

# DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN

*Worcester Regional  
Transit Authority*

60 Foster Street  
Worcester, MA 01608

Date: October 26, 2018





**WORCESTER REGIONAL TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
In compliance with U.S. DOT 49 CFR § 26 Final Rule**

**WRTA DBE Objective / Policy Statement - § 26.1, 26.23**

The Worcester Regional Transit Authority (WRTA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR § 26. The WRTA has received Federal financial assistance from the DOT and as a condition of receiving this assistance, the WRTA has signed an assurance that it will comply with 40 CFR § 26.

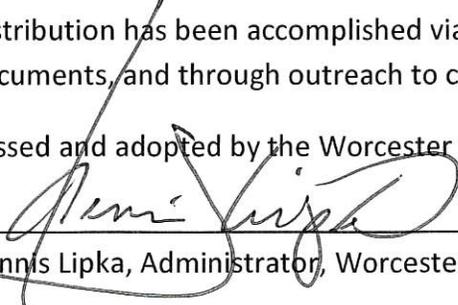
It is the policy of the WRTA to ensure that all contracts and procurement will be administered without discrimination on the basis of race, color, national origin or sex. The WRTA ensures that Disadvantaged Business Enterprises (DBEs) shall have an equal opportunity to compete for and participate in DOT-assisted contracts. It is also our policy to:

1. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
2. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
3. To ensure that only firms that fully meet 49 CFR § 26 eligibility standards are permitted to participate as DBEs;
4. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
5. To assist the development of firms that can compete successfully in the marketplace outside the DBE program

The Chief Financial Officer has been designated as the DBE Liaison Officer. The DBE liaison officer has direct, independent access to the Chief Executive Officer (Administrator) concerning DBE program matters. The liaison officer is responsible for implementing all aspects of the WRTA DBE program. The WRTA has adequate staff, (including procurement, finance, etc.), to administer the program in compliance with 49 CFR § 26.

WRTA has circulated this policy statement to the Advisory Board, throughout our organization and to the DBE and non-DBE business communities that perform work on our DOT-assisted contracts. Distribution has been accomplished via our website [www.therta.com](http://www.therta.com), inclusion with procurement documents, and through outreach to community organizations.

Passed and adopted by the Worcester Regional Transit Authority this 26th day of October, 2018.

  
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Dennis Lipka, Administrator, Worcester Regional Transit Authority

## **Subpart A—General**

### **§26.1 Objectives**

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

### **§26.3 Applicability**

The WRTA is a recipient of the following 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, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

### **§26.5 Definitions**

The WRTA will adopt the definitions contained in 49 CFR § 26.5. *See Attachment (A) §26.5 Definitions*

### **§26.7 Non-Discrimination Requirements**

(a) The WRTA will not 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 this part on the basis of race, color, sex, or national origin.

(b) In administering its DBE program, the WRTA 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 program with respect to individuals of a particular race, color, sex, or national origin.

### **§26.11 Record Keeping Requirements**

(a) Uniform Report of DBE Awards or Commitments and Payments, *See Attachment (B)*

Semi-annual reports must be submitted to DOT via TrAMS and email notification to FTA Civil Rights Officer – Margaret Griffin, no later than December 1 and June 1 for each tracking period.

(b) WRTA will continue to provide data about its DBE program to the Department as directed by DOT operating administrations.

(c) WRTA will create and maintain 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 use of the bidders list to assist in calculating overall goals. The bidders list will include the firm's name, address, DBE – non-DBE status, age and annual gross receipts of firms. The gross receipts will be obtained by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

WRTA will acquire the information for the bidders list in a variety of ways. For example:

- Collect the data from all bidders, before or after the bid due date.
- Prospective Vendors may submit their contact information via our website.
- Contact clause requiring prime bidders to report this information for all firms that quote to them on subcontracts

### **§26.13 Federal Financial Assistance Agreement**

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

(a) Each financial assistance agreement WRTA signs with a DOT operating administration (or a primary recipient) must include the following assurance:

- WRTA 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 49 CFR §26. WRTA shall take all necessary and reasonable steps under 49 CFR §26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. WRTA'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 WRTA of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR §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.).

(b) Each contract WRTA signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

- 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 WRTA deems appropriate.

## **Administrative Requirements**

### **§26.21 DBE program**

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

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

The WRTA has designated the following individual as its DBE Liaison Officer (DBELO):

*Diane Shea, Chief Financial Officer, WRTA, 60 Foster Street, Worcester, MA 01608, 508-453-3401*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that WRTA complies with all provisions of 49 CFR §26. The DBELO has direct, independent access to the Administrator concerning DBE program matters. See Attachment (C) Organization Chart.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of (2) to assist in the administration of the program. Example responsibilities include the following:

1. Gather and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase orders for compliance with this program.
3. Works with all departments, contractors and sub-recipients to set overall goals.
4. Ensures that bid notices and requests for proposals are available to DBE's 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 WRTA's progress toward attainment and identifies ways to improve progress.
7. Advises the Administrator and the WRTA Advisory Board on DBE matters and achievement.

8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Maintains the WRTA updated directory of certified DBEs.

#### **§26.27 DBE financial institutions**

It is the policy of the WRTA 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.

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 and reviewed the services provided by the following such institutions:

Leader Bank, NA – Arlington, MA

One United Bank – Boston, MA

#### **§26.29 Prompt payment mechanisms**

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

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the WRTA. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

. 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 WRTA deems appropriate.

#### **§26.31 DBE directory**

The WRTA maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, email address (if available) date of the most recent certification and the type of work the firm has been certified to perform as a DBE.

The Supplier Diversity Office (SDO) through the UCP (Unified Certification Program) acts as the DBE certifying agency for the WRTA. As the state designated agency for DBE certification and certain compliance functions, SOMWBA is fully responsive in meeting DBE certification standards and criteria as outlined in the above mentioned sections of 40 CFR §26.

The compilation of certified businesses lists the firm's name, address, phone number and they type of work the firm has been certified to perform as a DBE. 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.

WRTA is listed as a recipient in the Massachusetts Uniform Certification Program and information about WRTA and the program is available to the general public on the web

[http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/ucp/massachusetts-recipients.html?\\_ga=2.174394721.2106595341.1539682540-590112563.1539382318](http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/ucp/massachusetts-recipients.html?_ga=2.174394721.2106595341.1539682540-590112563.1539382318). This website contains information to the general public.

#### **§26.33 Overconcentration of DBE's**

The DBE Liaison Officer monitors industries or fields of work to determine if they are so over concentrated with DBEs as to unduly burden the opportunity of non-DBE firms to participate in this type of work. If it is determined there is over-concentration of DBE firms, the corrective measures outlined in 49 CFR § 26.33 will be utilized. WRTA has not identified that overconcentration exists in the types of work that DBEs perform.

#### **§26.35 Business Development Programs**

The WRTA has not established a business development program at this time.

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

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

1. The WRTA 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 WRTA 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 WRTA 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. The complexity of this monitoring will be dependent on the complexity of the contract. (e.g., construction, size, scope)
4. The WRTA 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 Provision**

WRTA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses. WRTA will utilize the Small Business Administration's definition of a small business. That definition is listed below and was acquired from the website, [www.sba.gov](http://www.sba.gov).

Size guidelines define the maximum size that a firm (including its affiliates) can be to qualify as a small business for most SBA programs. Size standards usually are a measure of a business's number of employees or its average annual receipts. Based on those criteria, the SBA has established the following common standards for a small business, depending on its North American Industry Classification System (**NAICS**) code:

- 500 employees for most manufacturing and mining industries, and
- \$7 million in average annual receipts for most non-manufacturing industries.

There are many exceptions, but these are the primary size standards for most industries. For complete information on size standards, see the SSA's Small Business Size Regulations (13 CFR Part 121) or the Table of Small Business Size Standards.

WRTA will encourage prime contractors and subrecipients to make efforts to contract with small business in their procurements of subcontractors. On a minimum of a fiscal year basis we will review these efforts with the DBELO and the Procurement staff.

Outreach to local Small Business Offices will commence in the December 2018 - January 2019 timeframe to discuss WRTA contracting opportunities and available sources in the small business community.

Additional measures to be implemented include: additional public outreach events, coordination with other agencies and better tracking and analysis of the small business element.

The DBELO will conduct at a minimum an annual assessment of all contracts in order to determine if a reasonable number of prime contracts can be made available to small businesses.

WRTA will structure procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

WRTA will actively implement program elements to foster small business participation in good faith. And as part of our overall DBE program.

### **Goals, Good Faith Efforts and Counting**

#### **§26.43 Set-asides or Quotas**

The WRTA does not use quota in any way in the administration of this DBE program.

#### **§26.45 Overall Goals**

In accordance with Section 26.45, the WRTA will submit its overall triennial goal to DOT on August 1<sup>st</sup> of the year specified by the FTA. (2020 is next submission due date.) WRTA's current 3 year goal has been updated to the TrAMS website.

WRTA will request the use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

*Step 1.* Begin the goal setting process by determining a base figure for the relative availability of DBEs.

The DBE Goal base figure is determined by identifying anticipated FTA-funded contracting opportunities over the upcoming three year period and examining the composition of DBEs within the subset of active firms available for such contracting opportunities with the WRTA using the following formula for calculation:

#### **DBE Base Goal =**

The number of DBE firms that are ready, willing and able to do business with WRTA

Divided by

All Firms including DBE firms that are ready, willing and able to do business with WRTA

This data is derived from a variety of sources, including but not limited to:

1. The WRTA 5-year capital plan & Subrecipient input – to identify contracting opportunities. NAICS codes are then assigned to the contracting opportunities.
2. *Use of DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes.

(Information about the CBP data base may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. Other methods which may be used are: The use of a Bidders List, Data from a Disparity Study, Goal of another DOT recipient.

*Step 2.* Once the base figure has been calculated, examine all of the evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made. The WRTA will use historical data to show:

- (i) The current capacity of DBEs to perform work on projected DOT-assisted procurements, as measured by the volume of work DBEs have performed in recent years;
- (ii) Past attainment of the DBE Goal will be used to determine if any further adjustment is necessary.

These factors will be considered before an adjusted goal is established.

WRTA will participate in public outreach with various community organizations. A listing and outreach activity with these organizations is available from the DBELO upon request. As new agencies are uncovered, WRTA will contact them and build coalitions/relationships when possible.

After consultation with the organizations, a final goal will be determined and an advertisement will be published.

WRTA 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 WRTA Administration Offices located at 60 Foster Street, Worcester, MA 01608, for 30 days following the date of the notice, and informing the public that WRTA and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be advertised on the WRTA website in order to maximize distribution in our service area.

Our overall goal submission to DOT will include: a description of the methodology used to establish the goal, including the base figure and the evidence with which it was calculated, and the adjustments made to the base figure and the evidence relied on for the adjustments. Also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why we did not use that evidence to adjust the base figure. Include a projection of the portions of the overall goal expected to meet through race-neutral and race-conscious measures, respectively; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. Our goal will remain effective for the duration of the three-year period established and approved by FTA. If we establish a goal on a project basis, this project goal will remain in effect the life of the project.

The WRTA DBE goal will be distributed to WRTA staff, contractors and sub-recipients.

We may adjust the WRTA's three-year overall goal during the three-year period in order to reflect changed circumstances. Adjustments must be submitted to DOT for review and approval.

#### **§26.47 Failure to meet overall goals**

DBE Shortfall Analysis and Corrective Action Plan is to be completed annually if a shortfall in DBE Goal attainment exists for that federal fiscal year in accordance with 40 CFR § 26.4. If the DBE Goal is met or exceeded in a fiscal year, no shortfall analysis is required. This form is to be kept on file and available to the Federal Transit Administration upon request.

The purpose of this analysis is to identify the reasons we failed to meet our goal; Identify means to increase DBE participation; Ensure compliance with the DBE Rule; Increase DBE accountability.

### **§26.49 Transit vehicle manufacturers**

The WRTA 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 WRTA 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.

FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement. This information will be updated on the FTA Civil Rights – Eligible Transit Vehicle Manufacturers website: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>

### **§26.51 Meeting overall goals**

The WRTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, WRTA will make an *effort* to achieve race-neutral DBE participation by implementing the following practices:

- Provide assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Provide technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- Ensuring distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Each time WRTA submits its overall goal for review we will also submit a projection of the portion of the goal that we expect to meet through race-neutral means and the basis for that projection

The WRTA will use contract goals to meet any portion of the overall goal WRTA 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 DBEs to perform the particular type of work.)

### **§26.53 Good Faith Efforts**

*Award of Contracts with a DBE Contract Goal: 26.53(a)*

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, WRTA will not award the contract to a bidder who does not either:

- (1) Meet the contract goal with verified, countable DBE participation; or
- (2) Documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so.

*Evaluation of Good Faith Efforts: 26.53(a) & (c)*

The DBELO 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 process used to determine whether good faith efforts have been made by a bidder are as follows:

Each solicitation for, which a contract goal has been established will require the bidders to submit the following information either under sealed bid procedures as a matter of responsiveness, or with initial proposals under contract negotiation procedures; or at any time before a commitment to the performance of the contract:

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 participation;
4. Written documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts.

The kinds of efforts that will be considered demonstrative of "Good Faith Efforts" (GFE) include, but are not limited to, the following:

- Whether the contractor solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract.
- Whether the contractor solicited interest within sufficient time to allow the DBEs to respond and if appropriate steps were taken to follow up with interested DBEs.
- Whether the contractor selected portions of the work to be performed by DBEs and where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

- Whether the contractor negotiated in good faith with interested DBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached.
- Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Whether the contractor effectively used the services of available minority/women community organizations, contractors groups and other organizations to provide assistance in the recruitment and placement of DBEs.
- Whether other bidders on the procurement met the DBE goal. If the GFE Committee determines that the apparent successful bidder/proposer has failed to meet the GFE requirements, the bidder/proposer has an opportunity for administrative consideration. The reconsideration official will be a member of the WRTA staff who did not take part in the initial GFE decision.

The bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate GFE to do so. They will also be permitted, upon request, to meet in person with the reconsideration official to discuss the issue.

WRTA will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or made adequate GFE to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

A contractor must also make a GFE to replace a defaulting DBE with another certified DBE. The prime contractor must notify the DBE Liaison immediately of the DBE's inability to perform and provide reasonable documentation. The contractor must receive prior approval on the substitute DBE from the WRTA. The contractor must provide copies of new or amended subcontracts and a completed certification form for each new DBE, or any applicable good faith efforts.

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

WRTA 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.

*Administrative Reconsideration: 26.53(d)*

Within 10 days of being informed by WRTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official: Dennis Lipka, Administrator, WRTA, 60 Foster Street, Worcester MA 01608. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

*Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)*

WRTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without WRTA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to WRTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to WRTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise WRTA of why it objects to the proposed termination. Note: the five day period may be reduced if the matter is one of public necessity- e.g., safety.

In those instances where "good cause" exists to terminate a DBE's contract, WRTA will require the prime 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, WRTA 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 contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, WRTA's Administrator or her designee 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 WRTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of\_% percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment1), 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 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 (5) if the contract goal is not met, evidence of good faith efforts.

**§26.55 Counting DBE Participation**

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

**CERTIFICATION**

**§26.81, Unified Certification Programs**

WRTA is the member of a Unified Certification Program (UCP) administered by the Supplier Diversity Office (SDO) of the Commonwealth of Massachusetts. The UCP will meet all of the requirements of this section. WRTA will use and count for DBE credit only those DBE firms certified by the Massachusetts *UCP*.

The following is a description of the UCP: **The Supplier Diversity Office (SDO)** is an agency within the Commonwealth of Massachusetts helping to promote the development of business enterprises and non- profit organizations owned and operated by minorities or women. Its website can be found at <https://www.sdo.osd.s tate.ma.us/> and vendors can apply online for certification as a minority or woman owned business.

For information about the certification process or to apply for certification, firms should contact:

Supplier Diversity Office  
(SDO) The McCormack  
Building  
One Ashburton Place, Room

1313 Boston, MA 02108  
Phone - (617) 502-8831  
Fax - (617) 502-8841  
[wso@state.ma.us](mailto:wso@state.ma.us)

### **§26.89-26.91 Appeal Procedures**

Any firm or complainant may appeal a Massachusetts UCP 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

WRTA 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).

## **COMPLIANCE AND ENFORCEMENT**

### **§26.109, Information, Confidentiality, Cooperation**

WRTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

The Massachusetts Public Records Law (G.L. c. 66) provides that every person has a right of access to public information. This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee. The Massachusetts General Laws broadly define "public records" to include "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics made or received by any officer or employee" of any Massachusetts governmental entity. The Public Records Law sets forth several, narrowly construed exemptions. Unless a record is exempt from disclosure under one of the exemptions, the public shall have a right of access to such record. The Public Records Law may be enforced by the Massachusetts Supervisor of Public Records or through court action by a person who has been wrongfully denied access to non-exempt public records.

Notwithstanding any contrary provisions of state or local law, we 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**

WRTA will track and report any request by any authorized representative of the WRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

WRTA will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request.

**Attachment (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—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

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

*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

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 members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. 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;

(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).

Attachment 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.

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.

*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 COMMITMENTS, AWARDS AND PAYMENTS									
*Please refer to the Instructions sheet for directions in filling out this form*									
1. Federal or State Agency		2. DBE		3. DBE		4. FHS Region (3 letter)			
5. DBE Business (FHS Reporting) Team		6. DBE Business		7. DBE Business		8. Date this Report Submitted			
9. Contract, Award, or Commitment Reporting Date		10. Report Due Date (See part 2, Sec. 21)		11. Report Due Date (See part 2, Sec. 21)		12. Report Due Date (See part 2, Sec. 21)		13. DBE annual report due date	
14. Name and address of recipient		15. DBE Business		16. DBE Business		17. DBE Business			
18. DBE Business		19. DBE Business		20. DBE Business		21. DBE Business			
Awards/Commitments this Reporting Period									
A. AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and commitments completed during the reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs (Race Consensus (number))	Total to DBEs (Race Consensus (number))	Total to DBEs (Race Neutral (dollars))	Total to DBEs (Race Neutral (number))	Percentage of total dollars to DBEs
19. DBE Business									
20. DBE Business									
21. DBE Business									
B. BREAKDOWN BY ETHNICITY & GENDER									
B. BREAKDOWN BY ETHNICITY & GENDER	Contracts Awarded to DBEs this Period								
	Total to DBE (dollar amount)			Total to DBE (number)					
	White	Hispanic	Total	White	Hispanic	Total			
22. DBE Business									
23. DBE Business									
24. DBE Business									
25. DBE Business									
26. DBE Business									
27. DBE Business									
28. DBE Business									
29. DBE Business									
30. DBE Business									
Payments Made this Period									
C. PAYMENTS ON CONTRACTS COMPLETED (contracts awarded or during contracts)	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs			
31. DBE Business									
32. DBE Business									
33. DBE Business									
D. TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD									
D. TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (dollars)	Total DBE Participation (dollars)	Percent to DBEs				
34. DBE Business									
35. DBE Business									
36. DBE Business									
37. DBE Business									
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## Attachment C

### **Monitoring and Enforcement Mechanisms**

The WRTA 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 statues and common laws.
2. Breach of contract action, pursuant to state statue 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

# Worcester Regional Transit Authority

