

DBE Final Rule: FTA Tier II Recipients

FTA Office of Civil Rights

May 21, 2024



U.S. Department of Transportation
Federal Transit Administration

Welcome Message

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Associate Administrator

FTA's Office of Civil Rights (TCR)



Agenda

- DBE Background
- New Tiered Approach for FTA Recipients
- Five Provisions for Tier II
- Program Plans
- Goal Methodology
- FTA Oversight
- Recipient Frequent Questions
- Resources
- Q&A





Federal Transit Administration

- Funds more than 1,000 local public transit systems across the country that run city buses, subways, ADA paratransit, and more
- Invests more than \$20 billion annually to support and expand public transit
- In FY 2023, \$1.1 billion were awarded to DBEs through 4,100 FTA-funded contracts



FTA Office of Civil Rights

Mission

Supports mobility and economic development in America's communities by promoting equitable and accessible public transit through education and industry oversight

Responsibilities

- Oversee FTA recipient compliance with civil rights regulations and programs
- Conduct and support FTA oversight activities
- Develop civil rights guidance and policy
- Provide technical assistance and training
- Advance equity initiatives and equity integration into policies and programs

Disadvantaged Business Enterprise Program

- 49 CFR § 26 prohibits discrimination in DOT-funded contracts by ensuring fair competition for women- and minority-owned businesses bidding and working on DOT-funded contracts
 - Applies to all FTA-assisted contracts unless expressly stated otherwise
 - Does not apply to locally funded contracts
- Seeks to create a level playing field for DBEs
 - Contract/procurement policies that remove barriers for small disadvantaged businesses
 - Does not create quotas



Disadvantaged Business Enterprise Program Airport Concessions Disadvantaged Business Enterprise Program

FINAL RULE

OST • FAA • FHWA • FTA

Final Rule

- Notice of Proposed Rulemaking (NPRM) published July 21, 2022
- Final Rule issued April 9, 2024
- Most comprehensive update to the program; intended to streamline and modernize 49 CFR § 26 to reduce barriers for DBEs and clarify requirements for recipients
- FTA's transit-specific provisions improve the program for recipients, TVMs, and DBEs





Disadvantaged Business Enterprise Program
Airport Concessions Disadvantaged Business Enterprise Program

FINAL RULE

OST • FAA • FHWA • FTA

DBE Program Applicability

Most FTA funds are covered, but not all

- Applies to capital, operations, and planning funds
- Applies with DBE multimodal funds through FTA, FHWA, and FAA, but not other modes
- Tribal Transit is exempt

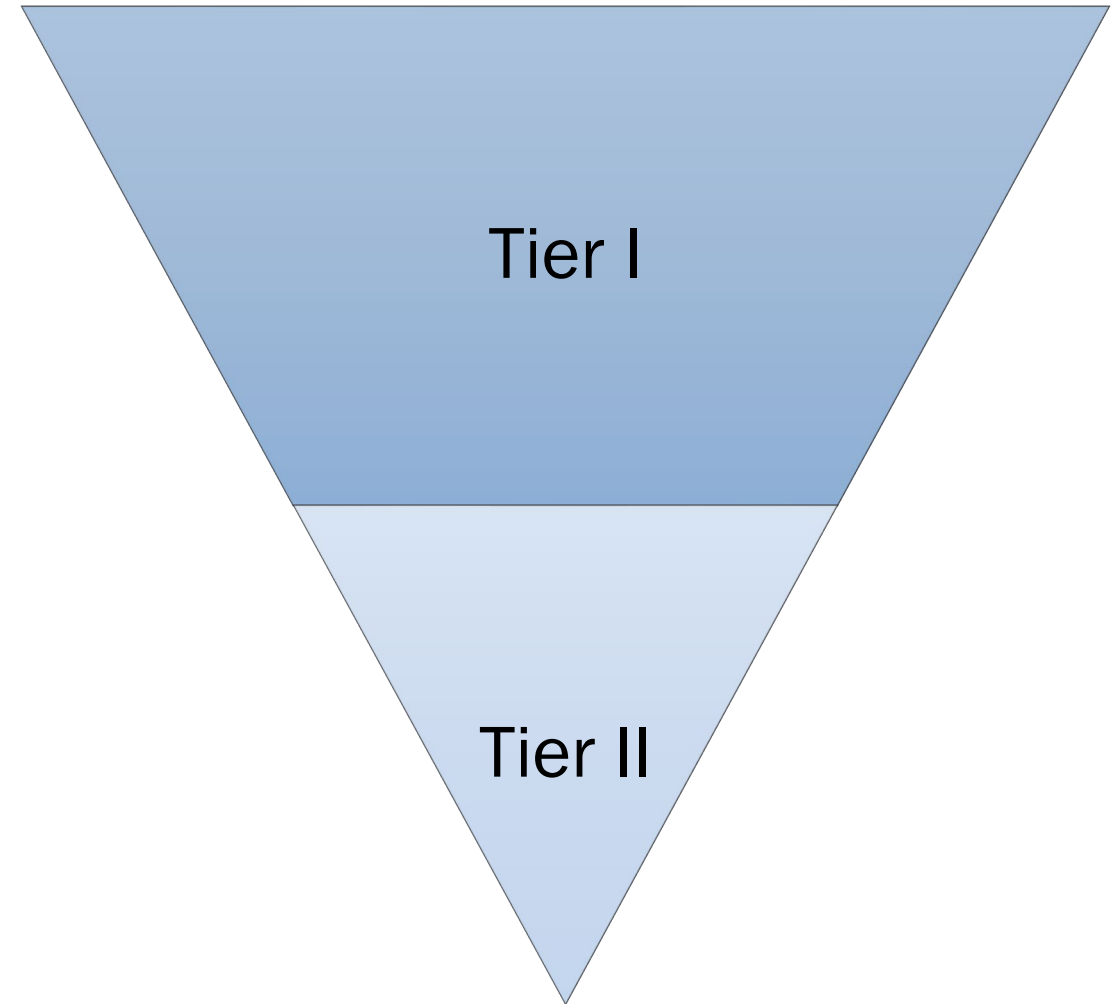


New Tiered Approach

Item	Tier I Recipients	Tier II Recipients
Criteria	<ul style="list-style-type: none"> Reasonably anticipates awarding more than \$670,000 in FTA funds annually 	<ul style="list-style-type: none"> Reasonably anticipates awarding \$670,000 or less in FTA funds annually
Requirements	<ul style="list-style-type: none"> All provisions of 49 CFR § 26 Update existing DBE program plan to reflect new rule by FY 2025 	<ul style="list-style-type: none"> Report on FTA-funded contract activity (49 CFR §26.11) Use the contract assurances (49 CFR §26.13) Develop/distribute policy statement (49 CFR §26.23) Develop/implement small business element (49 CFR §26.39) Follow TVM requirements (49 CFR §26.49)
Scope	<ul style="list-style-type: none"> ~430 recipients 	<ul style="list-style-type: none"> ~200 recipients
Effective FY 2025		

Why a Tiered Approach?

- Bring more recipients into the DBE program
- Reduce administrative burden on smaller recipients
- Increase data FTA receives for oversight purposes
 - Old rule = no visibility to DBE contracting opportunities among smallest recipients (<\$250,000)
- Use data to inform future policymaking



New FTA Guidance for Tier II Recipients

- FTA issued guidance on April 25, 2024
- Covers how Tier II recipients should implement the five applicable provisions
- Notes Tier II recipients do not need to submit a DBE program plan
- Sets expectation that Tier II recipients “memorialize the policies and procedures needed to ensure compliance with 49 CFR § 26”



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

**Guidance for FTA Tier II Recipients on Implementing
the Disadvantaged Business Enterprise (DBE) Program
Final Rule Published April 9, 2024**

Issued April 25, 2024

www.transit.dot.gov/DBE



Five Provisions for Tier II

FTA Tier II Recipients must maintain a program locally that includes:

1.	Recordkeeping and Reporting Requirements (49 CFR §26.11)
2.	Contract Assurance (49 CFR §26.13)
3.	Policy Statement (49 CFR §26.23)
4.	Small Business Element (49 CFR §26.39)
5.	Transit Vehicle Procurement Requirements (49 CFR §26.49)

Recordkeeping and Reporting Requirements

Uniform Report

- Tier II reporting once per year via TrAMS
 - First report due December 1, 2025, covering FY 2025
 - Uniform Report issued to Tier II recipients in October
- Information Captured
 - Awards/commitments/payments to DBEs and non-DBEs
 - Number and dollar value of contracts
 - Ethnicity and gender of DBE firm owners
 - [NEW] Individual firms, NAICS codes, and work type awarded/committed
 - [NEW] Dollar amount of individual contracts

Recordkeeping and Reporting Requirements

Bidders List

- Captures additional information, including:
 - Firm name and address
 - Firm's age and status as a DBE or non-DBE
 - Race and gender information for the firm's majority owner
 - NAICS code applicable to each scope of work the firm sought to perform in its bid
 - Annual gross receipts of the firm
- DOT will issue guidance on how/when to submit (will not be TrAMS)



Contract Assurance

Use the language verbatim

- FTA-Recipient Agreements, §26.13(a)
- Recipient-Prime Agreements, §26.13(b)

Have a plan to address breaches

- Should develop quality assurance and control mechanisms

Policy Statement

Intended to reflect the DBE program objectives found in 49 CFR §26.1

- Usually 1–2 pages
- Must be circulated among staff
- Must be posted on your website
- Must be emailed to certified DBEs in your state
- Must be signed by chief executive (and should be updated accordingly)



Small Business Element (SBE)

- SBE is a race/gender-neutral component of the DBE program
- Recipients must evaluate procurement practices and identify barriers to small business participation
- Examples of how to address barriers:
 - Set-aside program based on contract \$ amount (e.g., <\$1 million)
 - Requiring primes to specify subcontracting opportunities
 - Structuring contracts so that small businesses can reasonably perform
 - Business development services



Small Business Element (SBE) *Continued*

- Some Tier II recipients are already meet requirements
 - Post-2015 DBE program should have an SBE
 - You may have a local small business program
- Some Tier II recipients need to develop a SBE from scratch
 - Evaluate your contracting practices
 - Find and address barriers for small business participation
- Tier IIs are not required to submit their SBE for review and approval

Transit Vehicle Procurement Requirements

Specific rules for transit vehicle procurements

- Recipients may only award FTA-assisted contacts to “eligible” DBE-certified TVMs
- TVM must report within 30 days of becoming contractually required to procure a transit vehicle
- Exclude transit vehicle awards from your DBE program
- Eligibility list on FTA’s DBE webpage





DBE Program Plan

- Tier II recipients must have written policies to ensure compliance with 49 CFR §26
- Each recipient should review documents related to procurement, and federal compliance to ensure DBE is integrated properly
- Tier II recipients are not required to submit a program plan to FTA for review and approval
- Sample plan in development



Goal Methodology

- Tier II recipients are **not required** to develop and submit to FTA an overall goal unless:
 - A project or contract will have specific goals (race/gender-conscious); OR
 - A one-time project or contract exceeds \$670k
- Recipients are allowed to develop a race/gender-neutral goal without submitting to FTA. Retain:
 - DBE goal and supporting methodology
 - Uniform Report records for the goal period
- Small business element goals are permitted

Additional Part 26 requirements may apply to Tier II recipients using race/gender-conscious programs

GOALS:

1.-

2.-

3.-



Implementation Timeline

- Tier II recipients must implement their DBE programs is October 9, 2024
- Recipients with existing DBE program plans may begin implementing their Tier II program immediately
 - Required to submit Uniform Reports due June 1 and December 1, 2024, and then will submit annually



FTA Oversight

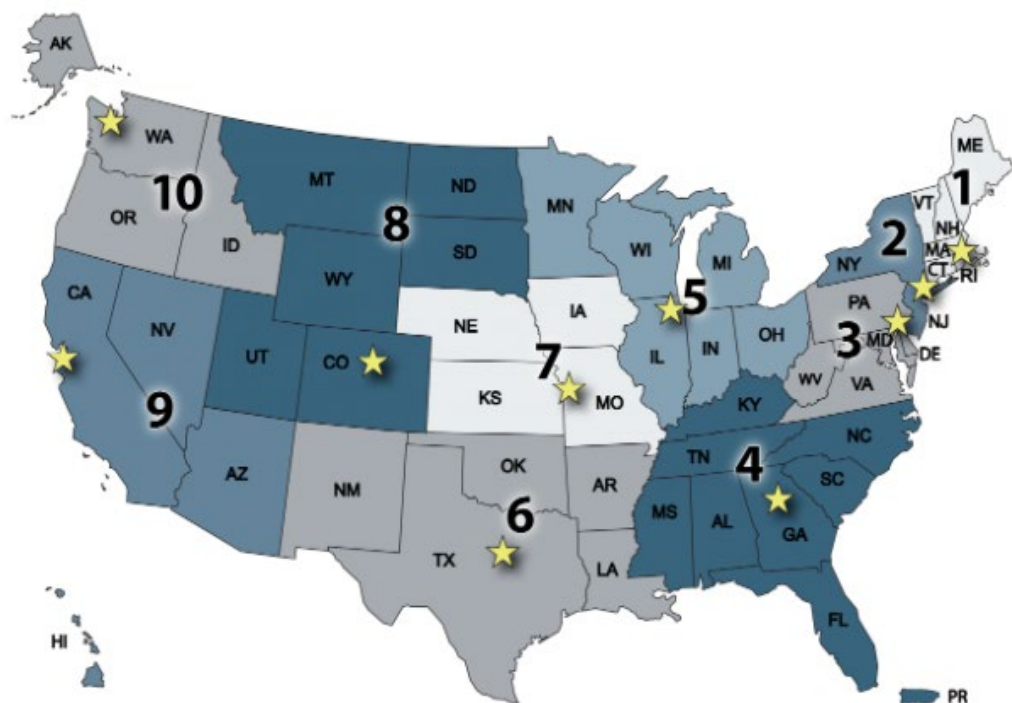
- FTA conducts routine and ad hoc oversight activities:
 - Uniform Report reviews
 - DBE program and goal reviews
 - Compliance reviews (e.g., Triennial Reviews)
 - Complaint investigations
- Failure to implement corrective actions may result in a noncompliance finding and denial of funding



Recipient Frequent Questions

- Q: How do we handle new DBE program submissions due before October 9, 2024?
- Q: Are micro purchases (purchases of less than \$10,000) subject to DBE or exempt from DBE under the new rule?
- Q: Do Tier II recipients still need to submit DBE Uniform reports on June 1, 2024, and December 1, 2024? How have submission deadlines changed under the new rule?

FTA Civil Rights Points of Contact



Region	Point of Contact
Region 1	Margaret “Peggy” Griffin
Region 2	Jay Ciaverella
Region 3	Jay Ciaverella
Region 4	Eboni Younger-Riehl
Region 5	Nate Seeskin
Region 6	Margaret “Peggy” Griffin
Region 7	Nate Seeskin
Region 8	Eboni Younger-Riehl
Region 9	Karin Vosgueritchian
Region 10	Karin Vosgueritchian

Email: FTACivilRightsSupport@dot.gov



Upcoming FTA DBE Final Rule Webinar

Requirements for TVMs in the New DBE Rule

Tuesday, July 30, 2024

3:00 p.m.–4:30 p.m. EST



DBE Resources

DOT DBE Final Rule

www.transportation.gov/DBEFinalRule

FTA Office of Civil Rights

www.transit.dot.gov/civilrights

FTA Guidance for Tier II Recipients

www.transit.dot.gov/DBE

Subscribe to FTA GovDelivery Email Blasts

<https://public.govdelivery.com/accounts/USDOTFTA/subscriber/new>

Still have a question after reviewing the resources?

Email the FTA Office of Civil Rights:

FTACivilRightsSupport@dot.gov

Thank you!

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FTA Office of Civil Rights Website: www.transit.dot.gov/civilrights



U.S. Department of Transportation
Federal Transit Administration

FTA Mission, Vision, Values



Mission

Improve America's Communities
through Public Transportation



Vision

A Better Quality of Life for All Built
on Public Transportation Excellence

Values

<i>Service</i>	Provide reliable, transparent, responsive, and anticipatory services to meet stakeholder needs
<i>Integrity</i>	Commitment to the highest professional and ethical standards
<i>Innovation</i>	Foster new ideas, concepts, and solutions for improved outcomes
<i>Sustainability</i>	Optimize decisions, resources, and systems to make long-term positive impacts on the environment, infrastructure, and safety
<i>Equity</i>	Remove barriers for systemically underserved communities to access all aspects of economic, social, and civic life