

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Policy Statement

Section 26.1, 26.23 Objectives/Policy Statement

The MetroWest Regional Transit Authority (MWRTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. DBEs are for-profit small businesses where socially and economically disadvantaged individuals own at least a 51% interest, control management, and daily business operations. African Americans, Hispanics, Native Americans, Asian-Pacific and Subcontinent Asian Americans, people with disabilities, veterans, and women are presumed to be socially and economically disadvantaged.

The MWRTA has received Federal financial assistance from the Department of Transportation. As a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26. The MWRTA recognizes that DBEs play a critical role in addressing disproportionately high adverse human health and environmental effects of its operations. In line with the federal Justice40 initiative and its Title VI plan, the MWRTA's DBE program enhances the quality of life, along with environmental justice, by eliminating barriers to opportunity. The program has allowed for the development of a more diverse, equitable, and inclusive community.

It is the policy of the MWRTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Mark McClanan has been delegated as the MWRTA's DBE Liaison Officer (DBELO). In that capacity, Mr. McClanan is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MWRTA in its financial assistance agreements with the Department of Transportation.

The MWRTA has disseminated this policy statement to its governing Advisory Board and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by including specific language in our contracting opportunities and by featuring information related to the program on our website. The MWRTA has encouraged known DBEs to compete for contracts issued at a general level, while actively encouraging and informing agency vendors who are believed to be potential DBEs to apply for certification.


James R. Nee, MWRTA Administrator

7-1-2025
Date
updated responsible official

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

SUBPART A - General Requirements

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

The MWRTA 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, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The MWRTA will adopt the definitions contained in Section 26.5 for this program. See Exhibit (A) §26.5 Definitions.

Section 26.7 Non-discrimination Requirements

The MWRTA 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.

In administering its DBE program, the MWRTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record-Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

MWRTA will report DBE participation on a semiannual basis, using the Transit Award Management System (TrAMS). These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The MWRTA has created a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow the use of the bidders list approach to calculate overall goals. The bidders list will include the name, address, DBE non-DBE status.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

The MWRTA will collect this information through the Commonwealth of Massachusetts' Unified Certification Program (UCP). The Massachusetts UCP is a federally recognized entity responsible for certification of small businesses owned and controlled by socially and economically disadvantaged individuals such as DBEs. The UCP certifies and shares information regarding DBEs across all Massachusetts agencies receiving Federal DOT funding. The UCP is administered through the Massachusetts Supplier Diversity Office (SDO). (<https://www.mass.gov/orgs/supplier-diversity-office-sdo>). The SDO provides robust outreach and certification activities to the business community. This agency also maintains a searchable database of all recognized DBEs to assist federal funding recipients in goal setting, advertising, and identifying DBE vendors.

Section 26.13 Federal Financial Assistance Agreement

The MWRTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The MWRTA 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 MWRTA 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 MWRTA'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 the MWRTA of its failure to carry out its approved program, the Department may impose sanction 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.).

This language (verbatim) will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

The MWRTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract: The contractor, sub-recipient, 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 MWRTA deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The MWRTA has received grants totaling \$250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. MWRTA will provide to DOT updates representing significant changes in the program.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

MWRTA has designated the following individual as our DBE Liaison Officer (DBELO):

Mark McClanan
MetroWest Regional Transit Authority
15 Blandin Avenue
Framingham, MA 01702
508-935-2222
Mark.McClanan@mwrt.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the MWRTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the MWRTA Administrator concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO and MWRTA Staff are responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. Specific duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third-party contracts and purchase requisitions for compliance with the program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals) attainment and identifies ways to improve progress.
6. Analyzes the MWRTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Administrator and Advisory Board on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Massachusetts.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the MWRTA's updated directory of certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the MWRTA 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. MWRTA is a member of the Massachusetts Unified Certification Program (UCP), which conducts outreach to financial institutions and assists with certification activities.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

In addition, the MWRTA works internally with Legal Counsel and the CFO to disseminate requests for financial services. This ensures that the agency reaches the highest possible number of financial institutions. MWRTA includes information in procurements with required certs and assurances encouraging contractors to use DBE institutions.

A list of DBE financial institutions is available at

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

Information on the availability of such institutions can be obtained from the Director of the Massachusetts Unified Certification Program (DBE).

<https://www.mass.gov/info-details/maintaining-your-dbe-certification>

Section 26.29 Prompt Payment Mechanisms

The MWRTA 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 contract receives from the MWRTA. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors 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 the MWRTA. This clause applies to both DBE and non-DBE subcontracts.

Should the contractor fail to comply with the prompt payment clause spelled out in this document, MWRTA may opt to pay the subcontractor directly from funds invoiced from the prime contractor.

Monitoring and Enforcement 26.29(d)

MWRTA has implemented appropriate mechanisms to ensure compliance with prompt payment and retainage requirements by all program participants. MWRTA is a small agency. The work that is done at this agency is on-site and performed under the supervision of MWRTA staff. It is MWRTA's policy that the DBELO confirm receipt of payment from prime and subconsultants subsequent to sending out checks. This process ensures that the subcontractors receive payment in 30 days or less. If prompt payment is not occurring, MWRTA will make direct payments to the subcontractor in subsequent billing cycles. If necessary, the MWRTA will explore additional legal and contract remedies available under federal, state, and local law. Remedies, penalties, or sanctions that may be imposed in the event of a breach of prompt payment or release of retainage will be set forth within relevant contract documents.

Section 26.31 Directory

The MWRTA participates financially and substantively in the Massachusetts Unified Certification Program (UCP). The UCP is administered through the Massachusetts Supplier Diversity Office (SDO), which maintains a directory of all certified DBEs and acts as the DBE certifying agency for the MWRTA. As the state designated agency for DBE certification and certain compliance functions, the SDO is fully responsive in meeting DBE certification standards and criteria as outlined in the above-mentioned

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

sections of 49 CFR §26. The directory lists the firm's name, address, phone number, email (if available) date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The UCP revises this directory on a rolling basis. The Directory is available online and is a common resource for public and private usage. The directory is revised at least annually and, for recertification purposes, will determine if the firm is within the criteria of a small business as specified in 13 CFR 121, by SIC Code/NAICS Codes. The directory is distributed to staff members and prime contractors. It is also made available to the public on request. MWRTA is listed as a recipient in the Massachusetts UCP and information about MWRTA and the program is available to the general public through the UCP.

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

The MWRTA maintains an internal directory identifying firms eligible to participate as DBEs. The Directory may be found in Attachment 2 to this program document.

Section 26.33 Overconcentration

The MWRTA has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The MWRTA has not established a business development program; however, the Massachusetts Unified Certification Program (UCP) actively recruits and supports DBE businesses. MWRTA actively encourages women and minority-owned businesses to apply for certification by discussing program benefits and encouraging initiatives with existing contractors and the business community as a whole.

Section 26.37 Monitoring and Enforcement Mechanisms

The MWRTA will utilize the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. MWRTA will bring to the attention of the Department of Transportation 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. MWRTA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. MWRTA 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 by meeting regularly with DBEs and on-site observation of work as it progresses.
4. MWRTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

MWRTA provides oversight of DBE contractors by meeting personally with all DBEs at key project points to monitor work and review contracts.

Section 26.39 Fostering Small and Minority-Owned Business Enterprise (MBE) Participation

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

MWRTA has adopted the following strategies to foster small business enterprise (SBE) and minority-owned business enterprise (MBE) participation in federally funded contracting opportunities:

- MWRTA unbundles larger activities to ensure that small companies have the opportunity to bid on its contracts.
- Contracting opportunities are advertised in local media outlets such as the MetroWest Daily News (MWDN), MWRTA website, and the Central Register (when applicable) to reach small and minority-owned businesses in the region.
- MWRTA's staff establishes relationships with DBE firms through word of mouth, Worcester Business Journal (WBJ), and other advertising techniques.
- MWRTA's Central Hub facility in Framingham, MA houses an Office for Veterans Services, which establishes relationships with veteran-owned business enterprises (VBEs).
- MWRTA hosts pre-proposal meetings with the business community to ensure that companies bidding for MWRTA work will understand the benefits of using DBEs on their project teams.
- MWRTA will host the 15-member Massachusetts Alliance of Regional Transit Authorities (MARTA) for a Grants/Procurement roundtable to include DBE on the agenda.

While many DBE firms may be SBEs, not all SBEs, WBEs, and MBEs are DBEs. In line with DOT requirements, MWRTA's DBE program is narrowly tailored to assist those firms that are socially and economically disadvantaged. As such, the Authority ensures that only DBEs are counted on federally assisted contracts.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

In accordance with Section 26.45(f) the MWRTA will submit its overall goal to DOT on August 1 of the year specified by FTA. Before establishing the overall goal each year, the MWRTA will consult with the Massachusetts Unified Certification Program (UCP) to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses. MWRTA will also foster open communication with the community and stakeholders to understand the effects of discrimination on opportunities for DBEs, and provide transparency related to the goal-setting methodology used. MWRTA Regularly reviews information concerning disadvantaged and non-disadvantaged businesses, along with the effects of discrimination on opportunities for DBEs. The Authority remains committed to maintaining a level playing field for DBE participation.

Following this consultation, the MWRTA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the MWRTA Central Hub for 30 days following the release date. The notice will state that MWRTA and DOT will accept comments related to the goals for 45 days following publication. This notice will also be made available within local media and on the MWRTA website.

The MWRTA will issue this notice by August 1 of the year the program is due. The notice will indicate that it is available for review on the MWRTA's website at www.mwrta.comm. In addition, the notice will

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

state that comments may be submitted to the MWRTA Central Hub at 15 Blandin Avenue, Framingham, MA, 01702, during the designated 45-day public comment period.

The MWRTA's overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 – Goal Setting and Accountability

If awards and commitments shown on MWRTA's Uniform Report of Awards or Commitments and payments at the end of the year are less than the overall goals 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.

Section 26.49 Transit Vehicle Manufacturers (TVM) Goals

The MWRTA will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the MWRTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

Pursuant to Section 26.51, the MWRTA ensures the utilization of race-neutral means when conducting outreach, requesting technical assistance, and engaging in procurement activities. In establishing its overall DBE goal, MWRTA estimates, in advance, the part which can be achieved through the use of race-neutral means. MWRTA provides this projection to DOT upon the submittal of its overall goal. MWRTA strives to obtain the maximum feasible level of DBE participation through race-neutral means and only utilizes race-conscious measures for goal setting and other activities when necessary to ensure adequate DBE participation. The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

Section 26.51(d-g) Contract Goals

The MWRTA 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 our overall goal that is not projected to be met through the use of race-neutral means.

We 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

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

DBEs to perform the particular type of work.) It should be noted that MWRTA unbundles contracts where prudent to encourage the participation of DBEs.

We will express our contract goals as a percentage of the total amount of the DOT-assisted contracts.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the respondent is to make good faith efforts. The respondent 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 to Part 26.

MWRTA staff is responsible for determining whether a respondent who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.]

The MWRTA will ensure that all information is complete and accurate, while adequately documenting the respondent's good faith efforts before we commit to the performance of the contract by the respondent.

Information to be submitted (26.53(b))

The MWRTA treats respondents' compliance with good faith efforts' requirements as a matter of responsiveness. It is the responsibility of the MWRTA's staff to collaborate with bidders to verify proper documentation of DBE participation. The staff is also charged with determining the bidders commitment to subcontracting with DBEs in a sufficient amount to meet the designated goal.

Each solicitation for which a contract goal has been established will require the respondents 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

In the event a bidder falls short of its goal, the Authority seeks documentation stating that the entity made sufficient good-faith efforts to engage with DBEs during all project stages.

Administrative reconsideration (26.53(d))

Within 7 days of being informed by the MWRTA that it is not responsive because it has not documented sufficient good faith efforts, a respondent may request administrative reconsideration. Respondents should make this request in writing to the following reconsideration official:

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

James R. Nee, Administrator, MWRTA, 15 Blandin Avenue, Framingham, MA 01702, 508-935-2222, jim@mwarta.com The reconsideration official will not have played any role in the original determination that the respondent did not document sufficient good faith efforts.

As part of this reconsideration, the respondent 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 respondent 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 respondent 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 Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The MWRTA 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. We 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, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our legal counsel will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, legal counsel may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the MWRTA 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 respondents, including those who qualify as a DBE. A DBE contract goal of 2.6 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The respondent 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;
- (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); and
- (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

MWRTA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. Pursuant to this section, the value of a DBE's participation is based on its actual function. DOT allows DBEs to be counted as performing a commercially useful function (CUF) when it is deemed responsible for the execution of work outlined within a contract.

MWRTA's DBE Liaison Officer and staff are responsible for ensuring that work committed to DBEs is adequately performed. These individuals closely monitor all contracts on which DBE participation is claimed in order to verify that DBE participation is accurately processed.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

For information about the certification process or to apply for certification, firms should contact the Supplier Diversity Office (SDO):

The McCormack Building
One Ashburton Place, Room 1608
Boston, MA 02108-1552
Main [\(617\) 720-3300](tel:6177203300)
Hours of Operation M-F 9am-5pm

Certification application forms and documentation requirements are available at:
<https://www.mass.gov/orgs/operational-services-division>.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The MWRTA is a member of a Unified Certification Program (UCP) administered by the Commonwealth of Massachusetts' Supplier Diversity Office (SDO). The UCP will meet all of the requirements of this section. The following is a description of the UCP: The SDO's mission is to promote diversity, equity, and inclusion in state contracting for businesses owned by minorities, women, veterans, service-disabled veterans, those with a disability, and LGBT individuals, as well as small Massachusetts businesses. The SDO enhances economic vitality and environmental justice by certifying these businesses through several programs that help them enhance their marketability when bidding on public contracts.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

MWRTA is a member of the Commonwealth of Massachusetts' Unified Certification Program (UCP). The UCP reviews the eligibility of DBEs certified under former part 23, to make sure that they meet the standards of Subpart E of Part 26. DBEs are required to be re-certified annually following their most recent certification date. (<https://www.mass.gov/info-details/maintaining-your-dbe-certification>). The UCP will notify firms 30 days prior to the date of expiration, and will work with them to ensure timely compliance.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

"No Change" Affidavits and Notices of Change (26.83(j))

The Massachusetts Unified Certification Program (UCP) requires all DBEs to inform the agency, 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. The UCP also requires DBEs to inform them of any material changes in the information provided with the entity's application for certification. Changes that affect certification include, but are not limited to, the following:

- Change in ownership, control, or operations
- Relocation of the business
- Change of products or services

The UCP requires all owners of all certified DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is as follows:

I affirm that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR Section 26.5, without regard to my individual qualities. I further affirm that my personal net worth does not exceed \$1,320,000.00, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged. I specifically affirm [name of DBE firm] continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26 and [DBE firm name] average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed \$30,400,000.00 average gross dollar amount. I provide the attached size and gross receipts documentation to support this affidavit.

<https://www.mass.gov/doc/massucp-no-change-affidavit/download>

The UCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The UCP will notify all currently certified DBE firms of these obligations via email, as well as a reminder letter, (30) days prior to the expiration date. (<https://www.mass.gov/service-details/learn-about-maintaining-your-sdo-certification>) This notification will inform DBEs that to submit the "no change" affidavit, their owners must 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.

Section 26.85 Denials of Initial Requests for Certification

If the Massachusetts Supplier Diversity Office (SDO) denies a firm's application or decertifies it, it may not reapply until 6-12 months have passed from this action.

Section 26.87 Removal of a DBE's Eligibility

In the event the Supplier Diversity Office (SDO) proposes to remove a DBE's certification, we will follow procedures consistent with 26.87. Any individual may file a complaint with the SDO alleging that a currently-certified firm is ineligible. The complaint must include information and arguments supporting

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

the assertion that the firm is ineligible and should continue to be certified. If the SDO determines that there is reasonable cause to believe that the firm is ineligible, it will notify the firm in writing.

Attachment 7 to this program sets forth these procedures in detail. To ensure the separation of functions in a de-certification, SDO has determined that the Massachusetts Department of Transportation (MassDOT) Administrative Law Judge will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that MassDOT will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal the Supplier Diversity Office's (SDO's) decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590

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

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

The MWRTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law (including applicable Freedom of Information Act (FOIA) requests).

Notwithstanding any contrary provisions of state or local law, the MWRTA 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.

Monitoring Payments to DBEs

The MWRTA requires 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 the MWRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We 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.

ATTACHMENTS

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal Calculation
- Attachment 5 Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 6 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 7 Certification Application Forms
- Attachment 8 Procedures for Removal of DBE's Eligibility
- Attachment 9 Regulations: 49 CRR part 26

EXHIBITS

- Exhibit A Definitions
- Exhibit B Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 1

Organizational Chart

MWRTA Organizational Chart

Advisory Board

- Administrator
- Chief Operating Officer (COO)/Deputy Administrator
- Executive Admin Assistant, Human Resources
- Grants Manager
- Financial Assistant
- Grants Support Coordinator
- Director of Travel Training & Community Relations
- Director of Fixed Route, Intermodal & Marketing, CDL Operations and Intermodal Operations
- Call Center Manager & Staff
- Schedulers
- Fleet Maintenance Director & Staff
- Facilities Director
- Farebox Associate
- Contractors:
 - Legal Counsel
 - Chief Financial Officer (CFO)
 - Audit Services
 - Information Technology (IT)
 - Owner's Representative
 - Services (Fixed Route, Demand, and Microtransit)

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 2 - DBE Directory

MWRTA is a member of the Massachusetts Unified Certification Program (UCP). A copy of the DBE Directory is available electronically on the Massachusetts Office of Supplier Diversity's website at:

<https://www.mass.gov/orgs/operational-services-division>

MWRTA Internal DBE Directory 2024-2026:

All Time Services Management, LLC
17 Poplar Street
Roslindale, MA 02131
Cleaning Service

ARCpoint Labs
352 Turnpike Rd, Ste 105
Southborough, MA 01772
Drug & Alcohol Testing / Training – MWRTA & Contractor

BCAD – Best Choice Abatement & Demolition
60 Pine St, Unit E
Methuen, MA 01844
Roof Project

Don Martin Corporation
475 School Street
Alden Crossing, Unit #6
Marshfield, MA 02050
Paving

Ellico Promotions, Inc.
113 Smoke Hill Ridge Road
Marshfield, MA 02050
Apparel, PPE Supplies, etc.

Heritage Construction & Supply
239 Dorchester Street, Unit 1
South Boston, MA 02127
Construction Project

JCM & Associates, Inc.
5443 E. Washington Boulevard
Commerce, CA 90040
Uniforms and reflective apparel; Embroidery logos

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Pacella Enterprises
P.O. Box 1020
Wrentham, MA 02093
Paving - Blandin

Samiotes Consulting Inc.
20 A Street
Framingham, MA 01701
Civil Engineer & Land Survey

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 3

Monitoring and Enforcement Mechanisms

The MWRTA has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Massachusetts General Law – Part I, Title II, Chapter 7, Section 61. <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter7/Section61>

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

Disadvantaged Business Enterprise (DBE) Ethnicity

BCAD, Inc. (Best Choice Abatement and Demolition)

60 Pine Street Unit E, Methuen, MA 01844

Attn: Manuel Joaquin

Tel # 978 688 4045

Name or Initials (Example: John Smith or J.S.)	Black American	Hispanic American	Native American	Subcontinental Asian American	Asian Pacific American	Non- minority
Manuel Joaquin		Hispanic				

July 2020

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Disadvantaged Business Enterprise (DBE) Ethnicity

Pacella Enterprises, Inc.

Civil Engineers + Land Surveyors

PO Box 1020, Wrentham, MA 02093

Tel # 508 695 9668

Name or Initials (Example: John Smith or J.S.)	Black American	Hispanic American	Native American	Subcontinental Asian American	Asian Pacific American	Non-minority
George Bradshaw	X					
Jennifer Dunlea						FEMALE
David Guimond						X
Jose Neto		X				
Thiago Ramos Da Silva		X				
Fernando Roxo		X				
Frederick Schuler						X

May 2017

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. MWRTA's overall goal for the following time period FY2024-2026 is the following: 2.6% of the Federal financial assistance we will expend in DOT-assisted contracts. [FTA recipients add: exclusive of FTA funds to be used for the purchase of transit vehicles.]
2. \$14,038,006 is the dollar amount of DOT-assisted contracts that MWRTA expects to award during FFY2024-FFY2026. This means that MWRTA has set a goal of expending \$36,498 with DBEs during this fiscal year/project.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

Ready, willing, and able DBEs

Base figure = 2.98% of all firms ready, willing and able

The data source or demonstrable evidence used to derive the numerator was: 4.01 (total of 3 years (FY21-23)

The data source or demonstrable evidence used to derive the denominator was: 3 (# of years)

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was: .013

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

MWRTA has determined that an adjustment to the Base Figure is not necessary since the current capacity of DBE's to perform the work is adequate to meet the need. MWRTA did not meet the DBE goal of 3.47% for FFY2021-2023. Therefore, MWRTA will make a race-conscious effort of 1.3% and a race-neutral effort of 1.3% for FFY2024-FFY2026.

Public Participation

The MWRTA published our goal information on its website, www.mwrta.com. We receive comments from individuals and organizations during our DBE Outreach at conferences, in the advertisement of RFPs, solicitations, and during bidder's conferences. We distribute DBE information to potentially eligible prime contractors, strongly encouraging DBE participation.

- Comments from individuals or organizations
- Summaries of comments
- Responses to comments

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 5

Section 26.51: Breakout of Estimated

Race-Neutral & Race Conscious Participation

The MWRTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Authority uses the following race-neutral means to increase DBE participation:

1. Performs outreach to DBEs at conferences and in the advertisements of RFPs/solicitations.
2. Word of mouth - MWRTA reaches out to qualified entities, encouraging them to apply for DBE certification.

We estimate that, in meeting our overall goal of 2.6%, we will obtain 1.3% from race-neutral participation and 1.3% through race-conscious measures.

MWRTA has determined that an adjustment to the Base Figure is not necessary since the current capacity of DBE's to perform the work is adequate to meet the need. MWRTA did not meet the DBE goal of 3.47% for FFY2021-2023. Therefore, MWRTA will make a race-conscious effort of 1.3% and a race-neutral effort of 1.3% for FFY2024-FFY2026.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: 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

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation: The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature of Authorized Official) Title Date

If the bidder/offeror does not receive the award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Attachment 7

Certification Application Forms and documentation requirements are available at:
<https://www.mass.gov/orgs/operational-services-division>.

Attachment 8

Procedures for Removal of DBE's Eligibility

<https://www.mass.gov/doc/procedures-governing-removal-of-dbe-eligibility/download>

Attachment 9

Regulations: 49 CFR Part 26

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

You may obtain an electronic version of this document, the DBE regulation itself and other DOT guidance here:
<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business>

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

* If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

FTA Last updated: Tuesday, February 8, 2022 / MWRTA Updated: July 2023

Exhibit A - §26.5 Definitions

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:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) 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 a recipient has correctly implemented the requirements of this part.

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 the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern—

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

(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 mean 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 that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: The Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). 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

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

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/eos/www/naics/>.

Primary recipient means a recipient which receives 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 the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient'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.

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 member 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. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(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;

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

(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.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

Exhibit B

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. FTA recipient, indicate WRTA Vendor Number 1380 in the space provided.
2. FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.
3. Specify the Federal fiscal year (*i.e.*, October 1-September 30, 20XX) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30.
6. Provide the name and address of the recipient. WRTA, 60 Foster Street, Worcester, MA 01608
7. State WRTA overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the FTA, and the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

49 CFR Part 26 – MWRTA Disadvantaged Business Enterprise (DBE) Program

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11-17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise, the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The “Non-Minority” category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either “women” OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A-E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)-20(E). Items 21(A)-21(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)-21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS										
FEDERAL AGENCY: _____ CONTRACT NO. _____										
FISCAL YEAR: _____ REPORTING PERIOD: _____										
APPROVAL / CERTIFICATION STATEMENT										
A. DBE PARTICIPATION BY CONTRACT VALUE		Total Dollars	Total Dollars	Total Dollars	Total DBE Dollars	Total DBE Dollars	Total Dollars	Total Dollars	Total Dollars	Total Dollars
B. DBE PARTICIPATION BY CONTRACT TYPE		Total Dollars		Total Dollars	Total Dollars	Total Dollars	Total Dollars	Total Dollars	Total Dollars	Total Dollars
C. PAYMENTS TO DBE BUSINESSES		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBE	Total Payments to DBE Bus.	Total Number of DBE Bus. Paid	Percent to Total			
D. TOTAL PERCENTAGE OF DOLLARS ON COMPLETED CONTRACTS		Total Dollars Value of Contracts Completed		Total DBE Participation (Dollars)	Percent to Total		Percent to Total			

Complete the Uniform Report of DBE Awards or Commitments and Payments for each of the Semi- Annual periods. The workbook will calculate the total DBE attainment for the federal fiscal year to determine if the annual goal has been met. If the goal has not been met, a shortfall analysis must be completed.