U.S. Department of Transportation
Office of the Secretary of Transportation

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AUDIT SUMMARY RESPONSE TO THE OFFICE OF INSPECTOR GENERAL

February 2014

EXECUTIVE SUMMARY:

The Disadvantaged Business Enterprise (DBE) program is an affirmative action program designed to combat discrimination and its continuing effects by providing contracting opportunities on Federally-funded highway, transit, and airport projects for small businesses owned and controlled by socially and economically disadvantaged individuals. One of the primary measures used to assess the extent to which the program objectives are being achieved is the proportion of U.S. Department of Transportation (DOT) assisted contract funding awarded to DBEs. Over the years, the Department has met or exceeded the national aspirational goal and has made continuous program improvements. The development of this Response to the Office of Inspector General (OIG) continues in that vein by addressing concerns raised by the OIG in its 2013 audit, to enhance DBE program operations.

PROPOSED REVISIONS TO DOT'S DBE PROGRAM:

While the Department does not agree with all of the findings in the OIG report, there are areas in which the DBE program might be improved upon. Some of these potential improvements simply involve a clear delineation of responsibilities, while others constitute a significant addition to the functions and processes currently outlined within the Departmental Order for the DBE program.

OIG Recommendation 1:

Develop comprehensive guidance and best practices for DBE program implementation by involving DBE stakeholders from all levels. The guidance should provide direction for conducting certification processes, certification reviews, and on-site project reviews.

Department's Response and Plan of Action for Recommendation 1

The DOT has an existing body of guidance on many key aspects of the DBE program. The Department continues its survey of existing DBE program guidance and training, as well as other training resources and materials related to external civil rights. The DOT plans to further improve the administration of the program by DOT recipients by establishing an OneDOT DBE training program that addresses all major program areas including certification reviews and on-site project reviews. The Department will continue to engage in discussions with stakeholders as one of many vehicles for identifying areas where additional guidance may be appropriate. The Department is poised to enhance program administration and has

completed its on-line learning center on the Departmental Office of Civil Rights (DOCR) website where all Departmental training related to the DBE program will eventually be posted.

- **January 2014:** DOCR met with Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) Civil Rights Directors (CRDs) to discuss common training offerings.
- **February 2014:** DOCR will enhance external civil rights on-line learning centers on DOCR websites.
- **May 2014:** DOCR will develop training on advanced DBE Program topics.

OIG Recommendation 2:

Formally assign one Department Office the responsibility and accountability for integrating and managing the DBE Program.

Department's Response and Plan of Action for Recommendation 2
The DOT Order 4220.1, "Disadvantaged Business Enterprise Program Coordination and Oversight," signed by the Secretary specifies the roles, relationships and functions among the Departmental offices leading the DBE program and the Operating Administrations (OAs) that are overseeing its implementation by recipients.

OIG Recommendation 3:

Develop program performance measures to regularly assess the DBE program and evaluate whether it is achieving its objectives.

Department's Response and Plan of Action for Recommendation 3
The Department will identify and implement appropriate performance measures to gauge the overall effectiveness of the DBE program recognizing the objectives set out in the rule. Broad based performance measures tied to the rule's objectives include:

- How well recipients reach their DBE goals;
- Effectiveness of OA's oversight and technical assistance;
- Developmental assistance provided to DBEs; and
- Whether the program creates a level playing field for DBE firms to participate in DOT-assisted programs.

- **May 2014:** DOCR will identify performance measures and metrics to assess whether DOT, as a whole, is achieving program goals.

OIG Recommendation 4:

Establish a centralized Departmental data system for collecting and tracking DBE commitment and award information and require that the Operating Administrations (OAs) implement procedures to ensure that recipients are accurately reporting DBE award and other financial information.

Department's Response and Plan of Action for Recommendation 4

The OAs have different electronic systems to collect data on DBE contract activity. The Department will assess the existing data collection systems to determine whether OAs have adequate systems in place to reasonably assure the accuracy of the data reported, develop guidance to correct any deficiencies, and ensure that adequate systems are maintained throughout the Department.

- **In the Short Term:**
  - The Department will maintain DBE commitments and awards in the DBE Office Online Reporting System (DOORS). This system was created exclusively to collect DBE participation data.
  - The FAA will continue to use DOORS. The FTA will continue to use its Transportation Electronic Award Management (TEAM) system and DOORS. TEAM is a grants management system that is electronically aligned with FTA's financial systems.
  - The FHWA is considering the use of DOORS or another data base. The FHWA's CRD will develop a timeline for completion.
- **In the Mid-Term:**
  - Establish standards for data requirements, compatibility, and accessibility of data collected by the OAs.
- **In the Long Term:**
  - The DOCR and OAs will determine which system is the best solution to capture universal data. Depending on cost, resources, and system requirements, a decision will be made on whether to leverage current systems (DOORS or TEAM), enhance current DOORS capabilities, or develop a new data collection system.

OIG Recommendation 5:

Maintain the Department's DBE Web site to ensure it contains current information and includes accurate DBE program contact information. Also, establish an electronic method for submitting appeals and administrative records to the Department.

Department's Response and Plan of Action for Recommendation 5

The Department has completed its initial action in response to the OIG by making its DBE webpage up-to-date and organized in a user friendly manner. For example, the question and answer guidance documents have been organized by subject matter. Webpage maintenance is an ongoing activity and the Department plans to: (1) review the information every 6 months, starting in 6/2014, to ensure it remains up to date and (2) consider a communication process to ensure that program changes and updates are kept in sync and consistent across different website areas.

The Department is examining the best means for electronic submission of appeals and administrative records to the Department.

OIG Recommendation 6:

Develop an oversight and compliance plan with the Operating Administrations (OAs) to identify specific, required oversight processes and reviews and ensure that a sufficient number of reviews are performed based on assessed risk.

Department's Response and Plan of Action for Recommendation 6

The Department will develop a plan to identify oversight minimum requirements, best practices, and specific actions to provide oversight across the OAs. Some of the actions the Department is considering include the following:

- **May 2014:**
    - Examine current oversight practices across the OAs.
    - Identify minimum necessary elements.
    - Make use of existing best practices to the greatest extent possible.
    - Gain agreement on (1) a minimum set of consistent oversight elements for application department-wide and (2) minimum necessary frequency for inspection.
    - Create a guide to establish expectations for the number of reviews for each fiscal year.
    - Identify a tracking mechanism to track completion.

OIG Recommendation 7:

Require that recipients track and regularly report utilization data to the Operating Administrations, including each DBE's number of years in the program and the number of DBE subcontracts or prime contracts received since first becoming certified.

Department's Response and Plan of Action for Recommendation 7

Proposed changes contained in the notice of public rulemaking (NPRM) offer the potential to improve the Department's awareness of DBE achievements. The Department will consider whether additional data collection and reporting by recipients will yield tangible benefits to improving the operations of the DBE program, taking into account any additional administrative burdens and costs such requirements may impose. The Department will consider including the recommended action as a proposal in a subsequent rulemaking. The Department might also consider the following actions:

- Convene a stakeholder meeting to discuss DBE utilization as defined in the OIG report, the costs/benefits of collecting the recommended data (including the purpose to be served by collecting the data), and how to measure DBE development. Based on input received from stakeholders, the Department will determine whether to initiate rulemaking or identify other steps that may be appropriate to measure business development. If a determination is made to propose a change in the rules, an advanced NPRM will be developed for issuance. Alternatively, non-regulatory action will be initiated.

OIG Recommendation 8:

Require that Operating Administrations (OAs) work with recipients to develop ways to improve utilization rates and require the establishment of Business Development Programs (BDPs) for firms that have not received DBE work for several years.

Department's Response and Plan of Action for Recommendation 8

The Department agrees that it is important to ensure there is a sharing of best practices in effectively implementing the DBE program in ways that enable more of the available DBEs an opportunity to compete for and obtain Federally-assisted contracts. The Department is considering the following:

- Include a discussion of ways to improve utilization rates (and whether resources should be spent on that effort) in the stakeholder meeting outlined in Recommendation 7.
- Under the authority contained in 49 C.F.R. §26.35, the OAs may require a recipient to establish a Business Development Plan (BDP) utilizing the guidance that is set out in Appendix C of Part 26. The FHWA and FTA are developing guidelines to identify the facts and circumstances under which a BDP must be implemented by some recipients. The FAA will consider the outcome of this process to see what elements of BDPs are appropriate for their recipients. As part of the decision making process, there may be a meeting with stakeholders to discuss ways to improve utilization rates and whether resources should be spent on that effort.

NEXT STEPS/CONCLUSION:

In order to ensure that the nation's transportation-related DBE firms can compete for DOT contracts, certain changes must take place throughout the Department to increase DBE program effectiveness. By providing coordinated oversight of the DBE program, along with expanding and improving upon the roles and responsibilities throughout the organizational structure, the Department can more effectively ensure proper certifications and reviews are performed and it can facilitate more effective development of these DBE firms.

APPENDIX A: GLOSSARY

BDP—Business Development Programs

CRDs—Civil Rights Directors in FAA, FHWA and FTA

DBE—Disadvantaged Business Enterprise

Department or DOT—The U.S. Department of Transportation

DOCR—OST Departmental Office of Civil Rights

DOT Order—a directive issued by the Secretary regarding the DBE Program Coordination and Oversight

DOORS—the Department's DBE Office Online Reporting System

FAA—The Federal Aviation Administration

FHWA—The Federal Highway Safety Administration

FTA—The Federal Transit Administration

NPRM—Notice of Proposed Rulemaking

OA—Operating Administrations within DOT. Administrators of the OAs are referred to as Operating Administrators

OGC—OST Office of General Counsel

OIG—Office of the Inspector General

OSDBU—OST's Office of Small and Disadvantaged Business Enterprise Utilization

OST—Office of the Secretary of Transportation

Recipients—states, cities, airports or transit agencies that receive DOT funds to complete projects and that effectively administer the DBE program

Stakeholders—all persons who have a vested interest in the DBE program, recipients, DBEs, local and state entities, and community advocates

TEAM—Transportation Electronic Award Management system is FTA's grants management tool that interfaces with other financial systems with the OA

UCP—Unified Certification Program