

**Berkshire Regional Transit Authority  
DBE Program – 49 CFR §26  
FY 2017 – 2019 DBE Program**

**POLICY STATEMENT**

**Section 26.1, 26.23            Objectives/Policy Statement**

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

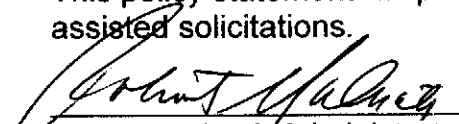
It is the policy of the BRTA to ensure that DBEs as defined in §26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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 CFT §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 assist the development of firms that can compete successfully in the market place outside the DBE program.

The BRTA Administrator is responsible for the formulation and monitoring of the policies and procedures of the DBE Program Plan. The Office Manager will be responsible for the development, implementation, compliance and record keeping function associated with this program. The Assistant Administrator fully intends to see that the provision of the DBE Program Plan are thoroughly understood by all suppliers, vendors, contractors and subcontractors and addressed in both the spirit and letter of the final rule.

The BRTA has disseminated this policy statement to the BRTA 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.

This policy statement will posted to the BRTA website, and accompany all future DOT-assisted solicitations.

  
Robert Malnati, Administrator

9/29/16  
Date

## **SUBPART A - GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

The BRTA is the recipient of federal transit funds authorized by Title I, III, V and VI of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) Public Law 112-141.

### **Section 26.5 Definitions**

The BRTA will adopt the definitions contained in 49 CFR Section 26.5. A copy of 49 CFR §26 can be found in Attachment 9 to this program.

### **Section 26.7 Non-discrimination Requirements**

The BRTA 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 §26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the BRTA 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.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT: 26.11(b)**

The BRTA will report DBE participation to DOT as follows:

The BRTA will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### **Vendors List: 26.11(c)**

The BRTA will create a vendor 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 use the vendor's list approach to calculating overall goals. The vendor list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

The BRTA will collect this information in the following ways:

The BRTA will collect this information by placing a clause in all solicitations requiring prime contractors to report the following information regarding the vendor, and all firms submitting quotes for that solicitation:

1. Firm name;
2. Firm address;
3. Firm's status as a DBE or non-DBE;
4. The age of the firm; and
5. The annual gross receipts of the firm.

### **Section 26.13 Federal Financial Assistance Agreement**

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

#### Assurance: 26.13(a)

The BRTA 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 §26. The BRTA shall take all necessary and reasonable steps under 49 CFR §26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The BRTA's DBE Program, as required by 49 CFR §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 BRTA of its failure to carry out its approved program, the Department may impose sanction as provided for under §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.).

The above language will appear in financial assistance agreements with sub-recipients.

#### Contract Assurance: 26.13(b)

The BRTA 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 §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 BRTA deems appropriate.

The above language will appear in financial assistance agreements with contractors and sub-contractors.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

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

The BRTA has designated the following individual as our DBE Liaison Officer:

Kaylyn Hunkler, Chief Financial Officer  
1 Columbus Avenue, Suite 201  
Pittsfield, MA 01201  
(413) 499-2782 #2873  
Kaylyn.hunkler@berkshirerta.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the BRTA complies with all provision of 49 CFR §26. The DBELO has direct, independent access to the 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 is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that solicitation notices are available to DBEs in a timely manner.

4. Identifies contracts and procurements to ensure that DBE goals are included in solicitations (contract specific) and monitors results.
5. Analyzes BRTA's progress toward attainment and identifies ways to improve progress.
6. Advises the Administrator on DBE matters and achievement.
7. Participates in DBE training seminars.
8. Provides outreach to DBEs and community organizations to advise them of opportunities.
9. Maintains the BRTA's updated directory of certified DBE's.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the BRTA 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 contract to makes use of these institutions. We have made the following efforts to identify and use such institutions:

### Federal Reserve Statistical Release of Minority-Owned Banks

To date we have identified the following such institutions:

Oneunited Bank  
BNB Bank, NA  
City National Bank  
Alternatives Federal Credit Union  
Eastbank, NA  
First American International  
Noah Bank

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. This list will be updated in conjunction with this DBE program submission.

## **Section 26.29 Prompt Payment Mechanisms**

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

The price 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 BRTA. 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 BRTA. This clause applies to both DBE and non-DBE subcontracts.

Failure by a contractor to carry out these requirements is a material breach of its contract, which may result in the termination of its contract or such other remedy as the BRTA deems appropriate.

All subcontracting agreements made by the contractor shall include the current prompt payment to sub-contractors provisions as incorporated in the contract.

### **Section 26.31      Directory**

The BRTA maintains a directory identifying all firms eligible to participate as DBEs. The directory list the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE and is revised annually. The Directory may be obtained by contacting the BRTA at 1 Columbus Avenue, Suite 201, Pittsfield, MA 01201. Supplier Diversity Office (SDO) <http://www.somwba.state.ma.us> an agency within the Commonwealth of Massachusetts will be used to supplement BRTA's DBE Directory. The Directory may be found in Attachment 2 to this program document.

### **Section 26.33      Overconcentration**

The BRTA has not identified that overconcentration exists in the type of work that DBEs perform.

### **Section 26.35      Business Development Programs**

The BRTA has not established a business development program.

### **Section 26.37      Monitoring and Enforcement Mechanisms**

The BRTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR §26.

1. The BRTA 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 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. The BRTA 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 use in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. The BRTA 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 mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments.
4. The BRTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Section 26.39      Small Business Element**

The BRTA submitted a small business element in response to the DBE program regulation that became effective on February 28, 2011. The BRTA is waiting on final approval before it can be added to the DBE Program.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43      Set-asides or Quotas**

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

### **Section 26.45      Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculation can be found in Attachment 4 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45 (f) the BRTA will submit its overall goal to DOT on August 1<sup>st</sup> for the upcoming period. Before establishing the overall goal of the project, the BRTA will consult with the Procurement Department, Grant Department, and BRTA Vision Plan to assist and comment on the outreach goals. The BRTA will also be able to determine the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the BRTA's efforts to establish a level playing field for the participation of DBEs.

Based on the update in regulations, the BRTA's goal will be set for a three (3) year period. The BRTA will adjust its goal during this three (3) year time period only if there is a substantial adjustment on the projects funding. In addition to the initial program the BRTA will publish a public notice in the Berkshire Eagle, Boston Globe and will provide notice on the BRTA's website – ([www.berkshirerta.com](http://www.berkshirerta.com))

Information on the proposed overall goals, including the rationale for establishing the goal, will also be available for inspection during normal business hours at the BRTA Administrative Office at 1 Columbus Avenue, Suite 201, Pittsfield, MA 01201 for a period of 30 days, following the date of the public notice informing the public that the BRTA and DOT will accept comments on the goal for 45 days from the date of the notice. The BRTA will issue the notice by June 15 of the DBE program year. The notice will include a means for which comments may be sent and the locations of where the proposal may be reviewed.

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

The BRTA will begin using our overall goal on October 1 of each DBE program year, unless instructed by DOT otherwise. If a goal is established on a project basis, the BRTA will begin using that goal in the first solicitation for a DOT-assisted contract.

#### **Section 26.47      Failure to Meet Overall Goals**

The BRTA intends to support this program and document its good faith efforts in achieving these goals. If the BRTA does not meet the goal set in this plan, the BRTA will not be in noncompliance and be penalized for the short fall of the overall goal. The BRTA will only be penalized for the failure to administer the program with good faith.

Pertaining to the Uniform Report, if the overall goal is less than what was committed; the BRTA will document to the reasoning for the difference between the overall goal set and the awards and commitments made along with a full explanation on how to correct the problems in order to meet the goal for the next year. The only time the FTA will find the BRTA in noncompliance is if the documentation is disapproved by FTA and if the corrective actions are not fully implemented. If the reports state that current trends make it unlikely to achieve DBE awards and commitments based on the approved plan, then the BRTA will formally modify the race conscious and race-neutral sections of the report to achieve their stated goal.

#### **Section 26.49      Transit Vehicle Manufacturers Goals**

The BRTA 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 49 CFR §26.49. Alternatively, the BRTA 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)      Breakouts of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated prior to the goal calculations update and submission.

#### **Section 26.51 (d-g)      Contract Goals**

The BRTA will use contract goals to meet any portion of the overall goal BRTA does not project being able to meet by 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.

The BRTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The BRTA is not required to establish a contract goal on every such contract, and the size of the 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.)

The BRTA will express its contract goals in all applicable solicitation documents. When applicable, the following language will be included in BRTA's solicitation documents.

*The requirements of 49 CFR §26, Regulations of the US Department of Transportation, apply to this contract. It is the policy of the BRTA 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 \_\_\_\_% has been established for this contract. The bidder/offeror shall make good faith efforts, as demonstrated in Appendix 6, 49 CFR §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; 3) the dollar amount of the participation of each DBE firm; 4) Written documentation of the bidders/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; 5) written confirmation from the DBE that 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.*

The BRTA will express its contract goals as a percentage of the Federal share of a DOT-assisted contract.

## **Section 26.53      Good Faith Efforts Procedures**

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Example of good faith efforts are found in Appendix A to §26.

The Assistant Administrator is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53 (b))

BRTA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors 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.

Administrative reconsideration (26.53 (d))

Within 7 days of being informed by the BRTA 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:

Administrator  
Berkshire Regional Transit Authority  
1 Columbus Avenue, Suite 201  
Pittsfield, MA 01201  
(413) 499-2782

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 the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The BRTA will send bidder/offeror a written decision on reconsideration, explaining the basis for finding 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)):

### Replacement of a DBE contractor

In the event that a DBE contractor must be replaced, the BRTA will require prime contractors to notify the DBE in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection. The prime contractor needs written authority from the BRTA in order to terminate the DBE subcontractor. At this point, the contractor will support the BRTA's decision and make good faith efforts to replace a DBE contract with another certified DBE.

Situations in which a DBE may be replaced include, but not limited to, the following:

- The DBE fails or refuses to execute a written contract
- The DBE fails or refuses to perform the work consistent with normal industry standards
- The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements
- The DBE becomes bankrupt or has credit unworthiness
- The DBE is ineligible to work because of suspension and debarment
- It has been determined that the DBE is not a responsible contractor
- The DBE voluntarily withdraws, with written notification, from the contract
- The DBE is ineligible to receive credit for the type of work required
- The DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract
- Or other documented compelling reasons.

### Notice of Substitution

The BRTA shall require the contractor to notify the DBE Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The BRTA shall require the contractor to notify the BRTA when the need for substitution arises and to submit a request for substitution, prior to the DBE's termination. Such a request must be in writing and include a description and justification for the substitution.

### Approval of Substitution

The BRTA shall require the contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts to obtain a DBE replacement contractor. The contractor shall submit a written

request for administrative approval of the substitution prior to making a change in the contract. The contractor's good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the terminated DBE.

#### Failure to Comply

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

#### **Section 26.55      Counting DBE Participation**

The BRTA will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55. DBE credit will only be awarded for all services performed and rendered by the DBE's themselves.

### **SUBPART D – CERTIFICATION STANDARDS**

#### **Section 26.61 – 26.73      Certification Process**

The BRTA will utilize the Massachusetts UCP DBE directory and will require every DBE participant to submit current certification. The BRTA will not certify firms.

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

The McCormack Building  
One Ashburton Place, 13<sup>th</sup> Floor  
Boston, MA 02108  
Phone: (617) 502-8831  
Fax: (617) 502-8841  
Email: [wsomwba@state.ma.us](mailto:wsomwba@state.ma.us)

### **SUBPART E – CERTIFICATION PROCEDURES**

Massachusetts UCP Certification will occur through the Massachusetts Supplier Diversity Office. The DBE Officer will encourage firms to apply and become certified.

### **SUBPART F – COMPLIANCE AND ENFORCEMENT**

#### **Section 26.109      Information, Confidentiality, Cooperation**

The BRTA 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 and local law, The BRTA 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 BRTA will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the BRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The BRTA 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 equal or exceeds the dollar amounts stated in the schedule of DBE participation.

### Commercial Useful Functions

During the performance of contracts, monitoring is conducted by various on-site project staff in conjunction with the Compliance Officer to ensure:

1. The type of work and the value of work performed are consistent with work stated in the contract.
2. The DBE is performing a “commercially useful function” by actually performing, managing, and supervising the work with its own workforce.
3. The equipment utilization is either owned or leased by the DBE.

The monitoring report will be utilized to serve as written certification by the BRTA that contracting records have been reviewed and work monitored relative to distinct elements of each DBE subcontract.

## **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculations
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 DBEs Eligibility
Attachment 9	Regulations: 49 CFR §26

## **Attachment 2**

### **DBE DIRECTORY**

Berkshire Services, Inc.  
408 Summit Road  
Richmond, MA 01254  
413-698-3347  
NAICS: 238350, 237310, 238320, 238120, 561730

Berkshire Wetland Services  
161 West Park Street  
Lee, MA 01238  
413-243-9777  
NAISC: 541620

O'LH Financial Management Service, Inc.  
11 Arrowhead Avenue  
Auburn, MA 01501  
413-427-4499  
NAICS: 541614, 561110, 541219

## **Attachment 3**

### **Monitoring and Enforcement Mechanisms**

The BRTA 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 as well as Massachusetts statutes and common laws.
2. Breach of contract action, pursuant to state statute and common law.

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:

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



## Attachment 4

### Section 26.45: Overall Goal Calculation

#### Amount of Goal

The BRTA's overall goal for the following time period 2017-2019 is the following: .78% of the Federal Financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

#### Methodology Used To Calculate Overall Goal

##### **Step 1: 26.45(c) Base Figure**

Determine the base figure for the relative availability of DBEs.

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

**Total number of DBE firms (Western MA Regions 1 and 2)/total number of firms (Western MA Regions 1 and 2) = Overall Goal**

$$\begin{aligned} 7/380 &= .0184 \\ .0184 \times 100 &= 1.84\% \end{aligned}$$

The data source or demonstrable evidence used to derive the numerator was:

The Massachusetts Supplier Diversity Office (SDO) through its UCP maintains a listing of certified DBEs that can be found at:

<http://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx>.

The data source of demonstrable evidence used to derive the denominator was:

U.S. Department of Census can be found at:

<http://www.census.gov/econ/susb/index.html>

**Weighted Base Figure Calculation:**

NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
	<b>Preventive Maint</b>				
1) 238220	Plumbing Heating/AC	0.0049	x	0.01050	0.0001
2) 238210	Electrical Contractors	0.0008	x	0.02630	0.0000
3) 336340	M.V. Brake Systems	0.0182	x	0.00000	0.0000
4) 336350	M.V. Power Trains	0.0429	x	0.00000	0.0000
5) 336390	Other M.V. Parts	0.0277	x	0.00000	0.0000
6) 336330	M.V. Steering/Suspension	0.0112	x	0.00000	0.0000
7) 238390	Other Bldg. Finish Cont		x		
8) 238990	Other Specialty Trade		x		
	<b>Operating Assistance</b>	0.5467	x	0.00000	0.0000
9) 424120	Stationary Office Supply	0.0025	x	0.00000	0.0000
10) 424720	Pet. Merchant Wholesale	0.0067	x	1.00000	0.0067
11) 424710	Pet. Bulk Station	0.1991	x	0.00000	0.0000
12) 524126	Property Casulaty Ins	0.1012	x	0.00000	0.0000
13) 541512	Computer System Design	0.0115	x	0.05260	0.0006
14) 532420	Office Machine Equip	0.0008	x	0.00000	0.0000
15) 541430	Graphic Design Services		x		
16) 541110	Lawyers	0.0073	x	0.00000	0.0000
17) 541211	CPA	0.0142	x	0.00000	0.0000
18) 323111	Commercial Printing	0.0034	x	0.10530	0.0004
19) 541214	Payroll Services	0.0009	x	0.00000	0.0000
20) 541850	Outdoor Advertising		x		
21) 423110	Support Vehicle		x		
		1.0000		<b>Total</b>	0.0078
				Expressed as a % (*100)	0.78%
				<b>Rounded, Weighted Base Figure:</b>	<b>0.78%</b>

## Step 2: 26.45(d) Adjust Base Figure

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.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure as follows:

The data was used to determine the justification to adjust the base figure was:

Fiscal Year	Total Contract	Total DBE	Percentage
2013	\$2,294,375	\$5875	0.25%
2014	\$3,553,705	\$0	0.0%
2015	\$2,995,788	\$2648.62	0.1%

The DBE goal is 0.78%. The BRTA will achieve this by 50% race neutral means and 50% race conscious means. The BRTA's operating assistance funding level (\$810,177.00) is approximately 50% of the total FTA assisted contract funds (\$1,683,628). Active periodic review of the state OSD website for potential DBE firms by BRTA and the operating company prior to any solicitation, then including the potential DBE firms when releasing the procurement notices will ensure DBE outreach. 5 out of 21 areas listed in Charts 1-3 have DBE participation or 24%.

### **Public Participation**

The BRTA published its goal information on the BRTA website at [www.berkshirerta.com](http://www.berkshirerta.com) for a 45 day public comment period. There were no comments.

## **Berkshire Regional Transit Authority Disadvantaged Business Enterprise (DBE) Goals Good Faith Efforts and Community Outreach**

The Berkshire Regional Transit Authority (BRTA) takes every step available to include disadvantaged businesses in all procurement opportunities. The BRTA purchasing staff is fully trained on the DBE plan and monitors the DBE certified vendor list to ensure that all DBE vendor are included. The following are tasks that were undertaken during the past three (3) years to provide this community and business outreach:

1. Member of the Berkshire Chamber of Commerce. BRTA staff attended chamber meetings, conferences, and work groups on a regular basis.
2. Member of Pittsfield Downtown, Inc. where BRTA contracting opportunities were discussed.
3. BRTA staff attended NTI DBE training courses in Atlanta, GA and Columbia, SC.
4. The BRTA DBE plan and goals were included on the BRTA website.
5. BRTA posted information on how to do business with BRTA was on the BRTA website.
6. BRTA received announcements about updates to the DBE Directory.
7. BRTA staff monitors and discussed DBE participation during budget planning meetings.
8. BRTA met with the Berkshire Chamber of Commerce to discuss BRTA's DBE program.
9. BRTA ensures that all procurement notifications were sent to the applicable DBE firms.

Moving forward, the BRTA plans to continue the activities outlined above while incorporating the following activities to further enhance the community and business outreach:

1. Increase participation in the Berkshire Chamber of Commerce by attending Chamber Nights, as well as Berkshire Young Professionals events.
2. Interact with other governmental agencies (City of Pittsfield, Pittsfield Economic Development Authority, and other transit agencies) to share DBE vendor lists and success stories.
3. Continue to attend training classes to gain additional knowledge on the DBE programs and contracting.
4. Ensure that all procurements continue to be notified to the applicable DBE firms.
5. Participate in local minority, women, and small business groups to ensure that they are aware of contracting opportunities with the BRTA.
6. Periodically review this standalone document to determine what efforts are working and what changes or additions should be made to further increase the BRTA community and business outreach.

## **Attachment 5**

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

1. E-mail solicitation to those firms listed in the MA UCP DBE directory, along with utilizing the BRTA's website for information regarding all DOT-assisted contracting opportunities.
2. Maintaining a current Massachusetts Supplier Diversity Office UCP DBE Directory as a source of identifying all DBEs certified by the MA UCP and make available copies of the directory to prospective contractors desiring contract information for projects.
3. The BRTA will encourage prime contractors to subcontract portions of work that they might otherwise perform with their own forces to maximize the opportunity for DBEs.
4. Facilitate the receipt of timely progress payments to DBEs for work completed, following such request for payment.
5. Maintain a system of record and reports documenting efforts made to identify and award contracts to DBEs.

BRTA estimate that, in meeting the overall goal of 0.78%, 50% will be from race-neutral participation and 50% through race conscious efforts.

## ATTACHMENT 6 DBE UTILIZATION FORM

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

\_\_\_\_\_ The Bidder is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

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

BIDDER'S NAME: \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

### DBE PARTICIPATION SCHEDULE

The Bidder shall complete the following information for all DBE's participating in the contract that comprises the DBE Utilization percent stated above. The Bidder shall also furnish the name and telephone number of the appropriate contact person should the BRTA have any questions in relation to the information furnished herein.

### DBE IDENTIFICATION AND INFORMATION FORM

Name Address	Contact Name and Telephone Number	Participation % & Dollar Of Total Contract Value	Description of Work To Be Performed (NAICS code)	Category (Indicate MBE or WBE)

PRIME COMPANY NAME: \_\_\_\_\_

NAME OF CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

**BERKSHIRE REGIONAL TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
Form 2: Letter of Intent  
(To be supplied if using DBE subcontractors)  
LETTER OF INTENT**

To: \_\_\_\_\_ (Name of Prime Contractor)

The undersigned intends to perform work in connection with this project as (check one):

- an individual     DBE     a partnership     a joint venture

The Disadvantaged Business Enterprise status of the undersigned is confirmed

(a) On the most recent reference list of Disadvantaged Business Enterprises published by Massachusetts Supplier Diversity Office dated \_\_\_\_\_, or

(b) On the attached Disadvantaged Business Enterprise Identification Statement

The undersigned is prepared to perform the following work in connection with the above project, (Specify in detail particular work items or parts thereof to be performed):

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The proposer/bidder is committed to utilizing the above named DBE firm for the work described above. The estimated dollar amount if this work is \$ \_\_\_\_\_.

You have projected the following commencement date for such work and the undersigned is projecting completion of such work as follows:

<u>Items</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non- Disadvantaged Business Enterprise at any tier. The undersigned will enter a formal agreement for the above work conditioned upon an execution of a contract with BRTA.

Date \_\_\_\_\_

Name of Disadvantaged Business Enterprise  
**Attachment 7**

**Certification Application Forms**

Certification will occur under the state of Massachusetts UCP.

The BRTA does not have the internal capacity to certify prospective firms but will provide assistance to disadvantage businesses seeking to achieve DBE certification.

**Attachment 8**

**Procedures for Removal of DBEs Eligibility**

The BRTA will rely on the Massachusetts Supplier Diversity Office and will not have an independent methodology for removing DBEs from Massachusetts UCP eligibility. If there is an instance of fraudulent activities the BRTA will notify the Supplier Diversity Office to report the incident.

**Attachment 9**

**Regulations: 49 CFR §26**

Refer to <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=6087573616bf69e6b9fe5f3a84492ae0&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>