

AUGUST 1, 2021

# Disadvantaged Business Enterprise (DBE) Program

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## POLICY STATEMENT

### Disadvantaged Business Enterprise Program

The Virginia Department of Rail and Public Transportation (DRPT) is committed to the policy of the U.S. Department of Transportation (DOT) which provides guidelines that this agency will utilize to ensure a level playing field and foster equal opportunity for Disadvantaged Business Enterprises (DBEs). DRPT's implementation of this policy is in keeping with the Department's objectives to be responsive to citizens' needs and to ensure equality of opportunity and compliance with Title 49, Code of Federal Regulation (CFR), Part 26.

To ensure compliance with this policy, all DRPT programs managers will monitor and evaluate the award of contracts for compliance with 49 CFR Part 26. Programs managers will also report to DRPT's DBE Liaison and Title VI Officer on the progress made towards accomplishing DRPT's stated goals. I expect all levels of management to fully support both the letter and spirit of this program. To this end, managerial, supervisory, and other personnel charged with implementation of elements of this program may expect their performance evaluation to reflect, in part, the effectiveness of their response to this program.

I am therefore, charging DRPT's DBE Liaison and Civil Rights Compliance Officer with the responsibility to implement DRPT's revised DBE program and to make appropriate recommendations to me, where needed, to strengthen the program.



6/29/2022

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Jen DeBruhl, Director, Department of Rail and Public Transportation

Date

## Objectives

The Virginia Department of Rail and Public Transportation (DRPT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. DRPT has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, DRPT has signed an assurance that it will comply with 49 CFR Part 26.

- It is the policy of DRPT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Department's policy to:
- Ensure nondiscrimination in the award and administration of DOT assisted contracts
- Create a level playing field on which DBEs can compete fairly for DOT assisted contracts
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs
- Help remove barriers to the participation of DBEs in DOT assisted contracts
- Assist with the development of firms that can compete successfully in the market place outside the DBE Program

The full Code of Federal Regulations can be found at the link below:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=f8181cd8c1fc90c9f6ff7ef66df2da6d&mc=true&node=pt49.1.26&rgn=div5>

## Applicability (§26.3)

The Virginia Department of Rail and Public Transportation is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code; Titles I, II, and V of the TEA-21, Pub. L. 105-178 Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

## Definitions of Terms (§26.5)

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121 --

1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
  - One concern controls or has the power to control the other or
  - A third party or parties controls or has the power to control both or
  - An identity of interest between or among parties exists such that affiliation may be found.

2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that all activity has been correctly implemented.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including, but not limited to: the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA) and the Federal Railroad Administration (FRA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern --

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means any activity that has not been correctly implemented.

Operating Administration or Administrator means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA) or Federal Railroad Administration (FRA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include: The individual’s ownership interest in an applicant or participating DBE firm or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/naics/>.

Primary recipient means a recipient of DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm’s day-to-day operations spend most working hours. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.



Program means any undertaking on DRPT's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms. Set-asides are illegal per the Commonwealth of Virginia procurement regulations.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race

(iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka

(vi) Women

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers.

Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

## **Nondiscrimination (§26.7)**

DRPT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. Moreover, in administering its DBE program, DRPT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

## Recordkeeping and Reporting (§26.11)

DRPT commits to submitting the Uniform Report semi-annually June 1 and December 1 of the first and second half of the federal fiscal year in the format included in 49 CFR Part 26, Appendix B. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

## Bidders List (§26.11(C))

DRPT will create a bidders list consisting of information about all DBE and non-DBE firms that bid or quote on federally funded contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include name, address, DBE /non-DBE status, age, and annual gross receipts of firms. We will collect this information by including a clause in contracts requiring prime bidders to report the names/addresses, DBE status, age, and annual gross receipts of all firms who quote to them on subcontracts. DRPT has made a change to new contracts being issued as well as Requests for Proposals (RFPs) to ensure that collection of this information takes place. All RFPs are issued through the Commonwealth's procurement website eVA. RFPs can be accessed using the Solicitations, Quick Quote & Awards portal in eVA at <https://eva.virginia.gov/index.htm>. Registered eVA vendors are notified electronically of solicitations when commodity codes that they registered with match the commodity codes entered in the solicitations. The following link is the listing of vendors registered in eVA.

[https://logi.cgieva.com/External/rdPage.aspx?rdReport=Public.Reports.Report9001\\_Data](https://logi.cgieva.com/External/rdPage.aspx?rdReport=Public.Reports.Report9001_Data)

## DBE Program Updates (§26.21)

DRPT will continue to carry out this program until all funds from DOT financial assistance have been expended. DRPT will provide to DOT updates representing significant changes in the program. Any updates representing significant changes in the program will be provided by DRPT to FTA for approval. DRPT subrecipients of FTA funds must comply with the DRPT DBE Program Plan and may not have a plan independent from DRPT.

## Overconcentration (§26.33)

DRPT has not identified that overconcentration exists in the types of work that DBEs perform, however, most DBEs DRPT utilizes are in the construction category.

## Business Development Programs (§26.35)

DRPT has not established a business development program. We will re-evaluate the need for such a program every 18 months.

## Small Business Participation (§26.39)

DRPT is actively committed to fostering race and gender neutral small business growth and participation in DRPT contracting. The agency demonstrates this commitment through the development of both internal and external initiatives aimed toward small firms and the agency's grantees.

Small businesses are welcome to meet with DRPT's DBE Program Liaison Officer and Procurement Officer to learn about DRPT's contracting opportunities and how to do business with DRPT. DRPT also has a "How to do Business with DRPT" tutorial on our website. DRPT staff will have an opportunity to become familiar with qualified business owners who are interested in supplying services and products to DRPT by keeping a list of interested businesses who contact DRPT. In addition, through its website, DRPT will provide information on DBE certification and DBE program requirements and procedures. This information is also available through the Virginia Department of Small Business and Supplier Diversity (SBSD) (Attachment 1).

SBSD is the state agency dedicated to enhancing the participation of small, women- and minority-owned businesses in Virginia's procurement opportunities. SBSB is responsible for the administration of two certification programs: the Small, Women- and Minority-owned Businesses under Virginia's "SWaM" Procurement Initiative and the federal U.S. Department of Transportation's Disadvantaged Business Enterprise ("DBE") Program. SBSB also provides support to their certified businesses through business development and procurement advocacy programs, in cooperation with other agencies and departments.

All DRPT subrecipients are encouraged to identify and develop smaller sized contracts to foster small business participation on DRPT or subrecipient contracts as prime and/or sub-contractors.

DRPT uses a small business enhancement award priority when seeking business for goods and services under \$5,000. For goods and services in the \$5,000 to \$100,000 range, DRPT also applies a small business enhancement award priority and uses the Quick Quote feature in Virginia's electronic procurement system eVA. DRPT determines which businesses are considered small businesses registered to do work with Virginia government agencies by using the SBSB Small, Women- and Minority-owned Business (SWaM) vendor list. This list is maintained by the SBSB, the certifying agency for Virginia, and is considered the most accurate and up to date information available for Commonwealth of Virginia agencies.

DRPT has on its website a section on how to do business with DRPT as well as links to the Department of Minority Business Enterprises whereby small businesses can register as DBE or SWaM vendors.

Outreach is critical to the success of DRPT programs. DRPT partners with SBSB which has a myriad of resources ranging from Outreach Services and Financing to Certification for both state and federal programs that support the growth and sustainability of small businesses. The agency's subject matter experts are professionals that have years of experience and training to assist small businesses in navigating state government successfully. In addition, SBSB has a Business Services Manager Advocate assigned specifically assigned to DRPT. SBSB provides support through Business Development and Outreach Services as well as technical assistance. They host a variety of other development programs across the Commonwealth. DRPT provides information on how to do business with DRPT to minority business organizations achieves this through participation in VDSBDC outreach events.

It will be part of the agency's standard approach to business to consider how contract bundling practices during project development impact contracting opportunities for small businesses on DRPT projects. Consideration will be given to portions of a prime contract that could be extracted to create a smaller contract for small businesses.

### **Quotas (§26.43)**

DRPT does not use quotas in any way in the administration of this DBE program.

### **DBE Liaison Officer (DBELO) (§26.45)**

DRPT has a designated DBE Liaison Officer (DBELO), the DBE and Title VI Coordinator / ADA Complaint Resolution Officer. The DBELO may be contacted at the following: 600 East Main Street, Suite 2102, Richmond, VA 23219, 804.786.4440, or [drptpr@drpt.virginia.gov](mailto:drptpr@drpt.virginia.gov).

In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program and ensuring that DRPT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the DRPT Director concerning DBE program matters.

An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has no staff to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by the DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Advises the Director on DBE matters and achievement.
4. Plans and participates in DBE training seminars.
5. Coordinates with Virginia Department of Small Business and Supplier Diversity (SBSD) on the Uniform Certification Process.

### **Federal Financial Assistance Agreement Assurance (§26.13)**

DRPT has signed the following assurance, applicable to all DOT-assisted contracts and their administration. DRPT will also include this language in financial assistance agreements with sub-recipients:

*“The Virginia Department of Rail and Public Transportation (DRPT) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal*

*obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to DRPT of its failure to carry out its approved program, DRPT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)”.*

## DBE Financial Institutions (§26.27)

It is the policy of DRPT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

DRPT has made the following efforts to identify and use such institutions:

**DRPT has identified five (5) minority owned financial institutions with the Federal Reserve, and can be found on the Federal Deposit Insurance Corporation (FDIC) site at: <https://www.fdic.gov/regulations/resources/minority/mdi.html>**

**DRPT has researched, through the Commonwealth of Virginia’s Small Business and Supplier Diversity’s (SBSD) UCP list of certified DBE firms, as to whether any of those financial institutions are certified DBE firms.**

To date, there are no DBE certified financial institutions listed in the SBSBD UCP directory.

DRPT will monitor, on an annual basis, the list of minority owned financial institutions compiled by the Federal Reserve and will compare that list with the SBSBD’s UCP database to identify DBE certified financial institutions.

## Directory (§26.25)

In support of DRPT’s DBE program, the SBSBD maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm’s name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. SBSBD updates the directory as necessary. A copy of the directory is made available to subrecipients of DRPT. The Directory may be found at <https://directory.sbsd.virginia.gov/#/>, click on DBE Vendor Directory. (Attachment 3)

## Required Contract Clauses (§26.13, 26.29)

### Contract Assurance

DRPT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

*“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such*

*other remedy as the recipient deems appropriate, which may include, but is not limited to:*

1. *Withholding monthly progress payments;*
2. *Assessing sanctions;*
3. *Liquidated damages; and/or*
4. *Disqualifying the contractor from future bidding as non-responsible.”*

## **Prompt Payment**

DRPT will include the following clause in each DOT-assisted prime contract:

*“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Virginia Department of Rail and Public Transportation (DRPT) or its sub-grantees. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of DRPT of its sub-grantees. This clause applies to both DBE and non-DBE subcontractors.”*

## **Monitoring and Enforcement Mechanisms (§26.37)**

DRPT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. DRPT will bring to the attention of the U.S. Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. DRPT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 4 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. DRPT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished through the monthly utilization of DBE Subcontractor Report and will occur for each contract/project on which DBEs are participating (see Attachment 5).
4. DRPT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

See Attachment 6 for statewide removal procedures.

For U.S. DOT-supported contracts awarded by subrecipients, payments to DBE firms are counted toward DRPT's progress toward its overall goal. DRPT requires subrecipients to complete and submit to DRPT FTA's semi-annual reporting form. DRPT tabulates these forms and includes the subrecipient information within DRPT's own semi-annual reports to FTA. DRPT monitors subrecipients' compliance with 49 CFR Part 26 as part of DRPT's compliance reviews of subrecipients.

### **Overall Goals (§26.45)**

DRPT's overall goal is 7.8% of the federal financial assistance DRPT will expend in DOT assisted contracts. DRPT will begin using its overall goal on October 1 of each year, unless DRPT has received other instructions from FTA.

DRPT will consult with the Virginia Department of Small Business and Supplier Diversity and minority, women's, and general contracting groups and community organizations in setting our triennial goal and to inform them of the contracting opportunities available to certified DBE firms with DRPT and our subrecipients.

### **Good Faith Efforts to Attain Overall Goal and Accountability (§26.47)**

If the awards and commitments shown on DRPT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments.
2. Establish specific steps and milestones to correct the problems identified in the analysis.
3. Submit the plan to FTA within 90 days of the end of the affected fiscal year.

### **Vehicle Manufacturers (§26.49)**

DRPT will require each vehicle manufacturer, as a condition of being authorized to bid or propose on federally-assisted vehicle procurements, to certify that it has complied with the requirements of this section. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid on FTA-assisted procurements conducted by DRPT or subrecipients. Alternatively, DRPT may, at its discretion and with federal approval, establish project-specific goals for DBE participation in the procurement of vehicles in lieu of the manufacturer complying with this element of the program.



## Contract Goals (§26.51)

DRPT meets the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

DRPT will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of DRPT's overall goal that is not projected to be met through the use of race-neutral means. DRPT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). DRPT will express its contract goals as a percentage of the total value of a DOT-assisted contract.

## Good Faith Efforts for Contract Goals (§26.53)

DRPT treats offerors' compliance with good faith efforts requirements as a matter of responsibility. Therefore, each solicitation for which a contract goal has been established will require the offerors to submit the following:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount or percentage of the participation of each DBE firm participation
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
- If the contract goal is not met, evidence of good faith efforts

## Demonstration of Good Faith Efforts (§26.53(A))

The obligation of the offeror is to make good faith efforts. The offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A, 49 CFR Part 26.

DRPT Program Managers are responsible for determining whether an offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

DRPT will ensure that all information is complete and accurate and adequately documents the offeror's good faith efforts before we commit to the performance of the contract by the offeror.

## **Good Faith Efforts when a DBE is Replaced on a Contract (§26.53(F))**

DRPT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. DRPT will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, DRPT will require the prime contractor to obtain DRPT's prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

See Attachment 7.

## **Administrative Reconsideration (§26.53(D))**

Within 10 days of being informed by DRPT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Chief of Administrative Services  
DRPT, 600 E. Main Street, Suite 2102  
Richmond, Virginia 23219  
804.786.4440

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

## **Sample Bid Specification (§26.53(B))**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of DRPT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract.
2. A description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
3. The dollar amount of the participation of each DBE firm participating.
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal.
5. Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4).
6. If the contract goal is not met, evidence of good faith efforts including copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

## Counting DBE Participation (§26.55)

DRPT will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

## Certification (§26.81)

DRPT is a member of a Unified Certification Program (UCP) administered by the Virginia Department of Small Business and Supplier Diversity (SBSD). The UCP meets all of the requirements of this section. DRPT will use and count for DBE credit only those DBE firms certified by the SBSB.

More information about the UCP can be found at:

The Virginia Department of Small Business and Supplier Diversity  
 101 N. 14th Street, 11th Floor  
 Richmond, VA 23219  
 804.786.6585  
<https://www.sbsd.virginia.gov/directory/>

DRPT will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. DRPT will make certification decisions based on the facts as a whole.

## Process

Certification application forms and documentation requirements can be found at <https://www.sbsd.virginia.gov/certification-division/dbe/>. For information about the certification process or to apply for certification, firms should contact:

The Virginia Department of Small Business and Supplier Diversity  
101 N. 14th Street, 11th Floor  
Richmond, VA 23219  
804.786.6585  
<https://www.sbsd.virginia.gov/certification-division/dbe/>

In the event DRPT proposes to remove a DBE's certification, DRPT will follow procedures consistent with §26.87 and will work with the Virginia certifying agency: The Department of Small Business and Supplier Diversity.

### **Certification Appeals**

Any firm or complainant may appeal DRPT's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
1200 New Jersey Avenue SE  
Washington, DC 20590

DRPT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DRPT's DOT-assisted contracting (e.g., certify a firm if DOT has determined that DRPT's denial of its application was erroneous).

### **Re-certifications**

To date, the SBSD has reviewed and recertified all of the firms listed in the directory and determined that they meet the eligibility criteria of Subpart D of Part 26 and Subpart E of Part 26. Each firm will be recertified no later than three years from the most recent certification date. The firms will be reviewed in chronological order based on the submittal of the information required for recertification.

### **“No Change” Affidavits and Notices of Change**

All DBEs will be required to inform the SBSD, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the application for certification.

Also, all owners of all certified DBEs will be required to submit to the SBSD, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). A copy of the renewal application can be found at [www.sbsd.virginia.gov](http://www.sbsd.virginia.gov).

The SBSD will require DBEs to submit with this affidavit documentation of the firm's size and gross receipts. DRPT will notify all currently certified DBE firms of these obligations by letter sixty (60) days in advance of the due date of the recertification information. This notification will inform

DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

### **Personal Net Worth**

The SBSB will require all disadvantaged owners of applicants and of currently-certified DBEs whose eligibility under Part 26 we review, to submit a statement of personal net worth at the time of certification or recertification. The statement of personal net worth can be found at <https://www.sbsd.virginia.gov/important-forms/>.

## **Reporting and Confidentiality**

### **Monitoring Payments to DBEs**

DRPT will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of DRPT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

DRPT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

DRPT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### **Reporting to DOT**

DRPT will report DBE participation to DOT as follows: DRPT will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

### **Confidentiality**

DRPT and the SBSB will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, DRPT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

## ATTACHMENT 1: CERTIFYING AGENCIES

Information and forms can be found below:

Virginia Department of Small Business and Supplier  
Diversity <https://www.sbsd.virginia.gov/>

Metropolitan Washington Airports Authority  
<http://www.mwaa.com/about/about-authority>

How to become DBE certified  
<https://www.sbsd.virginia.gov/certification-division/>

## ATTACHMENT 2: ORGANIZATIONAL CHART

DRPT's Organizational Chart can be found at the link below:

<https://drpt.virginia.gov/about-us/our-team/>

## ATTACHMENT 3: DBE DIRECTORY

Virginia's DBE directory can be found at the link below:

<https://directory.sbsd.virginia.gov/#/>



## ATTACHMENT 4: MONITORING & ENFORCEMENT / LEGAL REMEDIES

DRPT will bring to the attention of the United States Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program so that DOT can take the steps provided in §26.107. After notifying a contractor they are in violation, DRPT will withhold payment until such violation is corrected.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR Part 31
- Prosecution pursuant to 18 USC 1001.



## ATTACHMENT 6: PROCEDURES FOR REMOVAL OF DBE ELIGIBILITY

Information and forms can be found below:

Virginia Department of Small Business and Supplier Diversity  
<https://www.sbsd.virginia.gov/certification-division/>

Metropolitan Washington Airports Authority  
<http://www.mwaa.com/about/about-authority>

## ATTACHMENT 7: FORMS

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract.
- The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_%) is committed to a minimum of \_\_\_\_% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No: \_\_\_\_\_

By: \_\_\_\_\_  
Signature Title

