

DBE Final Rule: ***Transit Vehicle Manufacturer Requirements***

FTA Office of Civil Rights

July 30, 2024



U.S. Department of Transportation
Federal Transit Administration



Agenda

- DBE Background
- DBE Final Rule Updates for TVMs
 - TVM Requirements
 - Reporting
 - DBE Goal Setting and Methodologies
 - Dealing with Dealerships
 - Merged and Acquired Entities
 - Prompt Payment
- Upcoming Guidance
- Resources





Federal Transit Administration

- Funds local public transit systems across the country that purchase transit vehicles such as buses, rail cars, and trolleys
- FY 2021 – FY 2023 \$13.8M in FTA funds used for 4,500 vehicle procurements
- FY 2024 (to date) \$10M in FTA funds contracted for 874 vehicle procurements across 64 eligible transit vehicle manufacturers



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 Part 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 effective date May 9, 2024
- Most comprehensive update to the program; intended to streamline and modernize 49 CFR Part 26 to reduce barriers for DBEs and clarify requirements for recipients
- FTA's transit-specific provisions improve the program for recipients, TVMs, and DBEs

Final Rule Updates – Impact on TVMs

General Changes

- Updated rules on how to count participation of DBE material suppliers
- Expands recipient reporting requirements for Uniform Report and DBE Bidders List
- Strengthens monitoring and prompt payment requirements
- Expedites interstate certification process
- Increases the personal net worth limit for DBE owners and simplifies the calculation

TVM-Specific Changes

- Updates the TVM definition
- Clarifies TVM award reporting requirements
- Codifies current FTA practice for project goal exception

TVM Rules Applicability

TVM rules apply when FTA funds are used to procure transit vehicles

- “Transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation”
- “A transit vehicle is any vehicle used for transit purposes, except vehicles manufactured by entities that manufacture, mass-produce, or distribute vehicles primarily for personal use”
 - Examples of transit vehicles: buses, rail cars, trolleys, ferries, and paratransit vehicles
 - May also include cutaway and personal-use vehicles if modified for transit purposes by the TVM



How To: Eligibility

- TVMs must submit:
 - DBE program plan to initiate eligibility to participate in FTA-funded vehicle procurements
 - Updated DBE program plan if there are significant changes
 - Annual DBE goal methodology on August 1 to FTA for review
 - Semiannual Uniform Report of DBE Awards/Commitments and Payments on June 1 and December 1 of each fiscal year to remain eligible to bid
- TVMs are subject to the same operational requirements for their DBE programs as direct funding recipients, with important exceptions
- A TVM's failure to implement the DBE program consistent with 49 CFR Part 26 may result in removal from FTA's List of Eligible TVMs and the inability to bid on future FTA-assisted vehicle procurements

Setting DBE Goals

A DBE goal is the percentage of FTA funds a TVM anticipates awarding to ready, willing, and able DBEs who provide supplies or services during FTA-assisted vehicle procurements. The DBE goal methodology has 8 minimum requirements:

	DBE Goal Methodology
1.	Detailed list of contracting opportunities
2.	Geographic Market Area (GMA)
3.	Step 1 Base Figure
4.	Step 2 Adjustment
5.	Race-Conscious/Race-Neutral Breakdown
6.	List of Sources used to Establish the Goal
7.	Evidence of Meaningful Consultation
8.	Proof of Publication

TVM Considerations for DBE Goals

Special DBE goal considerations for TVMs:

- Not limited to DBEs certified in the TVM's home state location
 - Should include outreach and consultation documentation for each state
 - Subcontractor must be certified as a DBE in the state where work is performed to count towards goal attainment
- Some work may not be directly related to the FTA-funded contracts
 - Can include work affected by FTA-funded contracts in goal methodology
- Payment to a third party does not need to be a subcontract to the FTA-assisted contract
- Base amount should only include the value of work to be subcontracted
 - If the TVM can demonstrate no real opportunity for small businesses for certain subcontracts, they may exclude from the base amount

Goal Methodology Submission

FTA accepts TVM goal methodologies on a rolling basis; if a TVM intends to bid during the next fiscal year the TVM must submit its goal methodology by August 1 of the current year

- Extension requests by TVMs currently listed on the FTA List of Eligible TVMs must be reviewed and approved by FTA before October 1
- If the TVM has a letter from FTA stating the goal methodology has been received, the TVM is eligible to bid
- For deficiencies in goal methodologies, FTA will issue a “In Review Letter,” which allows 30 days for the TVM to come into compliance
- TVMs are deemed eligible to bid until FTA disapproves the goal methodology. If deficiencies are not addressed within 30 days, FTA to issue a disapproval, which will result in removal from the FTA List of Eligible TVMs

All submissions must be sent via email to FTATVMSubmissions@dot.gov

FTA List of Eligible TVMs

There are currently **77** manufacturers on the FTA List of Eligible TVMs

United States Department of Transportation			
Federal Transit Administration			
Search			
About Funding Regulations & Programs			
Home			
Civil Rights			
Transit Vehicle Manufacturers List			
Transit Vehicle Manufacturer	Address	FY2024 DBE Goal %	DBE Liaison Officer/ Email
A and J Vans, Inc.*	333 West Washington Street Valders, WI	2.09%	Travis Pfile
ABC Bus, Inc.*	17469 West Colonial Drive Winter Garden, FL 34787	0.99%	Brian Nelson
Advanced Wheels of Technology, Inc.*	33 Bradley Park Road P.O. Box 908 East Granby, CT	1.20%	Ed Basile
Alexander Dennis*	31566 Railroad Canyon Road, Suite 342 Canyon Lake, CA	2.50%	Judy Lovitt
Alstom Transportation, Inc.*	1 Transit Drive Hornell, NY	3.74%	James "JD" Daniel

- * Indicates the goal methodology has been submitted and is pending review by FTA
- If listed on FTA's List of Eligible TVMs, the TVM is eligible to bid on FTA-assisted procurements
- Addresses only a vendor's eligibility as a TVM under the DBE regulations
 - There may be other laws or regulations that affect whether the TVM is eligible to be awarded an FTA-funded contract

No Eligible TVMs?

- Upon FTA approval, recipients may procure transit vehicles from entities that are not eligible TVMs by establishing a project goal
- Requirements for FTA approval of a transit vehicle project goal:
 - Approval of decision to use a project goal before public solicitation
 - Evidence of no TVMs available to produce the vehicle sought
 - Project goal methodology used complies with 49 CFR § 26.45



Vehicle Award Reporting Requirement



- Recipients must report procurement of transit vehicles to FTA within 30 days of becoming contractually required to procure the vehicles. This timeline may be impacted by:
 - Option contracts
 - Ordering from an authorized schedule
 - Piggybacks
- Recipients are also required to report transit vehicle procurements of their subrecipients via “Transit Vehicle Award Reporting Form” on the FTA website
- Practices no longer permitted:
 - Reporting total value authorized vs. contractually required
 - Reporting total value including non-FTA funds

Dealing with Dealerships

- Recipients must specify they will not accept bids unless the vehicles are manufactured by eligible TVMs
- Prime bidders that are dealerships may list several potential manufacturers
 - FTA funds may only be used on eligible TVMs at the time of bidding
 - Cost of vehicles manufactured by other entities must be excluded from match calculations
- Recipients will also identify the dealership on the TVM Award Report



Merged and Acquired Entities

- If the manufacturing processes and supply chain remain the same after the acquisition/merger, the acquired TVM's goal will apply to the acquiring/new entity for the remainder of the fiscal year. The acquiring/new entity:
 - Should notify FTA and provide details for updates to the List of Eligible TVMs
 - Will be required to submit revised DBE goal methodology documentation, but will not be required to calculate a new goal for the remainder of the fiscal year
 - Will be required to submit a new DBE program plan
- If the manufacturing processes or supply chain changes, the acquiring/new entity:
 - Will be required to submit a new DBE program plan
 - Will need to calculate and submit a new DBE goal
 - May request to use the acquired/merged TVM's goal as an interim goal pursuant to 49 CFR § 26.45(f)(5)

Prompt Payment



- Prompt payment requirements are the same as any other FTA-funded contract. TVMs must pay all subcontractors within 30 days of receiving payment from recipient:
 - Failure to meet requirement qualifies as a violation and could affect eligibility to be on future FTA-funded procurement
- If contract with recipient structured as payment upon delivery, TVM should pay subcontractors as quickly as financially feasible:
 - Payment may extend beyond 30 days if payment would have a material negative impact on TVM finances
 - In most cases, FTA expects TVMs to make incremental payments

Upcoming Guidance

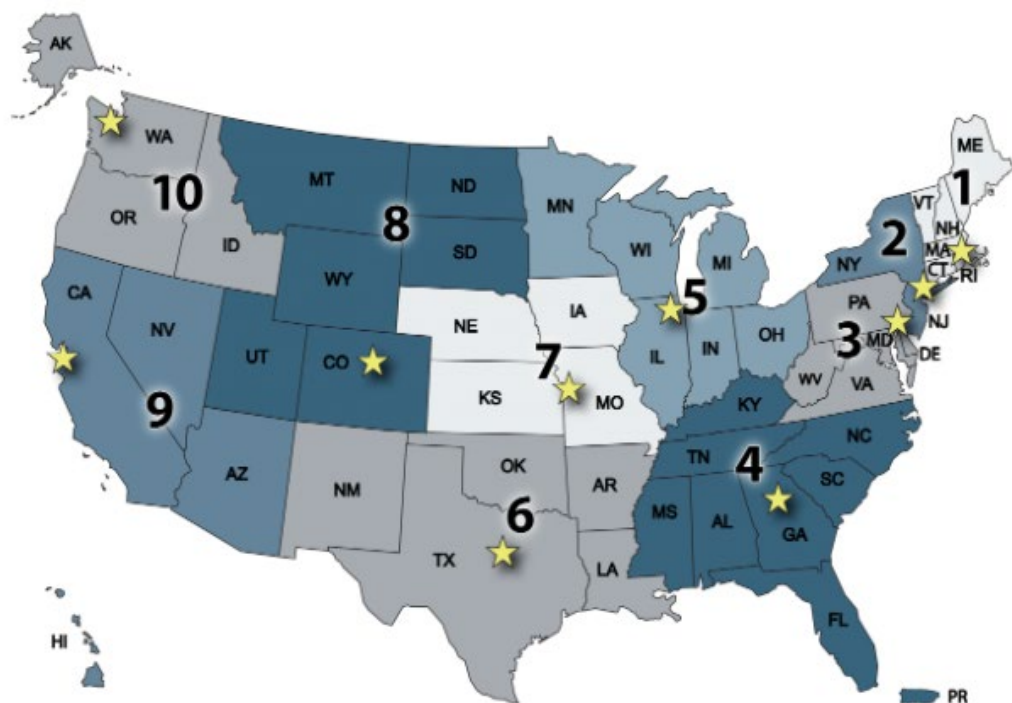
Preamble: “We acknowledge that the final rule will result in several changes for recipients and TVMs; FTA is planning issue guidance to TVMs on how to fulfill their reporting requirements under the new rules.”

Discussion Questions

- Which other topics do you feel most unsure about?
- Which requirements would benefit from guidance on implementation?
- What type of resources would you like to see FTA provide?



FTA Civil Rights Points of Contact



Region	Recipient Point of Contact
Region 1	Margaret “Peggy” Griffin
Region 2	Jay Ciavarella
Region 3	Jay Ciavarella
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

TA Email: FTACivilRightsSupport@dot.gov

Additional DBE Resources

FTA Guidance for TVMs

www.transit.dot.gov/TVM

DOT DBE Final Rule

www.transportation.gov/DBEFinalRule

FTA Office of Civil Rights

www.transit.dot.gov/civilrights

Subscribe to FTA GovDelivery Email Blasts

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

DOT Final Rule Webinars

<https://www.transportation.gov/dbe-rulemaking/webcast>

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