



TDOT
Department of
Transportation



Performance Audit of the Civil Rights Division's Disadvantaged Business Enterprise Program

Tennessee Department of Transportation - Division of Internal Audit
Government Accountability Professionals



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The mission of the Division of Internal Audit is to provide objective analysis and information critical to better decision making and enhancing the overall governance capability within the Tennessee Department of Transportation.

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Results in Brief

We conducted a performance audit of the Civil Rights Division's processes related to the Disadvantaged Business Enterprise (DBE) program covering the period July 1, 2013 through June 30, 2015. The audit results indicated that for a majority of the certification and supportive services activities the integrity of the DBE program appears intact. However, minor process flow improvements and more robust internal controls will ensure compliance with existing statutes and improve the overall effectiveness and efficiency of the program. Audit objective questions and conclusions included ascertaining the following objective questions:

- ***Do the Civil Rights Division's DBE approval processes ensure compliance with the Tennessee Unified Certification Procedures (TNUCP)?***
- ***Are there sufficient internal controls to ensure the continued eligibility of each certified DBE firm?***
- ***Are internal controls in place to ensure that TDOT receives value for payments to the DBE Supportive Services Program, and the payments comply with federal requirements?***

Generally yes. Our performance audit of the Civil Rights Division's DBE processes indicated that management controls were in place and working as intended. We recommend slight process improvements and additional internal controls to enhance further the transactional integrity, accuracy, and compliance with federal requirements.



*Internal Control Evaluation: **Managed***

Key Recommendations

- Management should collaborate with Tennessee Department of Transportation (TDOT) Information Technology Division to periodically receive a DBE database report and reconcile this report to internal records. Reconciling the database to internal records ensures the accuracy, validity, and concurrency of DBE certifications.
- Management should develop a formal process to ensure new applicants or previously certified DBE firms, do not appear in the United States Department of Transportation's (USDOT) Ineligibility Determination Online Database or are listed as disbarred or suspended in the System for Award Management's (SAM) Excluded Parties List System (EPLS).
- The Civil Rights Division should work with the TDOT Finance and Legal Divisions to incorporate all provisions required by Federal law for any future supportive services contracts.

Introduction

Audit Initiation

We conducted a *Performance Audit of the Civil Rights Division* in fulfillment of the annual audit plan for the fiscal year 2015, as presented to the Commissioner of Transportation, the Deputy Commissioner of Transportation, and the Comptroller of the Treasury.

The overarching goal of every performance audit engagement conducted by the Division of Internal Audit (IA) is to assist those charged with governance by providing information to help improve operational performance, reduce costs, facilitate decision-making, and contribute to public accountability.

Background

The Civil Rights Division (Civil Rights) is one of 30 divisions within TDOT and is responsible for the administration of both state and federal programs of nondiscrimination that includes Title VI, Affirmative Action, and Small Business Development. The varied operational functions of Civil Rights include the following:

- Promote the development of small businesses in Tennessee through education and training
- Create a level playing field for disadvantaged businesses to compete fairly for Department of Transportation (DOT) assisted contracts
- Administer the Title VI program to help prevent discrimination in federal aid programs and TDOT's operations
- Establish a systematic and ongoing public involvement process that engages communities affected by transportation projects
- Implement and ensure compliance with federal and state Affirmative Action Plans and Equal Employment Opportunity (EEO) policies and procedures
- Create awareness of statutory non-discriminatory requirements

The Civil Rights Division is also responsible for developing and implementing internal and external affirmative action plans, investigating complaints of alleged discrimination for TDOT, and interacting with businesses and leaders across the State of Tennessee to provide education and training, promote nondiscrimination, and facilitating opportunities for small businesses.

Operational and Financial Information

The Civil Rights Division operates out of a centralized organizational structure, having all division employees located at the TDOT headquarters in Nashville. The Director of Civil Rights heads the Division which is divided into three program sections (see Exhibit A).

Affirmative Action

The Affirmative Action Program facilitates equal opportunities throughout the department by ensuring all employment practices are conducted in a fair manner. This includes implementing and ensuring compliance with federal and state Affirmative Action Plans and Equal Employment Opportunity (EEO) policies and procedures. As part of its Affirmative Action strategy, the program provides diversity training and seeks to retain and recruit minority and female employees and applicants. Additionally, the Affirmative Action Program works to ensure EEO compliance and On-the-Job-Training externally with contractors and consultants.

Title VI¹

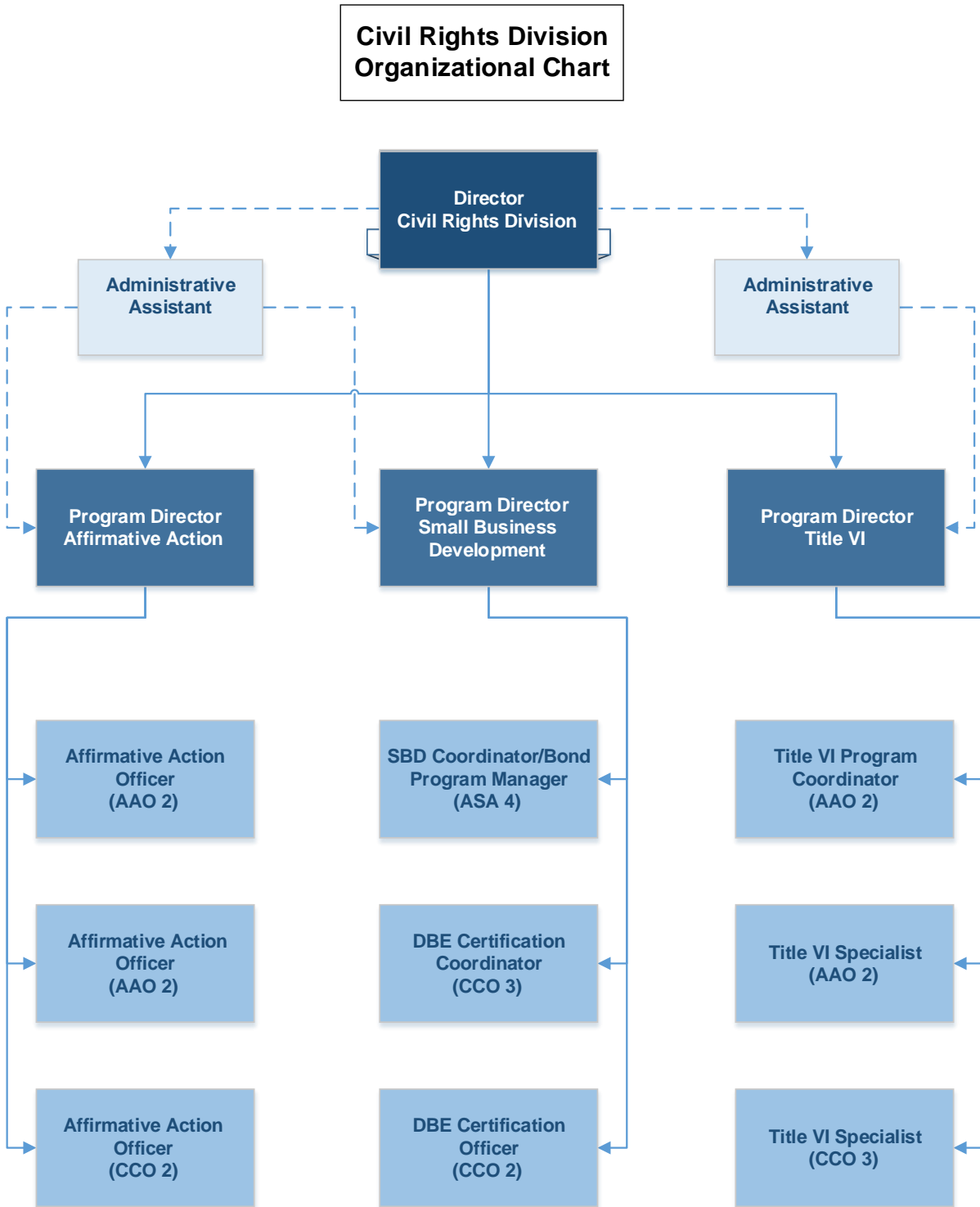
The Title VI Program is responsible for providing leadership, direction, and policy to ensure compliance with Title VI of the 1964 Civil Rights Act and environmental justice principles. TDOT, as the recipient of federal aid, establishes its Title VI Program goals and measurements to attain nondiscrimination in all of its operations.

Small Business Development

The Small Business Development Program (SBDP) is charged with the responsibility of assuring the enforcement of Code of Federal Regulations (CFR), specifically 49 CFR Part 26 for the DBE program. TDOT receives federal financial assistance from the USDOT, and as a condition of receiving this assistance, designed the DBE program to meet the objectives stated in 49 CFR Part 26.

¹ **Title VI of the 1964 Civil Rights Act** (42 U.S.C.§2000d) requires the following, *no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance.*

Exhibit A – Civil Rights Division Organizational Chart



Disadvantaged Business Enterprise Program: Background and Processes

The U.S. Congress established the Disadvantaged Business Enterprise Program (DBE) in 1982 to:

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts,
- Help remove barriers to the participation of DBEs in USDOT-assisted contracts, and
- Assist the development of disadvantaged firms that cannot compete successfully in the marketplace outside of the DBE program.

The TDOT DBE program lies within the Small Business Development section of the Civil Rights Division and consists of four primary areas of responsibility: DBE Certifications and Tennessee Unified Certification Procedures (TNUCP) Administration; DBE Goals, Records, and Reporting; Project Monitoring; and Supportive Services.

DBE Certifications and TNUCP Administration - The integrity of the DBE program relies on systematic procedures to ensure that only small business firms independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons are certified as DBE firms.

Firms seeking to participate in TDOT contracts as a DBEs submit the Uniform Certification Application and required supporting documents to the TDOT Civil Rights Division (*Appendix F to 49 CFR Part 26*). The Contract Compliance Officer (CCO) for Certifications reviews the submitted documents and completes a checklist to ensure that all necessary documents have been received. The application documents are analyzed to make an initial determination if the firm meets eligibility requirements. The CCO makes a recommendation of approval or denial based on the review of the application documents and the performance of an on-site review. The Director of Civil Rights makes the final determination for DBE certification and issues an approval letter which is mailed to the applicant along with their DBE Certificate.

In addition to the certification process, the CCO for Certifications is responsible for maintaining records in the statewide directory of certified DBE firms. The directory includes firms certified by TDOT, one of the seven partner agencies within the TNUCP, and certifying agencies in the home states of firms not headquartered in Tennessee that wish to participate in contracts with the State of Tennessee. This database is used by contractors, state agencies, and recipients of grant funds to identify DBE firms.

DBE Goals, Records, and Reporting - TDOT is required to establish a three-year agency goal for DBE participation in projects under the Federal Highway Program, determine individual project goals, and report the agency's performance in meeting DBE goals to the Federal Highway Administration (FHWA). The Civil Rights Division and Construction

Division work together to ensure that reasonable goals for DBE participation are established and attained by TDOT. The key activities of the Civil Rights Division in this area are:

- Develop TDOT's Annual Goal for DBE participation
- Participate with the Construction Division in project goal setting
- Create DBE bidder lists for contract lettings
- Submit the Uniform Report of DBE Awards/Commitments to the FHWA

Project Monitoring - The DBE program monitors TDOT projects to ensure that commitments to DBE participation by prime contractors are fulfilled. The key tasks involved in project monitoring are:

- Review Commercially Useful Function (CUF) checklists and addressing red flags
- Review prompt payment mechanisms
- Perform reviews of contractor Monthly DBE progress/Payment Reports
- Perform construction project site visits
- Obtain Certification of payments to DBEs at project completion (Form CC-3)

Supportive Services - A requirement of 49 CFR Part 26 is that DBE programs must provide supportive services to DBE firms to assist in the development of the firms to promote increased participation of disadvantaged businesses in federal-aid highway contracts. The TDOT DBE program provides supportive services through a 5-year contract with Tyler Construction Engineers, P.C. (TCE). Additionally, TCE provides a more intensive Business Development Program that is available to a select number of DBEs (no less than 5 and no more than 15) for enhanced developmental training and support. The program assists firms in developing into non-traditional areas of work and/or to compete outside of the DBE program.

Audit Overview

The aim of the *Performance Audit of the Civil Rights Division* engagement was to provide TDOT's Senior Leadership and the management of the Civil Rights Division, information used for: oversight, stewardship of public resources, accountability, transparency, and improvements of government programs and operations.

We utilized a risk management based methodology to provide an assessment of (a) general process controls related to the DBE program, (b) transparency and accuracy of DBE transactions, and (c) compliance with federal regulations, state statutes, and TDOT policies. Our audit activities focused on areas of process improvements that will enable the efficient use of limited resources, promote the overall integrity of the DBE program, and enhance effectiveness of service delivery.

The scope of this performance audit focused on assessing existing internal controls for the DBE certification and supportive services processes. We examined transactions from July 1, 2013 through June 30, 2015. During the period under review, we relied on:

- information provided by the Civil Rights Division
- query outputs from Edison and federal databases
- physical records maintained by the Civil Rights Division
- information contained within the websites of federal agencies
- the Code of Federal Regulations
- interviews or discussions with Civil Rights personnel

Audit activities focused on compliance with existing regulations, efficient use of resources, effectiveness of service delivery and the overall integrity of the DBE program.

Objectives and Conclusions

I. Do the Civil Rights Division's DBE approval processes ensure compliance with the TNUCP?

Generally yes. Results of the work conducted indicated that the firms entered into the DBE database appear to have been properly certified through the TNUCP and approved by the Director of the Civil Rights Division. However, process improvements and stronger oversight of database access rights are necessary to ensure the validity of the information in the Statewide DBE Database. We conducted the following procedures to ascertain the overall integrity of the listings in the DBE database.

Review of Certification Documentation for Firms Entered Into the Statewide DBE Database

We obtained a report of 272 firms which were added to the directory of certified DBE firms from July 1, 2013 through June 30, 2015. Of those 272 firms, we identified 143 company records that listed TDOT as the certifying agency. Table 1 depicts a summary of the firms added to the DBE database in the audit period, separated according to the certifying agency.

Table 1: Summary of DBE Database Entries July 1, 2013 through June 30, 2015

TNUCP Certifying Partner	Female Owned	Male Owned	Total	Percentage
Chattanooga Area Regional Transportation Authority	2	1	3	1.10%
Memphis Area Transit Authority	8	15	23	8.46%
Memphis-Shelby County Airport Authority	35	39	74	27.21%
Metropolitan Knoxville Airport Authority	0	1	1	0.37%
Metropolitan Nashville Airport Authority	13	15	28	10.29%
Tennessee Department of Transportation	79	64	143	52.57%
Total DBE Records Created in Scope	137	135	272	100.00%

Source: Internal Audit Test Work

Our test work on new entries to the statewide directory of certified DBE firms included an examination of the documentation included in the DBE application files. We selected a random sample of 30 firms added to the database, which were certified by TDOT, and obtained the hard copy file for each randomly selected applicant from the Civil Rights Division file room. We examined each file to verify the following:

- Existence of an approval letter signed by the Director of Civil Rights and dated prior to the date of entry into the statewide DBE database indicating the firm was properly approved as a certified DBE by the Director prior to entry
- Tax returns submitted by the applicant as proof the firm met the Small Business Administration eligibility standard for business size based on the average annual gross receipts over the previous three fiscal years
- Existence of an On-Site Review form dated prior to the date the firm was entered into the database and signed by the reviewer and applicant

The results of our work showed that all the applicant files reviewed included the documentation to support the certification decision. However, we noted that 20 of the records were entered into the DBE database **prior** to the date of the Director’s approval letter (See Observation A).

Review of DBE Database Edits

The statewide database of certified DBE firms is part of TDOT’s Business Objects Enterprise (BOE), which logs the network user name of the author of any edits made to the DBE database. New database entries and edits to critical information should only be performed by the DBE database administrator, or the appropriate Civil Rights Division personnel, and only at the request of the database administrator.

We obtained a report of 27,223 edits to DBE records performed from July 1, 2013 through June 30, 2015. Our test work included identifying the personnel who performed each edit and the category of information (fields) edited. The results, summarized in Table 2 below, indicated that only authorized personnel performed all changes to critical information.

Table 2: Summary of DBE Database Edits July 1, 2013 through June 30, 2015

Type of Edit	Database Administrator	Administrative Assistant	SYSTEM	Total Edits By Type
Company Name	374	0	0	374
County	24,912	0	0	24,912
DBE Address	290	5	79	374
DBE Type	294	0	0	294
NAICS Code	895	0	0	895
Phone Number	288	5	81	374
Totals	27,053	10	160	27,223

Source: Internal Audit Test Work

Review of DBE Database User Access Rights

Data entry to the statewide database of certified DBE firms is limited to authorized personnel through application access rights. We obtained, from the TDOT Information Technology Division, a list of the network users for all personnel with administrative or data entry rights to the DBE database. We subsequently cross-referenced this list to the active TDOT employee roster to identify the division and position of each of the listed users. Results of our work indicated that a former TDOT employee was still listed with active user rights to the DBE database. Our review also showed three users who were not included in the list of active TDOT employees and had access to the DBE database (See Observation B). Table 3 represents the users with administrative or data entry access rights to the DBE database.

Table 3: DBE Database User Access Rights

Employee User ID	User Role	Division	Database Code	Auditor Comments
XXXX879	Admin	Civil Rights	DBE Director	
XXXX100	Admin	IT		Application Development Office
XXXX271	Admin	Unknown	Unknown	In TDOT phonebook, not in Roster
XXXX343	Admin	Administration	TRNS COOR	In TDOT phonebook, not in Roster
XXXX885	Data Entry	IT	BIS ADV	Application Development Office
XXXX295	Data Entry	N/A	N/A	Former DBE program Director
XXXX417	Data Entry	Unknown	Unknown	In TDOT phonebook, not in Roster
XXXX592	Admin	Civil Rights	AA 1	Administrative assistant
XXXX515	Admin	Civil Rights	CON CMP O3	Database Administrator
XXXX390	Admin	Civil Rights	Division Director	

Source: TDOT Information Technology Division

II. Are there sufficient internal controls to ensure the continued eligibility of each certified DBE firm?

Generally yes. Results of the work conducted indicated that firms listed as certified DBEs in Tennessee are annually required to attest that *no changes* have occurred affecting the company's eligibility, and to submit financial information which is reviewed to ensure they continue to meet eligibility standards. However, testing also indicated that the statewide DBE database included firms that had been previously denied DBE certification or have been decertified in other states. Our tests also showed that one firm in the DBE database had an owner that was excluded from participating in federal contracts. We conducted the following procedures to test the controls in place to ensure that previously certified DBE firms continue to meet eligibility standards.

Review of Required Annual Submissions by Certified DBE Firms

Each year on the anniversary date of DBE certification, owners must affirm that there have not been any changes to the firm's circumstances affecting its eligibility to be a certified DBE. To satisfy the requirement, certified DBEs must submit an *Affidavit of No Change* along with documentation supporting the firm's gross receipts.

We identified 604 firms in the DBE database, which were certified by TDOT prior to July 1, 2013. We selected a random sample of 32 firms and obtained the hard copy file for each certified DBE from the Civil Rights Division's file room. We examined each file to verify the existence of a fully completed and signed *Affidavit of No Change* supported by tax returns for Fiscal Years 2014 and 2015. Additionally, we examined the tax returns to ensure the firm's annual gross receipts did not exceed the restrictions on business size.

The results of our work showed that all of the files reviewed included fully completed and signed *Affidavit of No Change* and supporting financial documentation for fiscal years 2014 and 2015. Additionally, the tax returns examined in the testing indicated that the gross receipts for each firm did not exceed the business size limitations. No other issues were noted.

Federal Database of Decertified DBEs and Application Denials

Participants in a Unified Certification Program (UCP) are required to make an entry in the Department of Transportation Office of Civil Rights' (DOCR) Ineligibility Determination Online Database when a DBE application is denied or when a DBE firm is decertified. Likewise, UCP participants must check the DOCR website monthly to determine whether any certified firms or those applying for certification were denied certification or were decertified by other UCPs. Firms listed in the database are not automatically ineligible for DBE certification, but a copy of the decision must be requested promptly from the UCP that made the decision. The information in the decision must be considered when determining what action to take in regard to the applicant or a certified DBE firm.

Auditors applied analytical procedures to identify any firms certified by TDOT, listed as active in the DBE database, and listed in the DOCR Ineligibility Determination Online Database of Decertified DBEs and Application Denials. We reviewed 3,189 records obtained from the DOCR website and identified 24 firms certified as DBEs by TDOT Civil Rights that have been decertified or denied DBE certification by another UCP. Additionally, records from 10 of the 24 firms showed they had been decertified in their home state (See Observation C).

System for Award Management (SAM) Excluded Parties List

Suspensions and debarments are actions taken to exclude firms or individuals from receiving federal contracts or assistance because of actual or alleged contractor misconduct, such as poor performance, fraud, corruption, bribery, or federal tax delinquency. Guidance from the 2014 USDOT DBE program final rule instructs UCPs to decertify firms which have been federally suspended or debarred due to criminal indictment, criminal conviction, or for conduct related to the DBE program. For other suspensions and debarments not related to the DBE program, recipients are advised to note in the UCP directory the suspended or debarred status of the DBE.

To identify firms or owners of firms listed as active DBEs in Tennessee that are federally suspended or debarred; we compared the firms in the TNUCP DBE database to the SAM list of 138,021 companies and individuals excluded from participating in federal contracts. Our work identified one firm in the TNUCP DBE database, which is owned by an individual who has been federally debarred for conduct unrelated to the DBE program. The database listing did not include a notation indicating the debarred status of the owner (See Observation D).

III. Are internal controls in place to ensure that TDOT receives value for payments to the DBE Supportive Services Program, and the payments comply with federal requirements?

Generally yes. Results of the work conducted indicated that the DBE Supportive Services program provides the categories of training and education to disadvantaged businesses as specified by federal regulations. However, we also noted that the third-party contract to perform Supportive Services for DBE firms on behalf of TDOT does not include all the provisions required by federal law. To ensure that charges billed to TDOT are accurate and valid, the contracted consultant is required to submit supporting documentation with each monthly invoice. Process improvements, related to the analysis of invoices and supporting documents, are needed for enhanced oversight of contract expenditures.

We conducted the following procedures to evaluate compliance to federal regulations and the validity of payments made to the Supportive Services consultant.

Examination of the Supportive Services Provider Contract

The TDOT DBE program provides supportive services through a 5-year contract with a consultant. The Federal Highway Administration (FHWA) provides funds for the program

and specifies the types of training and education services that must be provided to participating disadvantaged businesses. Federal regulations also require provisions that must be included in third-party contracts to provide supportive services.

We obtained the supportive services contracts initiated in 2010 and 2015 then compared them to the services and contract requirements detailed in 23 CFR 230.204 to verify compliance. Results of the work indicate that the following services the program is required to provide are specifically addressed in the supportive services contracts:

- Estimating
- Bidding
- Certification Assistance
- Technical Assistance related to highway construction
- Business Management
- Record Keeping
- Financial Accounting
- Assistance becoming eligible for and to obtaining bonding and financial assistance

Comparison of the contracts to the minimum contract provisions required by federal regulation identified the following provisions that were not included in the contracts:

- Non-collusion certification - 23 CFR 230.204(g)[10]
- The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in Form FHWA-1273

Additionally, the language required by FHWA restricting who Supportive Services are provided to reads, *provided only to those minority business enterprises determined to be eligible for participation in the Federal-aid highway program in accordance with 49 CFR Part 23 and have a work specialty related to the highway construction industry*. The 2010 supportive services contract includes the required language but was changed in the 2015 supportive services contract to, *DBEs active in the highway construction industry ... will be given priority for supportive services and training*. (See Observation E)

Review of Supportive Services Vendor Invoices

The TDOT DBE program provides supportive services through a 5-year contract with Tyler Construction Engineers (TCE). The previous contract with TCE ran from fiscal year 2011 through fiscal year 2015. The current contract runs from fiscal year 2016 through fiscal year 2020. The contracts specify that compensation for TCE be based on payment rates for units of services in addition to monthly contract administration fee. The table below details the services and payment rates in the supportive services contracts.

Table 4: Supportive Services Payment Rates

Service Description	2010 - 2015 Contract Amount per Unit	2015 - 2020 Contract Amount per Unit	Unit of Measure
DBE Business Plans	\$1,200.00	\$50.00	Plan
Contract Administration	\$30,000.00	\$26,450.00	Month
DBE Quarterly Meetings	\$750.00	\$150.00	Meeting
DBE One-on-One Training	\$300.00	\$50.00	DBE Trained
DBE Classroom Group Training	\$2,500.00	\$500.00	Class Held
Two-Day Annual Meeting	\$30,000.00	\$30,000.00	Meeting
Business Development Program	NA	\$12,000.00	Month

Source: 2010 and 2015 Supportive Services Contracts

To test the validity of expenditures for supportive services, we identified 22 payments made to TCE for work performed from July 1 2013 through June 30, 2015. We performed the following procedures for each of the 22 invoices:

- Vouching of invoices to supporting documentation
- Recalculation of charges for accuracy of invoice amounts
- Identification of charges duplicated on the same invoice or subsequent invoices
- Reconciliation of charges with per unit rates specified in the contract

In addition to the monthly charge for *Contract Administration*, we examined 63 separate line items for services provided by TCE. Results of our test work indicated that the invoices submitted to TDOT Civil Rights by TCE were valid and accurate. The invoices were calculated correctly using the unit pricing for specific services detailed in the contract. With the exception of two group-training events, the charges were supported by documentation submitted with the invoices. Consultant time sheets submitted did indicate that those two group-training events were conducted and attended by TCE staff. A summary of the services provided and the related charges to TDOT are shown in the table below.

Table 5: Summary of TCE Services Provided

Service Description	Documentation Provided	Contract Unit Price	Invoiced Quantity	Total Amount
DBE Business Plans	Business Development Plan	\$1,200	18.00	\$21,600
Contract Administration	Consultant Time Sheets	\$30,000	21.30	\$639,000
DBE Quarterly Meetings	Attendee Sign-In Sheet	\$750	24.00	\$18,000
DBE One-on-One Training	Training Summary or Time Sheet	\$300	14.00	\$4,200
DBE Classroom Group Training	Attendee Sign-In Sheet	\$2,500	5.00	\$12,500
Two-Day Annual Meeting	Attendee Sign-In Sheet	\$30,000	2.00	\$60,000

Source: Internal Audit Test Work

Observations and Recommendations

A – Firms are entered into the Certified DBE Directory prior to the date of the Director’s certification letter.

In conducting our review of the overall integrity of the DBE certification procedures, we noted that firms, which were newly certified as DBEs, were often entered into the statewide DBE database prior to the date the approval letter was issued by the Director of Civil Rights. In our sample of 30 certifications reviewed, we noted 11 of the database entries were made one day prior to; eight instances were made two days prior to; and one instance where the entry was made four days prior to the date of the approval letter.

49 CFR 26.83(a) requires agencies to *ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program*. According to the guidance in Principle 10.03 of the GAO Standards for Internal Control (Green Book), *transactions are authorized and executed only by persons acting within the scope of their authority*. The principle also advises management to segregate key duties among different people to reduce the risk of error, misuse, or fraud. The approval letter from Director of Civil Rights is the principle means of documenting authorization to advertise the firm as a certified DBE.

While our testing did not indicate any unauthorized entries into the DBE database, the entry of firms into the database prior to the date of the Director’s letter indicates that a key control in the certification process can be easily bypassed. Additionally, the Certification Coordinator who also leads the certification process and makes the approval or denial recommendation to the Director enters newly certified firms into the database. This combination can potentially result in the inclusion of non-eligible firms in the DBE database.

Criteria:

- 49 CFR Part 26 DBE (sections 26.81(g) and 26.83(a))
- TDOT DBE Plan
- DBE Operating Procedures
- GAO Standards for Internal Control: Principle 10 - Design Control Activities

Risks or Effects:

- Federal funds intended only for disadvantaged businesses may be awarded to firms which are ineligible to participate in the DBE program
- Program sanctions such as suspension or termination of federal funds
- Refusal by federal agencies to approve projects, grants, or contracts

Recommendation(s):

A.1 – New entries to the database should be performed by personnel other than the Certification Coordinator and only upon receipt of the approval letter signed by the Director of Civil Rights.

A.2 – The DBE Program Director should receive a report of new entries to the database each month from the IT Division to reconcile against internal records of approved applications.

B – Access rights to the certified DBE directory are not properly controlled to prevent improper modification or destruction of information.

During the course of reviewing the list of user access rights to the statewide Certified DBE Directory, we noted that a former employee of the Civil Rights Division was still listed with a *Data Entry* role. We also noted three individuals with assigned *Administrative* roles who were not in the roster of TDOT employees. Additional verification indicated that their positions were not listed in the TDOT phonebook, and whose identities were not known to management of the Civil Rights Division.

Principle 11.11 of the Green Book discusses internal controls pertaining to the design of security management and states that, *Management designs control activities for security management of the entity's information system for appropriate access by internal and external sources to protect the entity's information system. Objectives for security management include confidentiality, integrity, and availability.* Principle 11.12 continues with, *Security management includes the information processes and control activities related to access rights in an entity's information technology, including who has the ability to execute transactions.*

Criteria:

- 49 CFR Part 26 Section 26.83(a)

- GAO Standards for Internal Control: Principle 11 – Design Activities for the Information System
- Prudent business practices

Risks or Effects:

- DBE Directory records may be created, deleted, or altered by unauthorized personnel
- Federal funds intended only for disadvantaged businesses may be awarded to firms which are ineligible to participate in the DBE program
- Certified DBE firms may be denied the opportunity to participate in federally funded contracts
- Program sanctions such as suspension or termination of federal funds
- Refusal by federal agencies to approve projects, grants, or contracts

Recommendation(s):

B.1 – The DBE Program Director should review the list of individuals with user access rights to the DBE database on a regular basis.

B.2 – Access roles with the ability to create and modify DBE records should be limited to authorized personnel supporting the appropriate segregation of duties.

B.3 - The DBE Program Director should request the removal of access rights for any separated personnel and information concerning the role of any users outside the Civil Rights Division as well as the business purpose for their roles.

C – The certified DBE directory includes firms who have been denied DBE certification or have been decertified by other states.

Testing procedures identified 24 firms certified as DBEs by TDOT Civil Rights which are also listed in the USDOT Office of Civil Rights' (DOCR) Ineligibility Determination Online Database of Decertified DBEs and Application Denials, meaning that they have been decertified or denied DBE certification by another UCP. 49 CFR Part 26 section 26.85 (f) [2 & 3] requires a UCP to *check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list. For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it.* Reasons for denials and decertification range from factors which should not affect eligibility in Tennessee such as a voluntary withdrawal in another state, to factors involving business size, ownership, or decertification in the firm's home state that affect their overall eligibility for DBE status.

The TDOT DBE program does employ a process to search the DOCR Ineligibility Determination Online Database of Decertified DBEs and Application Denials to identify any firms who are listed as active in the statewide DBE directory. Currently, the inability of the DOCR to provide the database information in a suitable format prevents UCPs from effectively and efficiently performing a monthly review to identify any matching firms in their DBE directory.

Criteria:

- 49 CFR Part 26 section 26.85(f)[1-3]
- United States Department of Transportation Office of Civil Rights' (DOCR) Ineligibility Determination Online Database
- TNUCP DBE Directory
- TDOT DBE Plan
- DBE Operating Procedures

Risks or Effects:

- Firms which no longer meet the criteria for certification as a DBE may be certified or continue to be advertised as a certified DBE in Tennessee.
- Federal funds intended only for disadvantaged businesses may be awarded to firms which are ineligible to participate in the DBE program.

Recommendation(s):

C.1 – Civil Rights Division management should work with the DOCR to obtain the records from the Database of Decertified DBEs and Application Denials in a format suitable for comparison to the statewide DBE directory on a monthly basis.

C.2 – In lieu of a monthly review, DBE program management should develop and define a process for checking the Database of Decertified DBEs and Application Denials to incorporate into the review of DBE applications and the review of the annual submission of the Affidavit of No Change required of each certified DBE.

D - The certified DBE directory includes firms who have been excluded from participating in federal contracts.

The results of our work identified one active listing in the statewide DBE directory, which is owned by an individual who has been excluded from participating in federal contracts. The USDOT Office of Inspector General issued a Management Advisory on September 24th, 2013 to inform the Department on the issue of suspended or debarred

firms listed in state DBE directories as eligible to participate in the DBE program. A DBE should be decertified if the firm or owner has been suspended or debarred for conduct related to the DBE program or for criminal indictment or conviction. The database listing for firms suspended or debarred for other reasons should include a notation indicating that status.

The TDOT DBE program searches the SAM Excluded Parties List at the time of application but does not search the Excluded Parties List to identify any firms who have been previously certified in Tennessee.

Criteria:

- USDOT OIG Management Advisory
- USDOT Final DBE Rule
- System for Award Management (SAM) Excluded Parties List
- TNUCP DBE Directory
- TDOT DBE Plan
- DBE Operating Procedures

Risks or Effects:

DBE work awarded to suspended or debarred firms can result in the federal agency disallowing costs, terminating the transaction, issuing a stop work order, or other remedies.

Recommendation(s):

D.1 – DBE program management should develop and define a process for checking the SAM Excluded Parties List to incorporate into the review of DBE applications and the review of the annual submission of the Affidavit of No Change required of each certified DBE.

D.2 – DBE program management should work with the TDOT Information Technology Division to develop a method to include the suspended or debarred status of certified DBE firms.

E - The third-party contract to perform Supportive Services to DBE firms on behalf of the Civil Rights Division does not include provisions required by federal law.

Results of our examination of the contracts between TDOT and a consulting firm to provide education and training to disadvantaged business identified two provisions required by federal regulation that are not included in the contracts. Additionally, language in the current contract concerning who supportive services are provided to is less restrictive than the language required by law.

Criteria:

- 23 CFR 230 Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises
- FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts
- 49 CFR Part 26 DBE
- TDOT DBE Plan
- 2010 Supportive Services Contract
- 2015 Supportive Services Contract

Risks or Effects:

Failure to comply with the federal contract requirements can result in the FHWA disallowing costs for supportive services.

Recommendation(s):

E.1 - Civil Rights Division management should work with the TDOT Finance and Legal Divisions to incorporate all provisions required by federal law into future contracts.

E.2 - DBE program management should communicate the restrictions on recipients of services to the supportive services consultant and closely monitor the work performed to ensure compliance to the federal regulations.

General Audit Information

Statement on Compliance with GAGAS

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the work to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations based on our audit objectives.

Scope and Methodology

The audit period focused on DBE program activities by the Civil Rights Division for the period July 1, 2013 through June 30, 2015. The methodology employed throughout this audit was one of objectively reviewing and evaluating various forms of documentation including accounting and financial information, federal regulations, written policies and procedures, contracts, and data in various forms as well as performing test of details, analysis, and benchmarking.

Criteria

In conducting the audit, we evaluated the Civil Rights Division against existing federal regulations and internal policies applicable to the function of the Civil Rights Division. We also utilized other standards such as Government Accountability Office Standards for Internal Control. We also used industry and other business norms as supplementary criteria, especially as they pertained to internal controls and prudent business practices, to complete the objectives of this engagement.

Staff Acknowledgment

Craig Pitts, MBA, MACC – Internal Auditor In-Charge
Nichole Sly – Staff Internal Auditor
Roger Miller, CPA – Audit Manager and Quality Assurance
Mel Marcella, CPA, CMA, CIA, CISA, CFE – Quality Assurance

Appendix A – Management Responses

Acknowledgment Letter and Response Matrix in the Following Pages



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

CIVIL RIGHTS DIVISION
SUITE 700, JAMES K. POLK BUILDING
505 DEADERICK STREET
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(615) 741-2848

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

April 24, 2017

Mel Marcella
Director of Internal Audit
James K. Polk Building, Suite 1800
Nashville, TN 37243

Dear Mr. Marcella:

This letter acknowledges that the Civil Rights Division is in receipt of the report entitled *Performance Audit of the Civil Rights Division's Disadvantaged Business Enterprise Program*, which was conducted by the Office of Internal Audit.

We have reviewed the audit report and evaluated all the observations raised in this report. The Civil Rights Division will undertake the recommended actions. Attached please find our formal responses to the recommendations and the proposed plan of action. This audit will serve as a valuable instrument and management tool in helping the Tennessee Department of Transportation meet its objectives and goals. Please know that we appreciate having the opportunity for an outside review of our processes in order to improve delivery of services to our stakeholders.

Regards,

A handwritten signature in black ink, appearing to read "Deborah Luter".

Deborah Luter,
Director

**Civil Rights Division
Management Responses to Audit Recommendations – April 2017**

Report Item and Description	Responses to Recommendations/Action Plan	Assigned Responsibility	Estimated Completion
A.1 - New entries to the database should be performed by personnel other than the Certification Coordinator and only upon receipt of the approval letter signed by the Director of Civil Rights.	<i>Accept / Partially Accept / Reject</i> Due to knowledge of program, Certification Coordinator should continue all new entries. Also, lack of other personnel/feasibility of other staff in entering was a factor for decision to reject.	Ross Webb	Ongoing
A.2 - The DBE Program Director should receive a report of new entries to the database each month from the I.T. Division to reconcile against internal records of approved applications.	<i>Accept / Partially Accept / Reject</i> Director already logs all new DBE applications, renewals, etc. so they are currently involved in the process. IT can be contacted for a record to reconcile, but not sure if this is possible. Forthcoming AASHTO software may take care of this issue.	David Neese	Daily
B.1 - The DBE Program Director should review the list of individuals with user access rights to the DBE database on a regular basis.	<i>Accept / Partially Accept / Reject</i>	David Neese	Ongoing

**Civil Rights Division
Management Responses to Audit Recommendations - April 2017**

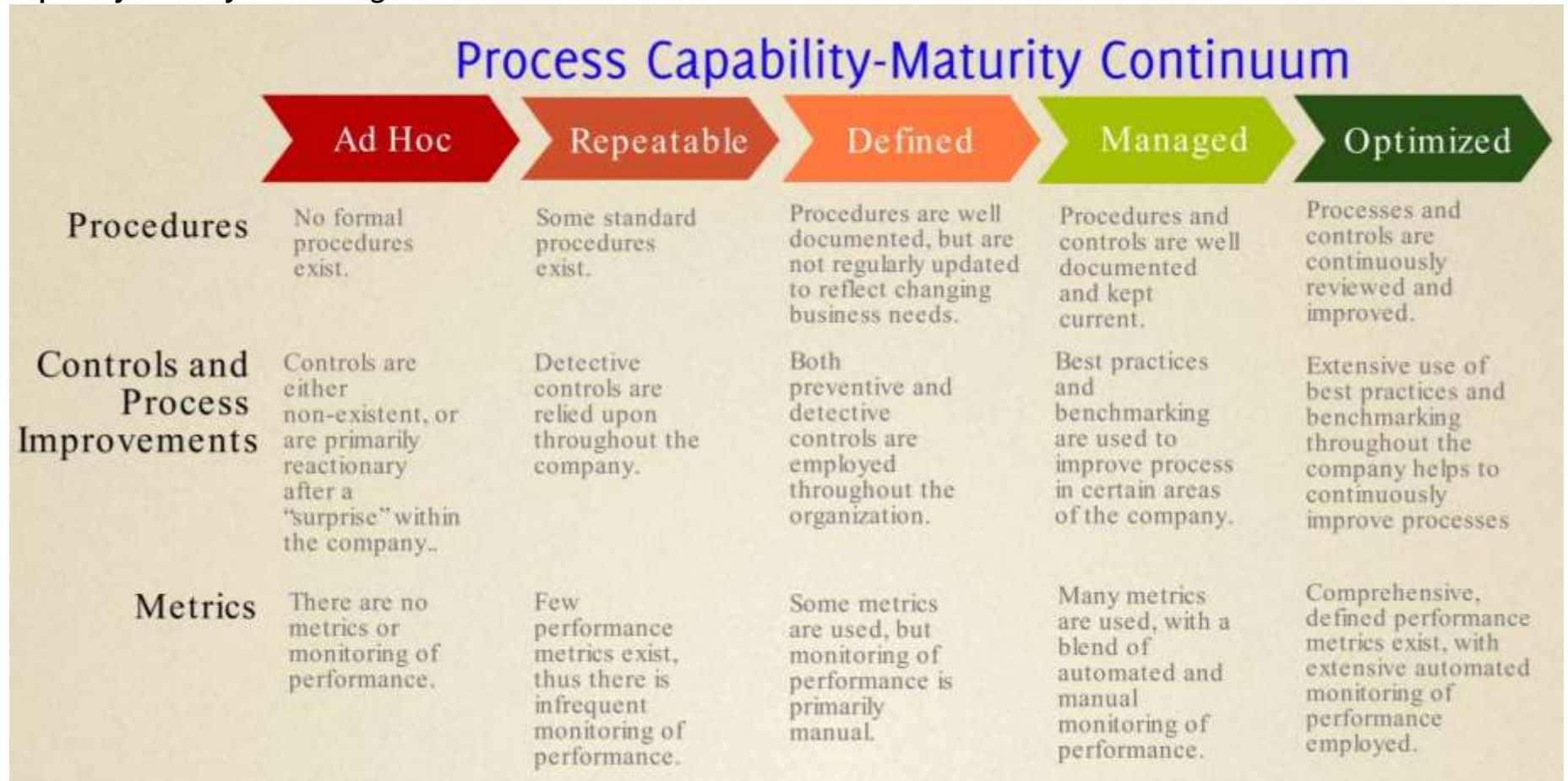
Report Item and Description	Responses to Recommendations/Action Plan	Assigned Responsibility	Estimated Completion
B.2 - Access roles with the ability to create and modify DBE records should be limited to authorized personnel supporting the appropriate segregation of duties.	<i>Accept / Partially Accept / Reject</i>	Staff w/ authorized access.	Ongoing
B.3 - The DBE Program Director should request the removal of access rights for any separated personnel and information concerning the role of any users outside the Civil Rights Division as well as the business purpose for their roles.	<i>Accept / Partially Accept / Reject</i> Will need access to Database/IT contact in order to facilitate changes.	David Neese	6/1/17
C.1 - Management should work with the DOCR to obtain the records from the Database of Decertified DBEs and Application Denials in a format suitable for comparison to the statewide DBE directory on a monthly basis.	<i>Accept / Partially Accept / Reject</i> Option of C.2 to be utilized		
C.2 - In lieu of a monthly review, DBE program management should develop and define a process for checking the Database of Decertified DBEs and Application Denials to incorporate into the review of DBE applications and the review of the annual submission of the Affidavit of No Change required of each certified DBE.	<i>Accept / Partially Accept / Reject</i>	David Neese Ross Webb	Ongoing
D.1 - DBE program management should develop and define a process for checking	<i>Accept / Partially Accept / Reject</i>	David Neese	Ongoing

**Civil Rights Division
Management Responses to Audit Recommendations - April 2017**

Report Item and Description	Responses to Recommendations/Action Plan	Assigned Responsibility	Estimated Completion
the SAM Excluded Parties List to incorporate into the review of DBE applications and the review of the annual submission of the Affidavit of No Change required of each certified DBE.			
D.2 - DBE program management should work with the TDOT Information Technology Division to develop a method to include the suspended or debarred status of certified DBE firms.	<i>Accept / Partially Accept / Reject</i> Will consult W/ on feasibility. This may not be an option w/ this our DBE list in its present form.	David Neese	6/1/17
E.1 - Civil Rights Division management should work with the TDOT Finance and Legal Divisions to incorporate all provisions required by Federal law into future contracts.	<i>Accept / Partially Accept / Reject</i>	David Neese	When next contract is written
E.2 - DBE program management should communicate the restrictions on recipients of services to the supportive services consultant and closely monitor the work performed to ensure compliance to the Federal regulations.	<i>Accept / Partially Accept / Reject</i>	David Neese	6/1/17

Appendix B – Organizational Development Matrix

Capability Maturity Model Integration



Source: Carnegie Mellon University

Appendix C – References

- American Association of State Highway and Transportation Officials. (2014). *Disadvantaged Business Enterprise (DBE) Initial Certification Process Internal Audit Practice Aid*. Retrieved from <http://audit.transportation.org/Documents/Practice%20Aid%20Disadvantaged%20Business%20Enterprise.doc>
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