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Capital Metro Board of Directors

From: Terry Follmer, VP of Internal Audit

Date: August 14, 2019

Subject: Audit Memorandum – Disadvantaged Business Enterprises (DBE)

As part of our Fiscal Year 2019 Internal Audit Plan approved by the Capital Metro Board, we performed an audit on the capital project expenditure control process to determine whether CMTA has sufficient internal controls to prevent and detect errors and/or irregularities in capital expenditures and ensure compliance with applicable contract terms. While the main focus of the audit was on the Capital Projects Department's role in managing project expenses, we also reviewed the Diversity and Compliance (D&C) Department's role in managing Disadvantaged Business Enterprise (DBE) project expenses, which is an integral part of the overall capital project expenditure process.

The federal DBE Program was created to provide a level playing field for small, minority- and women-owned companies and adheres to the Code of Federal Regulations (CFR), Title 49, Part 26 – Participation by Disadvantage Business Enterprises in Department of Transportation Financial Assistance Programs. To be eligible for federal DBE designation, companies must be for-profit, small businesses where socially and economically disadvantaged individuals own at least a 51% interest and control management and daily business operations. The U.S. Department of Transportation (DOT) requires that all recipients of federal funds meet a 10% yearly DBE goal, but also allows each recipient to set an even higher goal for themselves. Goals and actuals are tracked through the B2Gnow system and reported to the DOT twice a year as a requirement for receiving federal funds.

The D&C Department has two staff that administer and oversee the DBE program with the help of the B2Gnow System which tracks the goals and payments to prime contractors and DBE's and related correspondence. B2Gnow is not directly interfaced to the AX

Accounting System, however, IT staff export AX payment data for prime contractors and then import it into B2Gnow on a monthly basis. As of July 2019, there were 99 prime contractors and 278 subcontractor DBE and SBE's that received over \$18 million in fiscal year 2019.

The capital project expenditure control audit and related DBE review was conducted by the following staff members in the Capital Metro Internal Audit Department:

- Sarah Daigle, Internal Auditor II (Project Lead)
- Terry Follmer, VP of Internal Audit

Recommendations to strengthen DBE controls and improve accountability were provided to management (see attached). Management agrees with the internal audit recommendations and has provided target completion dates which are included in the details below. A follow-up audit is performed semi-annually (i.e. May and November) to ensure management action plans for all issued audit reports are completed timely.

We appreciate the cooperation and assistance provided to us throughout this audit.

<i>Issues & Risk</i>	<i>Recommendation</i>	<i>Management Action Plan</i>
<p>1. <u>DBE NOT CURRENTLY CERTIFIED</u></p> <p>Federal regulations and contract terms require that contractors only use certified DBE companies to count towards their DBE goal. In Texas, there are six agencies that certify companies as a DBE and they require the company to submit an affidavit each year thereafter to attest that they still qualify for the program. The Diversity and Compliance Department confirms this certification in the B2Gnow system during the initial contract solicitation process and then periodically throughout the contract period.</p> <p>We reviewed all the Downtown Station Improvement project's prime contractors that received payment in Fiscal Year 2018 and found that 6% (1 out of 16) of their subcontractor DBE's were no longer currently certified before the end of the contract terms. Without current certification status, there is no way of knowing whether they still qualify as a DBE and meet the size, disadvantaged status, ownership, or control requirements. B2Gnow shows a red flag if the company doesn't have a current certification status and has a report which shows a summary of certification status for all subcontractor DBE's. A staff member in the D&C department periodically runs this report, however, there is no formalized process on how often the report should be generated and reviewed.</p>	<p>The Diversity and Compliance Department should develop the following internal control enhancements:</p> <ul style="list-style-type: none"> a) Monitor certification status on DBE subcontractors by checking certification status in B2Gnow semi-annually or at a frequency determined by the department. 	<p>Management agrees with the recommendation.</p> <p><u>Target Completion Date:</u></p> <p>10/1/2019</p>

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<p>2. <u>INCORRECT CONTRACT END DATE IN B2GNOW</u></p> <p>B2Gnow compliance software helps the D&C Department track and monitor federally required DBE goal attainment. The system stores various types of information such as contract number, description, start and end dates, payments to prime and subcontractor, and DBE goal and actuals. D&C staff rely on CA's from the Procurement Department to email any changes regarding contract end dates and then manually input these contract changes into the B2Gnow system. The CA's have visibility on all contract changes and the D&C staff rely on the CA's to notify them of changes since they don't have the time to perform this check manually. Once the contract has ended, D&C staff begin close out procedures for the prime contractor.</p> <p>Our testing identified one instance where the contract end date in B2Gnow for a Downtown Station Improvement project prime contractor was incorrect and showed the contract was closed even though the contract term had been extended 6 months. A D&C staff member eventually caught and corrected the error, however, the contract was listed with a closed status in B2Gnow for 4 months even though it was still open. Failure to update the B2Gnow system for changes in the contract terms may negatively affect close out procedures.</p>	<p>The D&C and Procurement Departments should develop the following internal control enhancements:</p> <ul style="list-style-type: none"> a) Both D&C and Procurement staff should increase their coordination efforts by regularly checking and sending emails regarding changes to contract end dates. b) Procurement staff should add a DBE line item to their contract monitoring checklist to ensure all CA's timely update D&C staff regarding changes to contract end dates. 	<p>Management agrees with the recommendation.</p> <p><u>Target Completion Date:</u></p> <p>10/1/2019</p>

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<p>3. <u>LACK OF DBE SANCTIONS</u></p> <p>Federal regulations require CMTA to implement appropriate enforcement mechanisms to ensure compliance with the DBE program (e.g., applying legal and contract remedies available under Federal, state and local law) and best practice recommends including clear, concise, detailed language in contracts. However, we found that current DBE contract language regarding sanctions is vague and does not list specific sanctions that may be imposed on a contractor. Additionally, we analyzed the one completed prime contractor for the Downtown Station Improvement project that did not meet their DBE goal by the end of their contract terms or submit Good Faith Effort (GFE)¹ documentation in Fiscal Year 2018, and found that while D&C staff were actively monitoring them, they did not issue sanctions for them or any other prime contractors that did not meet their goal.</p>	<p>Diversity & Compliance together with Project Managers, Procurement Department, and Legal Department should implement the following control enhancements as appropriate:</p> <ul style="list-style-type: none"> a) The D&C Department, along with the Legal Department, should update DBE contract language to include the following sanctions: <ul style="list-style-type: none"> • Withholding monthly progress payments • Assessing sanctions • Liquidated damages • Disqualifying the contractor from future bidding as non-responsible b) Establish criteria for when issuing sanctions for non-compliance with DBE requirements. The criteria will be utilized by the Project Manager, the CA's and the D&C Department to collectively decide what sanctions will be taken under the contract for noncompliance. 	<p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>10/1/2019</p>

¹ According to 49 C.F.R. Appendix A to Part 26, contractors do not have to meet their DBE goal if they can show documentation of Good Faith Efforts (GFE) and take all necessary and reasonable steps to help achieve their DBE goal. Some examples of GFEs include conducting market research to identify DBEs, providing interested DBEs with adequate information about the plans and requirements of the contract, making efforts to assist interested DBEs in obtaining lines of credit, and not rejecting DBEs as being unqualified without sound reason.

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<p>4. <u>LACK OF DBE MONITORING</u></p> <p>Federal regulations require CMTA to appropriately monitor DBE program compliance and ensure work committed to DBE's is actually performed by DBE's. This requirement is called the Commercially Useful Function (CUF) and means the DBE is required to actually perform, manage, and supervise the work themselves. CMTA staff must complete a written certification to document that they reviewed contracting records and monitored work sites for this purpose. However, we found that the D&C department has not conducted any site visits or other verification actions to confirm whether the DBE work was actually completed for the 4 prime contractors that received payment in Fiscal Year 2018 for the Downtown Station Improvement project. According to the Diversity and Compliance Department, this is because they are understaffed and do not have the manpower to complete the required number of site visits, however, they are currently in the process of updating their policies and will require PM's to conduct the site visits going forward once the new policy is implemented.</p>	<p>The Diversity and Compliance Department should implement the following control enhancements:</p> <ul style="list-style-type: none"> a) Define roles and responsibilities related to DBE's for the D&C Department, PM's, and the Procurement Department. b) PMs conduct prime contractor monitoring visits as part of their normal project management duties. As part of those visits, PM will document onsite observations related to usage of a subcontractor. The D&C Department will develop a form for recording and providing observations to D&C regarding the work of the DBE firm. The information gathered will be used by the D&C Department and Procurement to ensure compliance with DBE commitments. c) Consult with the Legal Department on how best to coordinate with PM's and meet federal requirements. 	<p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>1/1/2020</p>