleven (11) contracts led by CTA from 2010 through 2012. While each contract reviewed included the correct contract assurance language, there was no evidence that the non-discrimination clause was included in all subcontractor agreements. Four (4) files out of the eleven (11) files reviewed had no evidence of subcontract agreements.

#### Recommendation/Corrective Actions:

1. CTA should develop and formalize a procedure that will ensure that these required assurances are standardized and included in all subcontractor agreements.
2. CTA should explore the possibility of using its web-based diversity software, B2GNOW, to assist in achieving this requirement.
3. CTA should consider including this language as a standard part of its Schedule C, as the regulation requires this form to be executed and signed by each subcontractor.

#### CTA Management Response:

CTA concurs with the recommendations / best practices Ringold has provided. Action has been taken and revised Special Conditions have already been created that provide the non-discrimination clause on the CTA's Schedules C and D so that the subcontractor is immediately aware of this clause before work begins.

#### 49 CFR 26 Subpart B-Administrative Requirements

##### ◆ § 26.21 Requirement to Maintain a DBE Program

CTA must have a DBE Program meeting the requirements of 49 CFR Part 26. Recipients do not have to submit regular updates of the DBE Programs; however, significant changes in a program must be submitted for approval.

#### Findings:

During this review, **there were** deficiencies found in the requirements to maintain a DBE Program.

Ringold reviewed CTA's DBE Program dated March 2012 and discovered two (s) deficiencies:

1. The DBE Program contained incorrect DBELO contact information.
2. There is insufficient language regarding monitoring as required under provision §26.37.

### Recommendation/Corrective Actions:

1. CTA should immediately make updates to the Manual and website when significant or material changes occur, such as changes to the DBELO or monitoring procedures.
2. CTA should develop a process to review and update its Program Manual on a standard schedule, such as quarterly.
3. CTA should dedicate an employee to legislative tracking to ensure CFR changes and/or updates are implemented into the CTA's DBE program quickly.
4. CTA should communicate the updates to staff and implement staff training related to all DBE regulations.

### CTA Management Response:

1. The DBE Program plan is in the process of being updated and will be completed and ready for publication by January 30, 2013.

### ↓ § 26.23 Policy Statement

CTA must issue a signed and dated policy statement that expresses commitment to its DBE Program, states its objectives, and outlines responsibility for its implementation. CTA must circulate the statement throughout the organization and to the DBE and non-DBE business communities that perform work on DOT-assisted contracts.

### Discussion and Observations:

During this review, there **were no** deficiencies found in the requirements for a Policy Statement.

1. CTA provided a copy of its DBE policy statement dated June 30, 2011 and signed by CTA's current President, Forrest Claypool.
2. CTA provided an email it sent to CTA general managers and vice presidents on November 22, 2011 as evidence that the policy had been circulated internally.
3. At the time of review, CTA's website contained the correct policy statement located under "Doing Business with CTA."
4. Ringold reviewed contract files and validated that the Policy Statement was included as part of the language of the RFPs, demonstrating that the Policy was distributed externally in the business community.

★ § 26.25 Liaison Officer

CTA must have a DBE liaison officer who shall have direct, independent access to the Chief Executive Officer concerning DBE Program matters. The liaison officer shall be responsible for implementing all aspects of the DBE Program. CTA must also have adequate staff to administer the program.

Findings:

During this review, **there were** deficiencies found in the requirements for the DBE Liaison Officer (DBELO).

1. The CTA's DBE Program Plan identifies the General Manager of Diversity and Small Business Compliance as the DBELO.
  - This position has changed several times since 2010.
  - Mayra Garcia Guzman served from June 6, 2010 to October 31, 2010; Enrique Orozco served from November 1, 2010 to September 23, 2011; Gloria Camerena served from September 26, 2011 to June 11, 2012; Veronica Alanis served from June 11, 2012 to September 4, 2012; and ,Effective September 4, 2012, Omar Brown is the current General Manager.
  - The CTA's DBE Program currently lists Veronica Alanis as Acting General Manager.
2. The regulation requires the DBELO to have adequate staff to administer the DBE Program.
  - The compliance unit consists of four (4) staff members, and the certification unit consists of three (3) staff members.
  - Based on the findings in this and other areas of this review, it appears that CTA may not have adequate resources to fully and properly implement the Certification and Compliance requirements of this program.

Recommendation/Corrective Actions:

1. CTA should update its current DBE Program documents to reflect the current DBELO's name and contact information.
2. CTA should review the additional details discussed in the applicable sections of this Report to analyze whether resources in these areas can be effective, or if further resources are required.

CTA Management Response:

The DBE Program Plan is in the process of being updated and will be completed and ready for publication by January 30, 2013.

✦ **§ 26.27 Use of DBE Financial Institutions**

CTA must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically-disadvantaged individuals in its community and make reasonable efforts to use these institutions. CTA must also encourage prime contractors to use such institutions.

Discussion and Observations:

During this review, there **were no** deficiencies found with the requirement for Use of DBE Financial Institutions.

1. CTA provided FTA with a list of DBE financial institutions with whom it has done business and FTA found no deficiencies with this information. In accordance with Ringold's Acceptance Criteria Considerations, the FTA's Finding is incorporated into this Report as acceptable.
2. Ringold reviewed several contracts which included language encouraging the use DBE financial institutions by prime contractors.

✦ **§ 26.29 Prompt Payment Mechanism**

- (a) CTA must establish, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of contracts no later than 30 days from receipt of each payment it makes to the prime contractor.
- (b) CTA must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

### Findings:

During this review, **there were** deficiencies found with the requirements for Prompt Payment and Return of Retainage.

1. While CTA's DBE Program requires contractual language that the prime contractor agrees to return retainage to each subcontractor within 14 calendar days after the subcontractor's accepted work is satisfactorily completed, Ringold's review determined that work-flow charts used by staff for Prompt Payment procedures do not include the return of retainage requirement.
2. Of the contracts reviewed by Ringold, only one compliance file included a contract for the subcontractor. While prompt payment language was included in that contract the return of retainage language was not. This was a contract where retainage was, in fact, withheld.

### Recommendation/Corrective Actions:

1. CTA should update its workflows and internal prompt payment policies to include the return of retainage to subcontractor requirement.
2. CTA should develop and implement a procedure to help ensure all subcontractor agreements include the required prompt payment and return of retainage language and make sure staff is trained on this requirement.
3. CTA should explore the possibility of using its web-based diversity software, B2GNOW, to assist with achieving this requirement.
4. CTA should consider including this language as a standard part of CTA's Schedule C. The regulation requires this form to be executed and signed by each subcontractor.

### CTA Management Response:

CTA's workflow charts will be updated. CTA already includes this language on all DBE Special Conditions. CTA will consider adding this to other documents in the future.

### ◆ § 26.31 DBE Directory

- (a) In the directory required under §26.81(g) of this Part, CTA must list all firms eligible to participate as DBEs in its program. In the listing for each firm, CTA must include the address, phone number, and the types of work the firm has been certified to perform as a DBE.

- (b) CTA must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

**Discussion and Observations:**

During the review, there **were no** deficiencies found with the requirement for a DBE Directory.

1. CTA is part of the Illinois Unified Certification Program (ILUCP) and the directory of DBE firms is hosted by the Illinois Department of Transportation.
2. The directory includes the information required by the regulations. It lists each firm's name, mailing address, telephone number, and the type of work the firm has been certified to perform as a DBE.
3. In addition to the web-based electronic version, the directory is available in hard copy format upon request. The directory is updated weekly and/or as changes occurs.

✦ **§ 26.33 Over-Concentration of DBEs**

- (a) If CTA determines that DBE firms are over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, it must devise appropriate measures to address this over-concentration.
- (b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which CTA has determined that non-DBEs are unduly burdened. CTA may also consider varying its use of contract goals, to the extent consistent with §26.51, to insure that non-DBEs are not unfairly prevented from competing for subcontracts.
- (c) CTA must obtain the approval of the concerned DOT operating administration for determination of over-concentration and the measures CTA devises to address it. Once approved, the measures become part of the CTA's DBE Program.

**Ringold Advisory Comment:**

Ringold provides this Advisory Comment for consideration by CTA as it continues to review its program's compliance and effectiveness:

In an October 2011 Report, the FTA advised CTA of deficiency for this requirement and that such deficiency would be closed upon FTA's acceptance of a revision to the CTA's DBE Program.

To date, Ringold has no evidence that the FTA has accepted a revised DBE Program by CTA and closed the deficiency.

✦ **§ 26.35 Business Development and Mentor-Protégé Program**

- (a) CTA may, or if an operating administration directs it to, CTA must establish a DBE Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE Program.
- (b) CTA may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE Program after a certain time has passed or certain objectives have been reached.

Discussion and Observations:

During this review, there **were no** deficiencies found with the Business Development Program.

CTA has elected to administer a Business Development Program (BDP) as part of its overall DBE activities and this Provision is stated and outlined in CTA's DBE Program. The CTA's Business Development Program has three objectives:

1. It seeks to attract new DBE firms to participate in CTA's contracts.
2. It provides opportunities for DBE firms to gain CTA experience through work on smaller projects.
3. DBE firms will be provided training and development assistance in capacity building which allow them to move into non-traditional areas of work and/or compete in the market place outside the DBE Program.

✦ **§ 26.37 Recipient's Responsibilities for Monitoring**

- (a) CTA must implement and set forth appropriate mechanisms to ensure compliance with requirements by all program participants.

- (b) The DBE Program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award, or subsequently, is actually performed by the DBEs. This mechanism must include a written certification that CTA has reviewed contracting records and monitored work sites in Illinois for this purpose.
- (c) This mechanism must provide for a running tally of actual DBE attainments, comparing these attainments to commitments, and reports to the FTA must display both commitments and attainments.

#### Findings:

During this review, **there were** deficiencies found in the requirement for Recipient's Responsibilities for Monitoring.

1. There was no required written certification in the DBE Program or specific language regarding the monitoring mechanism indicating that CTA reviews contracting records and monitors work sites.
2. CTA utilizes B2GNOW as a tool for monitoring Prompt Payment requirements to subcontractors; however, during the review, Ringold determined that some contracts were not set up in the system nor was there evidence in the file that these contracts were monitored.
3. CTA's Contract Compliance department provided forms it uses for DBE/EEO job site monitoring and an employee questionnaire as evidence that site visits are performed. According to these forms, four (4) site visits were performed during the six-month period of April 2012 through September 2012. One of the site visit reports indicated that the DBE firm that CTA intended to inspect had completed the work and therefore was not interviewed. Ringold cautions that performing (4) four site visits in a six-month period, given the amount of FTA-funded contracting CTA performs, may not be adequate to meet the monitoring requirements of the DBE regulations.

#### Recommendation/Corrective Actions:

1. CTA should update its DBE Program to include more specific language related to its monitoring mechanisms and, as required, written certification that CTA has reviewed contracting records and monitored work sites.
2. CTA should implement procedures to ensure that all Federally-funded contracts are being monitored and that all contracts are included properly in the B2GNOW system.

3. CTA should analyze and determine if sufficient resources are in place to properly execute oversight and monitoring functions, including performing enough routine site visits.

CTA Management Response:

We concur with the auditors that the universe of contracts were not entirely placed in the B2G system. Corrective action has been taken and new procedures are being created and implemented that will provide for cross verification to ensure all our contracts that are in Oracle are properly migrated to the B2G system for monitoring.

CTA's Construction Management unit has been recruited to help the DBE department with site visits; this will result in an increased monitoring of constructions projects and improves CTA's ability to accurately report on participation. Once a site visit is complete, a report is created; the report will include the location of the visit, identity of the DBEs at the worksite and the work being done by the DBEs. The report will highlight any issues or risks of non-compliance.

◆ **§ 26.39 Fostering Small Business Participation**

- (a) CTA's DBE Program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to participation.
- (b) This element must be submitted for approval as a part of CTA's DBE Program by February 28, 2012.

Discussion and Observations:

During the review, there **were no** deficiencies found with the requirement to Foster Small Business Participation.

1. CTA's DBE Program outlines its commitment to establish a race-neutral small business program ("SB Program") no later November 28, 2012.
2. CTA supplied recent letters distributed to DBE vendors encouraging them to bid on race-neutral opportunities which have no DBE subcontracting opportunities.
3. CTA also provided evidence of its Draft SB Program being submitted to FTA for Approval on February 28, 2012. No response from FTA has been received.

## 49 CFR 26 Subpart C: Goals, Good-Faith Efforts and Counting

### ✦ § 26.41 Statutory 10 Percent Goal

*This section was reviewed by Ringold and determined to be an aspirational, national goal and not applicable at the local level. It was not included in the Ringold review plan.*

### ✦ § 26.43 Use of Set-Asides or Quotas

(a) CTA is not permitted to use quotas for DBEs on DOT-assisted contracts.

(b) CTA may not set-aside contracts for DBEs on DOT-assisted contracts subject to this Part, except that, in limited and extreme circumstances, CTA may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

### Discussion and Observations:

During this review, there **were no** deficiencies found with the requirement related to Set-Asides or Quotas.

1. CTA's DBE Program indicates that CTA will not use quotas in any way in the administration of the DBE Program.
2. Ringold reviewed several compliance files, and found no evidence of the use of quotas or set-aside contract practices.

### ✦ §26.45 Determining/Meeting Goals

CTA must set an overall goal for DBE participation in its DOT-assisted contracts. CTA's overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts. The goal must reflect CTA's determination of the level of DBE participation it would expect absent the effects of discrimination.

#### A. Calculation

To begin the goal setting process, the recipient must develop a base figure for the relative availability of DBEs and then adjust this figure to match the needs of the specific DBE community.

### Step 1: Determining the Base Figure

The base figure is determined by the availability of ready, willing, and able DBEs, relative to all businesses ready, willing and able to participate on the contracts. Examples of approaches that may be taken towards determining a base figure are as follows: (1) Use DBE Directories and Census Bureau Data; (2) Use a Bidders' List; (3) Use data from Disparity Studies conducted anywhere within CTA's jurisdiction to the extent it is not already accounted for in the base figure; (4) Use the goal of a similar DOT recipient; and (5) Alternative Methods.

### Step 2: Adjusting the Base Figure

Once CTA has calculated a base figure, it must examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at an overall goal.

## **B. Public Participation**

In establishing an overall goal, CTA must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A published notice announcing the overall goal must be available for 30 days. The public must be notified that the recipient is accepting comments on the goal for 45 days following the date of the notice.

### Findings:

During this review, **there were** deficiencies found with the Determining/Meeting Goals requirement.

### **Background Information:**

- ✓ **Calculation:** According to the FTA's October 2011 Report, for fiscal years 2009, 2008, 2007 and 2006, CTA used relatively the same verbiage and data in its goal methodology to arrive at a 30% overall goal.

The FTA Report included an analysis and Finding that the CTA goal-setting methodology for steps 1 and 2, as well as the public participation requirements of this section were deficient, and further that compliance with this provision required changes in the program's methodology and reporting processes; such changes to be reported to FTA in Third Quarter 2011.

- ✓ **Public Participation:** According to the FTA's October 2011 Report, no evidence of a consultative process was found for CTA's goal submissions.
- ✓ Ringold determined that CTA submitted a letter dated August 1, 2011 that requested the use of an interim goal of 24%, but did not propose an anticipated timeframe for completing goal-setting activities due to staffing and other changes at the agency.
- ✓ CTA also provided a letter dated June 22, 2012 addressed to FTA regarding the status of CTA's progress in completing a disparity study to support CTA's new agency goal. The letter indicated that CTA had engaged Robb Consulting Group to complete the disparity study and anticipate the disparity study to be completed by early September 2012. The letter also requested a confirmation of acceptance from FTA of CTA's interim goal of 24%, and to grant an extension to submit its new agency goal until November 30, 2012.
- ✓ FTA responded in a letter dated June 29, 2012 acknowledging CTA's engagement of the Robb Consulting Group to perform the disparity study, and granted an extension for CTA's 2013 to 2015 DBE Goal Methodology submission until November 30, 2012. The FTA letter also indicated that CTA's interim goal of 24% will be marked as "Conditionally Approved" until that time.
- ✓ CTA's staff has indicated that CTA is on track to meet the goal submission deadline of November 30, 2012, and is currently reviewing a draft copy of the disparity study performed by the Robb Consulting Group.
- ✓ CTA also made a written commitment to FTA to comply with guidance regarding Public Participation in the goal-setting process and this language is included in CTA's DBE Program.

**Findings Details:**

CTA has been in the process of trying to cure the deficiencies in this area since it was brought to their attention in 2010 by FTA. CTA could not meet the November 30, 2012 goal submission extension deadline and requested another extension on September 25, 2012. On November 27, 2012, FTA granted another goal submission extension deadline of January 30, 2013. CTA staff plans to present the new goal for approval to the CTA Board and, once approved, submit to FTA for approval before the January 30, 2013 due date.

Recommendation/Corrective Actions:

CTA should submit its 2013 to 2015 DBE Goal Methodology to FTA by January 30, 2013 for approval.

CTA Management Response:

CTA's DBE Goal methodology was made available for public viewing at CTA's Headquarters from November 20<sup>th</sup> 2012 through December 21<sup>st</sup> 2012. A copy of the methodology was provided to FTA on December 4, 2012. The FY 2013 – FY2015 Goal will be presented at the January CTA Board Meeting, January 11, 2013. Once approved by the Board, CTA will submit all supporting documentation to FTA.

➤ **§ 26.49 Transit Vehicle Manufacturer Goals (TVM)**

CTA must require that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. CTA should not include FTA assistance used in transit vehicle procurements in the base amount from which its overall goal is calculated.

- (a) As a recipient, CTA may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.
- (b) As an FHWA and/or FAA recipient, CTA may, with approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If CTA chooses to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

Discussion and Observations:

During the review, there **were no** deficiencies found with the requirement related to Transit Vehicle Manufacturer Goals.

Ringold reviewed the CTA's transit manufacturers' compliance file, and evidence of the TVM certification was found in the file. Evidence of cross-checking to FTA's list of certified TVM's during the bid evaluation stage was validated as well.

★ § 26.51 Means to Meet Overall Goals

- (a) CTA must meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award. Each time CTA submits its overall goal for review, it must also submit its projection of the portion of the goal that it expects to meet through race-neutral means and the basis for that projection.
- (b) CTA must also establish contract goals to meet any portion of its overall goal it does not project being able to meet using race-neutral means.

Findings:

During the review, **there were** deficiencies found with the Means to Meet Overall Goals requirement.

1. CTA used the same language to explain how its 2% race-neutral goal was determined that it used to determine its overall 30% agency goal. In addition, the 30% overall agency goal was considered deficient by the FTA in its 2011 DBE Review.
2. CTA did not provide any mathematical and/or other evidentiary support for its 2% race-neutral.
3. CTA staff indicated a race-neutral analysis and projection will be included as part of the required methodology and goal setting process that will be submitted to FTA on January 30, 2013, based on the disparity study that is being completed by the Robb Consulting Group.

Recommendation/Corrective Actions:

1. CTA should submit its methodology and analysis for race-neutral projects by January 30, 2013 to FTA for approval.
2. CTA should review and verify the process of collecting the correct data if CTA will be using past participation in projection of the future race-neutral portion of the goal submissions.

CTA Management Response:

CTA's DBE Goal Methodology was made available for public viewing at CTA's Headquarters from November 20<sup>th</sup> 2012 through December 21<sup>st</sup> 2012. A copy of the methodology was provided to FTA December 4, 2012. The FY 2013 – FY2015 Goal will be presented at the January CTA Board Meeting January 11, 2013. Once approved by the Board, CTA will submit all supporting documentation to FTA.

↓ § 26.53 Good-Faith Efforts for Bidders

- (a) When CTA has established a DBE contract goal, it must award the contract only to a bidder that makes good-faith efforts to meet it. In meeting this Provision, CTA must require bidders to submit sufficient documentation such as names and addresses of DBE firms that will participate in the contract; a description of the work that each DBE will perform, and the dollar amount of the participation of each DBE firm participating. The bidder should also provide written documentation of its commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, and written confirmation from the DBE that it is participating in the contract.
- (b) CTA must include in each prime contract a provision for appropriate administrative remedies that it will invoke if the prime contractor fails to comply with the requirements of this Provision.

Discussion and Observations:

During the review, there **were no** deficiencies found in the requirement for Good-Faith Efforts for Bidders.

1. CTA's DBE Program Plan outlines the requirements for good-faith efforts and the reconsideration process.
2. Ringold examined several contracts for offerors to submit bids and no deficiencies were found.
3. CTA has designated a reconsideration official, and the DBE Program indicates that CTA will ensure that this official is aware of the requirements for this function. The CTA reconsideration team consists of various CTA personnel independent of procurement and the DBE compliance team, including:

- a. Manager of HR Administration
- b. General Manager of Capital Grants
- c. Senior Compliance Officer for Safety and Security
- d. General Manager for Workers Compensation

◆ § 26.55 Counting DBE Participation Towards Goals

- (a) CTA must count only the value of work actually performed by the DBE towards actual DBE goals. CTA may count the entire amount of that portion of a contract performed by the DBE's own forces.
- (b) CTA may include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- (c) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
- (d) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Findings:

During this review, **there were** deficiencies found with the requirements for Counting DBE Participation Towards Goals.

- I. The CTA DBE Program Plan outlines an accurate process for counting DBE participation; however, Ringold was unable to verify the accuracy of the data.

As mentioned in this Report's section on Internal Controls, Ringold observed inconsistencies between the approved contract goal-setting documentation in the files reviewed and the actual goals in the B2GNOW system used for monitoring and reporting purposes. The goals in B2GNOW were lower than the approved goal setting documents and, therefore, cannot be relied upon to show accuracy in counting participation towards goals.

2. In December 2010, CTA began utilizing B2GNOW web-based diversity software. During the review of the data in this software, Ringold identified contracts that were not included in the system, and it was unclear how CTA included these contracts to ensure the accuracy and completeness of its counting and monitoring requirements.

#### Recommendation/Corrective Actions:

CTA should ensure that all of its Federally-funded projects/contracts are set up properly into its B2GNOW software system.

CTA should ensure that its data related to goals in the B2GNOW system is accurate.

#### CTA Management Response:

CTA uses a manual process to monitor contracts not already in the B2G system. The process consists of quarterly audits requiring prime contractors to submit payment affidavits as well as DBE payment affidavits submitted by the DBE subcontractors. Once the documents are submitted, the data is then entered and monitored for compliance on our LOTUS database. This LOTUS database is being phased out because of the implementation of the B2G system.

We concur with the auditors that the universe of contracts were not entirely placed in the B2G system. Corrective action has been taken and new procedures are being created and implemented that will provide for cross verification to ensure all our contracts that are in Oracle are properly migrated to the B2G system for monitoring.

#### 49 CFR 26 Subpart D: Certification Standards

- ✦ § 26.61 Allocation of Burdens of Proof in the Certification Process
- ✦ § 26.63 Membership Determinations Rules
- ✦ § 26.67 Rules to Determine Social and Economic Disadvantage
- ✦ § 26.69 Rules Governing Determinations of Ownership
- ✦ § 26.71 Rules Governing Determinations Concerning Control
- ✦ § 26.73 Rules Affecting Certification

*Ringold reviewed the regulations and requirements of the above provisions and considered these requirements when developing the strategy and plan for this review.*

✦ **§ 26.65 Rules Governing Business-Size Determinations**

- (a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, CTA must apply current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

Findings:

During the review, **there were** deficiencies found with the Rules Governing a Business-Size Determination requirement.

Ringold reviewed twenty (20) certification files and several of these files did not include any evidence of the inclusion of affiliates in the business size determination to ensure that the 3-year average annual gross receipts, as defined by the SBA's regulation, were not exceeded.

Recommendation/Corrective Actions:

1. CTA should re-evaluate its procedure and practice of only including affiliates in the size determination when the applicant firm owns at least fifty-one (51) percent of the affiliate(s).
2. Ringold recommends lowering this percentage substantially to limit the risk of non-compliance with this requirement

CTA Management Response:

Per the Small Business Administration definition of an affiliate, a party would have to control or have the power to control 50 percent or more of the concern's voting stock. CTA only requests the affiliate tax return if the social and economic owner has the power to control 50 percent or more of the affiliate.

Ringold Response Note:

Ringold clarified its interpretation of the regulations with CTA's staff that an affiliate is based on a DBE's ownership interest in a firm, not merely control. Ringold also highlighted the risk of having a practice that does not include affiliates' gross receipts in its determination unless the applicant firm owns fifty-one (51) percent or more of the affiliate(s). Such a practice may result in CTA certifying applicant firms that do not meet the business-size requirement.

49 CFR 26 Subpart E: Certification Procedures

- ✦ **§ 26.81 Requirements for Unified Certification Programs**
- ✦ **§ 26.85 Interstate Certification**
- ✦ **§ 26.86 Rules Governing Recipients' Denials of Initial Requests for Certification**
- ✦ **§ 26.89 Process for Certification Appeals to the Department of Transportation**
- ✦ **§ 26.91 Actions to Take Following DOT Certification Appeal Decisions**

*Ringold reviewed the regulations and requirements of the above provisions and considered these requirements when developing the strategy and plan for this review.*

✦ **§ 26.83 Procedures for Certification Decisions**

- (a) CTA must ensure that only firms certified as eligible DBEs participate as DBEs in the program by determining eligibility including conducting site visits, analysis of ownership, financial capacity of the firm, work history, equipment, licenses, and key personnel. When a UCP is formed, the UCP must meet all the requirements of Subpart D of this regulation.
- (b) CTA must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required. CTA may extend the time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. CTA may establish a different time frame in its DBE Program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration.
- (c) CTA must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

### Findings:

During this review, **there were** deficiencies found with the Certification Procedures requirement.

### Background Information:

The Illinois Unified Certification Program (ILUCP) consists of five certifying members, including Illinois DOT (IDOT), Metra, City of Chicago, PACE, and the CTA. The ILUCP has been operational since September 2003. Applicants can apply to any of the five agencies; however, applications can be transferred to another certifying member. The ILUCP directory is maintained by IDOT and is updated weekly by ILUCP certifying agencies.

### Findings Details:

Ringold selected and reviewed twenty (20) certification files to determine adherence to the certifications requirements and criteria set forth in the regulations:

1. Five (5) or 25% of the files reviewed did not meet the requirements due to lack of required documentation in the file and/or procedures followed, e.g., proof of citizenship, corporation documentation, affiliates tax returns, NAICS codes not identified on certification letter, and/or lack of site visit report.
2. CTA certification representatives informed Ringold that the certification department consists of three individuals. CTA representatives also indicated that they are not able to comply with the requirements to make certification determinations within 90-days of receiving all the information requested because of limited staff.
3. CTA certification representatives stated that they conduct interviews of officers and site visits of the applicant's office but that they were not aware of the requirement to conduct job site visits when feasible.
4. Additionally, of the twenty certification files reviewed, two files had no evidence of any site visit during the continued eligibility review that occurs at the end of a five-year term.

### Recommendation/Corrective Actions:

1. CTA should ensure that adequate resources are devoted to the certification process so that the 90-day timeframe in the regulation for making determinations is met.
2. CTA should include conducting local job-site visits in its certification procedures when applicable and feasible.

3. CTA should develop a process to ensure that a site visit is performed on every applicant in accordance with the requirements.
4. CTA should develop and implement procedures to help ensure that the required documentation is being requested and analyzed properly; this process should include ongoing training of certification officers.
5. CTA should standardize the procedures, including QA checklists.
6. CTA should implement new staff training as well as annual refresher training.

#### CTA Management Response:

We are standardizing our certification procedures including site visit requirements and the use of standard forms and checklists; this process will be complete and implemented by 01/30/2013. CTA has also implemented a performance management program to monitor program and staff productivity. Combined, these actions will further improve the efficiency and effectiveness of our monitoring program.

#### ✦ § 26.87 Procedure to Remove a DBE's Eligibility

- (a) Any person may file with CTA a written complaint alleging that a currently certified firm is ineligible specifying the alleged reasons why the firm is ineligible. CTA is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).
- (b) If CTA determines, based on a review, that there is reasonable cause to believe that the firm is ineligible, CTA must provide written notice to the firm that CTA proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If CTA determines that such reasonable cause does not exist, CTA must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- (c) Separation of functions. CTA must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or

(d) seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

#### Findings:

During this review, **there were** deficiencies found with the Procedure to Remove a DBE's Eligibility Requirement

1. CTA self-described its two-step removal process, including sending a proposed removal letter to a DBE firm with an opportunity for an informal hearing and, if during such a hearing the removal decision is upheld, a final removal letter is sent to the DBE advising it that the firm's certification has been removed.
2. One of the twenty files reviewed by Ringold showed that this process was not followed and the firm was not notified properly. As a result, the removal decision was overturned by the U.S. Department of Transportation.

#### Recommendation/Corrective Actions:

1. Review the removal process and implement safeguards to ensure that the policies and practices are followed by staff.
2. Implement staff training for this and other regulatory requirements of the DBE Program, including refresher training.
3. Implement oversight procedures for second level review prior to removal of a DBE firm.

#### CTA Management Response:

Our removal process has been updated to reflect the findings. We currently use the B2G system to track documentation of all DBE firms. Our Reconsideration Hearing Officer now has access to the B2G system and is able to utilize the system to create a timeline and document the process. Our legal department reviews any correspondence sent to firms which are being considered for removal.

#### 49 CFR 26 Subpart F: Compliance and Enforcement

*Ringold reviewed these regulations and considered these requirements when evaluating risk and developing its strategy and plan for this review.*

**IX. Summary of Findings**

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Internal Controls Review		D	Certification department consists of 3 full-time staff not able to make a certification determination within 90 days; Inconsistencies between goal-setting documentation and actual goals put into system used for monitoring and reporting; and Goals in system were lower than the approved goal setting documents in the file.	CTA should analyze its full program processes and procedures. Specifically, it should examine those areas deemed deficient in this and other external reviews to determine if its resources are sufficient in number and experience to properly execute the requirements of the program including oversight and monitoring.	Performance Management program has been implemented; a Certification Manager was hired with a start date of December 2012; and CTA is now utilizing an online tool for workflow management.
Non-discrimination Applicability Terms & Definitions Actions Forbidden Interpretations Exemptions or Waivers	§ 26.1 § 26.3 § 26.5 § 26.7 § 26.9 § 26.15	N/A	Ringold reviewed the regulations and requirements of these provisions and considered these requirements when developing the strategy and plan for this review.	N/A	N/A
Record Keeping and Reporting	§ 26.11	ND	CTA uses two distinct systems to track data and complete its Uniform Reports. Between the two systems all projects/contracts were included in the Uniform reports.	N/A	N/A

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Assurances for Recipients and Contractors	§ 26.13	D	There was no evidence that the non-discrimination clause was included in all subcontractor agreements.	CTA should develop and formalize a procedure to ensure required assurances are standardized and included in all subcontractor agreements; CTA should explore using B2GNOW to assist with this requirement.	CTA concurs. Special Conditions created for non-discrimination language to be included on Schedules C and D.
Requirement to Maintain a DBE Program	§ 26.21	D	DBELO information in the Program Manual is inaccurate. There is insufficient language regarding monitoring as required under provision §26.37.	CTA should develop a process to review and update its Program Manual on a standard schedule, such as quarterly. CTA should immediately make updates to the Manual and website when significant or material changes occur, such as changes to the DBELO or monitoring procedures. CTA should communicate the updates to staff and implement staff training related to all DBE regulations.	Program is being updated and will be published by January 30, 2013.
Policy Statement	§ 26.23	ND	Copy of Policy dated June 30, 2011 signed by President, distributed to employees, posted on website and distributed externally to business community.	N/A	N/A
DBE Liaison Officer	§ 26.25	D	DBELO reporting to Purchasing Department could cause conflicts of interest in areas such as good-faith efforts; Some conflicting information regarding reporting relationship. i.e., Purchasing or Chief Administrative Officer; Possible inadequate staff resources to implement Certification and Compliance requirements.	Update DBE info on website; Update organizational chart; Implement safeguards to prevent conflicts of interest if reporting relationship remains with Purchasing; Review and analyze whether additional resources are required.	DBE Program is in the process of being updated and will be completed and ready for publication by January 30, 2013

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Financial Institutions	§ 26.27	ND	Language included in prime contracts encouraging use of DBE financial institutions.	N/A	N/A
Prompt Payment	§ 26.29	D	Workflow charts do not include return of retainage requirement; Only one subcontract included in compliance file and no return of retainage language in that subcontract.	Update workflows and prompt payment policies; Implement procedure to ensure subcontractor agreements include prompt payment and retainage language; Consider using B2GNOW with this requirement.	Workflow charts have been updated and CTA will consider adding language to other documentation.
DBE Directory	§ 26.31	ND	CTA part of ILUCP and directory is hosted by IDOT.	N/A	N/A
Over-Concentration	§ 26.33	AC	Ringold offers the following Advisory Comment: There is no requirement for remediation because CTA has stated that no over-concentration of DBE firms exists. Ringold advises that a prior FTA deficiency was noted regarding analysis of over-concentration and the deficiency would be closed upon acceptance from FTA. Ringold has no evidence that such acceptance from FTA has occurred.	N/A	N/A
Business Development Programs	§ 26.35	ND	CTA has implemented a Business Development Program to attract new DBE firms, help DBE firms gain experience, and provide training in capacity building.	N/A	N/A
Monitoring	§ 26.37	D	DBE Program had no language related to monitoring mechanisms; No certification that CTA reviewed contracting records or monitored work sites; Some files evidenced monitoring, but process and documentation not consistent. e.g., prompt payment, use of web-based software system, site visits.	Update DBE Program with specific language regarding monitoring mechanisms; Use written certifications that it has reviewed contracting records and monitored work sites; Implement procedures to include all contracts in B2GNOW; Determine if sufficient resources are in place.	CTA concurs that universe of contracts were not in the B2G system. Corrective action has been taken and new procedures being implemented for cross verification to ensure contracts in Oracle are migrated to B2G system for monitoring. CTA's Construction Management unit to help with site visits.

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Fostering Small Businesses	§ 26.39	ND	Program outlines commitment to establish small business program by 11/28/12; Outreach program implemented.	N/A	N/A
Statutory 10% Goal	§ 26.41	N/A	Section reviewed and determined to be an aspirational national goal and not applicable at the local level.	N/A	N/A
Use of Set-Asides or Quotas	§ 26.43	ND	Program indicates no use of quotas or set-asides in the administration of the Program; No evidence found of the use of quotas or set-asides.	N/A	N/A
Determining/Meeting Goals	§ 26.45	D	Per the FTA 2011 Report, calculation language same for several years to arrive at 30% goal and FTA determined methodology deficient; Per FTA 2011 Report, no evidence of consultative public participation process; CTA commissioned disparity study and received FTA conditional approval of 24% interim goal; FTA approved additional request for extension until January 30, 2013	Submit 2013 – 2015 goal methodology to FTA no later than January 30, 2013	Goal methodology public viewing Nov 20 - Dec 21, 2012. Copy of the methodology provided to FTA December 4, 2012. FY 2013 – FY2015 Goal will be presented at the January CTA Board Meeting, January 11, 2013. Once approved by the Board, CTA will submit all supporting documentation to FTA.
Transit Vehicle Manufacturer Goals	§ 26.49	ND	Evidence of the TVM certification in file; Evidence of cross checking to FTA list during bid evaluation stage validated.	N/A	N/A

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Means to Meeting Overall Goals	§ 26.51	D	Use of same language to explain race-neutral and overall 30% agency goal and raises questions whether methodology is reasonable or sound; No mathematical or evidentiary support for 2% projection.	Submit new goals to FTA by January 30, 2013.	Goal methodology public viewing Nov 20 - Dec 21, 2012. Copy of the methodology provided to FTA December 4, 2012. FY 2013 – FY2015 Goal will be presented at the January CTA Board Meeting, January 11, 2013. Once approved by the Board, CTA will submit all supporting documentation to FTA.
Good-Faith Efforts for Bidders	§ 26.53	ND	CTA's DBE Program outlines requirements for good-faith efforts and reconsideration process; Reconsideration team is independent of Procurement and DBE compliance team.	N/A	N/A
Counting Participation Towards Goals	§ 26.55	D	DBE Program outlines accurate process for counting participation; however, Ringold was unable to verify the accuracy of data and found inconsistencies in the goal setting documentation and what was included in B2GNOW, raising accuracy issues related to counting; Some contracts not included in B2GNOW system software.	Ensure standard process for all federally-funded project/contracts to be included into B2GNOW system.	CTA uses two separate systems, Lotus and B2G. CTA uses manual process for contracts in Lotus until it phases out. CTA also conducts quarterly audits

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Allocation of Burdens of Proof in the Certification Process  Membership Determinations Rules  Rule to Determine Social and Economic Disadvantage  Rules Governing Determinations of Ownership  Rules Governing Determinations of Control  Rules Affecting Certification	§ 26.61  § 26.63  § 26.67  § 26.69  § 26.71  § 26.73	N/A	Ringold reviewed the regulations and requirements of these provisions and considered these requirements when developing the strategy and plan for this review.	N/A	N/A
Rules Governing Business Size Determinations	§ 26.65	D	<p>Some files did not include evidence of inclusion of affiliates in the business size determination to ensure that 3-year average gross receipts did not exceed size standards; CTA practice only includes affiliate gross receipts when applicant firm owns at least 51% of firm.</p> <p>Please Note: While CTA states it relies on SBA definition of an affiliate as having a 50% or greater control, Ringold interprets the regulation to define affiliate as one in which the DBE firm has an ownership interest, not merely control.</p>	Re-evaluate procedure and practice of only including affiliate in the size determination when applicant owns at least 51% of affiliate firm.	CTA states that per the SBA definition, an affiliate must control 50%. CTA will continue to include subs with 50% or more control.

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response	
Requirements for Unified Certification Program	§ 26.81	N/A	Ringold reviewed the regulations and requirements of these provisions and considered these requirements when developing the strategy and plan for this review.	N/A	N/A	
Interstate Certification	§ 26.85					
Rules Governing Denials of Certification	§ 26.86					
Process for Certification Appeals to DOT	§ 26.89					
Actions Following DOT Appeal Decision	§ 26.91					
Procedures for Certification Decisions	§ 26.83	D	<p>Five of 20 files reviewed had insufficient documentation or procedures not followed; Certification Department has 3 employees and indicated not able to comply with 90-day review requirement; Certification representatives stated unaware of requirement to conduct job site visits and do not do so;</p> <p>Two of 20 files reviewed had no office site visit for continued eligibility review.</p>	<p>Ensure adequate resources are devoted to certification process to meet 90-day determination;</p> <p>Revise procedures to include job-site visits when feasible;</p> <p>Develop process for corporate site visit on every applicant;</p> <p>Develop, standardize, and implement procedures to help ensure documentation is requested and analyzed properly.</p>	<p>CTA implemented a performance management program; also updating certifications procedures and expect completion by January 30, 2013.</p>	

DBE Program Review Requirement	49 CFR Part 26	Site visit Finding	Discussion, Observations, and/or Findings	Recommendation	CTA Response
Remove DBE's Eligibility	§ 26.87	D	One of the twenty files reviewed by Ringold showed that CTA did not follow its process for notification of removal and, as a result, the removal decision was overturned by the U.S. Department of Transportation.	Review the removal process and implement safeguards to ensure that the policies and practices are followed by staff; Implement staff training for this and other regulatory requirements of the DBE program.	Hearing process updated. All DBE firm documents to be included in B2G system; Reconsideration Hearing Officer to review system and document process; review of all appeal correspondence by Legal Department.

Legend:

- D:** Deficiency was determined and corrective action is recommended
- ND:** No Deficiency was determined and no correction action is required
- N/A:** Requirement was considered during planning phase; no in-depth review of provision was needed
- AC:** Ringold provides an Advisory Comment for CTA consideration