



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

Headquarters

1200 New Jersey Avenue S.E.
Washington DC 20590

August 12, 2010

Mr. Steve Heminger
Executive Director
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607

Dear Mr. Heminger:

Thank you for your letter of March 5, 2010, responding to my letter of February 3, 2010. My initial letter to you was in response to a complaint received in our office in September 2009 by Public Advocates on behalf of Urban Habitat Program, Transform, and Genesis against the Bay Area Rapid Transit District ("BART") alleging violations of Title VI of the Civil Rights Act of 1964. In my February 3, 2010, letter I requested the Metropolitan Transportation Commission (MTC) send the Federal Transit Administration (FTA) a list of all MTC subrecipients, as well as MTC's procedures for monitoring Title VI compliance of its subrecipients. In response, MTC sent me a list of its subrecipients, but states that MTC does not have responsibility for monitoring Title VI compliance of its subrecipients because "MTC is not a State DOT or State administering agency, and designated recipients are not referred to in [the Circular], MTC concluded that the omission was intentional and that these monitoring requirements do not apply to MTC."

In your response you included a list of MTC subrecipients, and I thank you for that list. In response to the request for MTC's procedures for monitoring Title VI complaints of its subrecipients, you asserted that the monitoring requirements outlined in Chapter VI of FTA's Title VI Circular 4702.1A do not apply to MTC. You also indicated that you require subrecipients to certify their compliance with Title VI and other FTA requirements.

In addition to the requirements in Chapter VI of the Title VI Circular, MTC annually signs the FTA Master Agreement, section 12(b) of which states:

Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each subrecipients, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended . . .

Further, MTC annually assures, through the certifications and assurances process, that it “will include in each subagreement ... adequate provisions to extend the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d and 49 CFR part 21 to other parties involved therein including any subrecipient ...” MTC has also assured that “[i]t will make any changes in its Title VI implementing procedures as U.S. DOT or FTA may request to achieve compliance with the requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21.”¹

In addition to the Master Agreement, the JARC and New Freedom circulars (9050.1 and 9045.1, respectively), provide guidance for complying with Federal requirements. According to Chapter VII of those circulars, designated recipients are required to have a Program Management Plan, which should,

[d]escribe how the designated recipient meets Federal civil rights requirements **and monitors subrecipients** to ensure compliance with the requirements of Title VI, Equal Employment Opportunity (EEO), and Disadvantaged Business Enterprise (DBE) Program. . . . (emphasis added).

The MTC’s Program Management Plan, dated September 2008, states, in relevant part,

MTC complies with all provisions prohibiting discrimination on the basis of race, color, or national origin on Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. D.O.T. regulations ... Except to the extent FTA determines otherwise in writing, MTC will comply with any applicable implementing federal directives that may be issued.

MTC specifically requires in all third party contracts and grant agreements that the subrecipient/contractor at any tier complies with all requirements of Title VI. Failure to do so is considered to be a breach of contract.

Furthermore, MTC complies with all applicable equal employment opportunity (EEO) provisions of 49 [sic] U.S.C. §§ 2000e, and implementing regulations ... MTC will also investigate any complaints received alleging breach of the requirements of Title VI.

The Program Management Plan documents MTC’s requirement that subrecipients comply; however, it does not describe how MTC monitors or enforces compliance with Title VI requirements.

FTA remains concerned that we found BART, a subrecipient of MTC, out of compliance with Title VI in 2009. This fact suggests to us that MTC has not adequately ensured BART’s Title VI compliance, as required by the FTA Master Agreement, certifications

¹ Section 01, Assurances Required for Each Applicant, paragraph D, Nondiscrimination Assurance.

and assurances, and FTA program circulars, and, therefore, this raises the possibility that other subrecipients of MTC may be out of compliance. In order to determine whether MTC's subrecipients are in compliance with Title VI, FTA's Office of Civil Rights requests MTC send FTA the following information within 30 days of this letter:

MTC's documented process for investigating Title VI complaints.

A description of the actions MTC took to investigate the Title VI complaint filed by Public Advocates against BART and alleging BART was not in compliance with Title VI.


A description of the penalty MTC assesses against a subrecipient for being in breach of contract as a result of failure to comply with Title VI, as well as a description of how MTC determines a subrecipient is in breach of contract. Please provide any and all documentation to support your determinations.

Provide copies of the subrecipient compliance reports as required by FTA Circular 4702.1A, Chapter 2, (4)(b) "Reporting Requirements, Subrecipient Reporting" collected from each of MTC's subrecipients that verifies their level and quality of service is provided on an equitable basis.

For purposes of this request, the term "subrecipient" means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant indirectly through MTC.² Please note that subrecipients may or may not provide public transportation services. The defining factor is that the entity receives Federal funding through the MTC.

Upon receipt of the requested information, FTA will determine whether the information provided meets Title VI requirements. If you have any questions regarding this request for information, please contact Amber Ontiveros at 202-366-5130 or at her electronic mail address: amber.ontiveros@dot.gov.

Sincerely,


Cheryl D. Hershey
Director, Office of Civil Rights

cc: Dorval Carter, Jr., Chief Counsel, Federal Transit Administration
Amber Ontiveros, Equal Opportunity Specialist
Richard A. Marcantonio, Public Advocates, Inc.

² Adapted from 49 U.S.C. § 5316(a)(5) and 49 U.S.C. § 5317(a)(2).