

**2018  
update  
2022**

DBE Program



# **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM .....	3
Section 26.1, 26.23, PVTA's DBE Objective / POLICY STATEMENT .....	3
Section 26.1, 26.23, Objectives .....	2
Section 26.3, Applicability .....	2
Section 26.5, Definitions .....	2
Section 26.7, Non-discrimination Requirements .....	2
Section 26.11, Record Keeping Requirements .....	2
Section 26.13, Federal Financial Assistance Agreement .....	3
ADMINISTRATIVE REQUIREMENTS .....	3
Section 26.21, DBE .....	3
Section 26.27, DBE Financial Institutions .....	4
Section 26.29, Prompt Payment Mechanisms .....	4
Section 26.31, Directory .....	6
Section 26.33, Overconcentration .....	6
Section 26.35, Business Development Programs .....	6
Section 26.37, Monitoring and Enforcement Mechanisms .....	7
Section 26.39, Small Business Provision .....	7
GOALS, GOOD FAITH EFFORTS, AND COUNTING .....	10
Section 26.43, Set-asides or Quotas .....	10
Section 26.45, Overall Goals .....	10
Section 26.47, Goal Setting and Accountability .....	12
Section 26.49, Transit Vehicle Manufacturers Goals .....	12
Section 26.51, Meeting Overall Goals/Contract Goals .....	12
Section 26.53, Good Faith Efforts Procedures .....	13
Section 26.55, Counting DBE Participation .....	17
CERTIFICATION .....	17
Section 26.81, Unified Certification Programs .....	17
Section 26.89-26.91 Appeal Procedures .....	18
COMPLIANCE AND ENFORCEMENT .....	18
Section 26.109, Information, Confidentiality, Cooperation .....	18
APPENDIX .....	19



**PIONEER VALLEY TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

In compliance with U.S. DOT 49 CFR 26 Final Rule

**Section 26.1, 26.23, PVTA's DBE Objective / POLICY STATEMENT**

The Pioneer Valley Transit Authority (hereinafter referred to as the "PVTA") has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The PVTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the PVTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the PVTA to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT—assisted contracts. It is also our policy:

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

The Revenue and Accounting Coordinator has been delegated as the DBE Liaison Officer. In that capacity, the Revenue and Accounting Coordinator is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the PVTA in its financial assistance agreements with the Department of Transportation.

PVTA *has* disseminated this policy statement to the 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. Distribution is accomplished via our web page, on all procurement documents, through outreach to a list of community organizations both DBE and non DBE. Currently the outreach is done through both electronic and regular mail communication.

This policy will continue to be circulated throughout the organization and to the DBE and non-DBE business communities that work on PVTA DOT-assisted contracts. This process will occur each time PVTA hires a new Administrator. The DBE Liaison Officer will be responsible for this distribution.

A handwritten signature in blue ink, appearing to be "John A. ...", is written over a horizontal line.

*Signature Recipients Chief Executive Officer] (Administrator)*

**Section 26.1, 26.23, Objectives**

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

**Section 26.3, Applicability**

The PVTA is the recipient of federal —aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The PVTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 05-178.

**Section 26.5, Definitions**

The PVTA will adopt the definitions contained in Section 26.5 of Part 26 for this program and will ensure that all definitions from the regulations are included and correct; (2) PVTA will add and include any new/amended definitions as they are provided by USDOT; and (3) PVTA not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.]

**Section 26.7, Non-discrimination Requirements**

The PVTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the PVTA 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**

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

PVTA will report DBE participation to the FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

DOT Records 26.11 (b)

PVTA will continue to provide data about its DBE program to the Department as directed by DOT operating administrations as required.

Bidders List: 26.11(c)

The PVTA will create 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 approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

prospective Vendors must register on our website so that we may capture this information.

If a vendor does not have the capacity to do this we will assist them over the phone and enter the information for them.

Prior to registering, all vendors will have to read our DBE policy contract clause requiring prime bidders to report the names/addresses, and possibly other information of all firms who quote to them on subcontracts. a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient.

**Section 26.13, Federal Financial Assistance Agreement**

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

General Assurance: 26.13(a)

PVTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the PVTA of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 26.13b

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**ADMINISTRATIVE REQUIREMENTS**

**Section 26.21, DBE**

Since the PVTA has received a grant of \$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.

**Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer (DBELO): *Fatiya Adamou, Grants Manager, 2808 Main St, Springfield, MA 01107. 413-732-6248 extension 2211*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the PVTA complies with all provision of 49 CFR Part 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 **Electronic Attachment 1** in the Appendix of this document.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff 3 to assist in the administration of the program and the services of the Procurement Officer. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes PVTA's progress toward attainment and identifies ways to improve progress.
7. Advises the CEO\governing body on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Maintains the PVTA's updated directory on certified DBEs.

**Section 26.27, DBE Financial Institutions**

It is the policy of the PVTA 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 make use of these institutions. We have made the following efforts to identify and use such institutions: In FY 2013 we completed procurement of banking services; however no DBE banks applied, despite outreach efforts. We will continue to re-evaluate the availability of DBE financial institutions every 2 years. To date we have not identified any such institutions but the DBE Liaison Officer will continue to outreach and search for such institutions that may be able to assist PVTA. Prime contractors will also be encouraged to use such institutions at such time as the PVTA is made aware of them.

**Section 26.29, Prompt Payment Mechanisms**

Prompt Payment: 26.29(a)

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 (ten) days from the receipt of each payment the prime contract receives from PVTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the PVTA. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 30 (thirty) 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 PVTA. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: zti.zu(a)

The PVTA has established procedures to monitor and enforce that prompt payment and return of retainage. The policy is listed below:

For construction projects, a retainage clause/section is standard in PVTA contracts. There is a contractually agreed upon dollar amount or percentage of payment(s) to be withheld from periodic payments as security for contractor's performance over the life of the contract (until specific milestones are met). Payments are processed over the life of the contract and retainage amounts that are withheld from each payment accumulate according to the terms of the agreement.

On FTA funded projects, PVTA policy is to pay retainage within 30 days of project completion as defined in the contract and required by FTA regulations. PVTA's Capital Projects Manager authorizes retainage payment based on satisfactory completion of the project and written concurrence by the Project Designer/Construction Administrator.

PVTA also requires that the prime contractors pay their subcontractors (all of them not just DBE's) promptly and return retainage in accordance with Massachusetts General Law Chapter 30, Section 39F. One of the stipulations of the MGL is that not later than the 65th day after each subcontractor substantially completes their work in accordance with plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor must then pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor to the general contractor.

Retainage is revoked/frozen when there is documented proof of substandard or incomplete performance, which the contractor has not cured after written notice of breach and a reasonable period to cure. This written notice is generally provided after proper documentation is provided by the Project Designer/Construction Administrator. PVTA does not un-encumber or use retainage funds for any other purpose until a performance issue or dispute that revokes or freezes retainage is resolved.

If performance is breached and retainage held, The DBE Liaison Officer and Administrator are notified in writing - since beyond retainage, there could be a contract dispute that results in legal action. If it appears that the situation may not be resolvable, PVTA attorneys would be apprised. The Finance Department staff who process invoices and track overall retainage percentages must also be notified.

Following final inspections and owner acceptance, and other contract provisions (that may include contractor written statements demonstrating that payrolls, bills and other indebtedness connected with the work have been fully paid/satisfied, lien waivers released, etc.), final payment is made along with the release of retainage.

Note: This policy was written for construction projects but can be transferred to any project with retainage involved. Project Managers would replace Capital Projects Manager

### **Section 26.31, Directory**

The PVTA 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) act as the DBE certifying agency for the PVTA. 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 49 CFR Part 26.

The compilation of certified businesses lists the firm's name, address, phone number, and the 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. The current directory is included as **Electronic Attachment 2** in the Appendix of this document.

PVTA is listed as a recipient in the Massachusetts Uniform Certification Program and information about PVTA 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>. This website contains much information to the general public about this process.

### **Section 26.33, Overconcentration**

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 in a certain type of work, the corrective measures outlined in 49 CFR Part 26.33 will be utilized. PVTA has not identified that overconcentration exists in the types of work that DBEs perform.

PVTA will re-evaluate for overconcentration every 2 years.

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

PVTA collaborates with two state agencies as part of its Business Development Programs.

1. Massachusetts Office of Business development Program (MOBD) — this office has a program that is responsible for providing a capacity development program for minority and women businesses seeking to do business with the Commonwealth. The capacity program includes, but is not limited to the following core areas of business development:
  - Strategic planning
  - Financial management planning
  - Human resource management
  - Planning, information technology access and management
  - Marketing
2. SDO -Another approach to providing for broader DBE participation through the SDO's Business Development Program. Each year the Agency schedules a number of training courses, workshops and procurement fairs throughout the Commonwealth that are open to all small businesses. At these sessions small businesses will have an opportunity to meet



with PVTA officials and prime contractors and to gain a better understanding of the process and procedures associated with DBE procurement practices. Conversely, PVTA staff will have the opportunity to become acquainted with qualified business owners who may supply services or products. The specifics of doing business with the PVTA will be discussed at each training event. Workshops and training sessions will include the following subjects:

- How to set up joint ventures or teaming
- How to write a winning proposal or bid
- How to write a business plan
- How to obtain bonding and/or insurance
- How to access capital for your business
- How to address various barriers that most small businesses encounter

When a company is identified as a potential candidate for a business development program or further technical assistance the company will be encouraged to apply to participate in the previously described MOBD, Mass Alliance and SDO programs.

PVTA will re evaluate its Business Development Program every 3 years.

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

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

1. PVTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. PVTA will consider similar action under out own legal authorities, including responsibility determinations in future contracts. *Electronic Attachment 3* in the Appendix of this document is an example of the form used at PVTA which lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. PVTA will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by on site reviews by our Capital Project Manager at the work sites in which DBE's are performing, and this will occur randomly for each contract/project on which DBEs are participating. Documentation of these reviews will be kept in the project files and any non compliance will be reported to the DBE Liaison Officer. *Electronic Attachment 4* in the Appendix of this document is an example of the form used at PVTA to monitor these vendors on-site.
4. PVTA 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**

PVTA 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). PVTA 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 SBA's Small Business Size Regulations (13 CFR Part 121) or the Table of Small Business Size Standards. Size Standards for principal NAICS Sectors:

#### Construction

- General building and heavy construction contractors: \$33.5 million
- Special trade construction contractors: \$14 million
- Land subdivision: \$7 million
- Dredging: \$20 million

#### Manufacturing

- About 75 percent of the manufacturing industries: 500 employees
- A small number of industries: 1,500 employees
- The balance: either 750 or 1,000 employees

#### Mining

- All mining industries, except mining services: 500 employees

#### Retail Trade

- s Most retail trade industries: \$7 million
- A few (such as grocery stores, department stores, motor vehicle dealers and electrical appliance dealers) have higher size standards, but none above \$35.5 million (or 200 employees for New Car Dealers only).
- Retail Trade NAICS codes and their size standards do not apply to Federal procurement of supplies. For Federal contracts set aside for small businesses a concern that supplies a product it did not manufacture (which is what a retailer would do) is a "nonmanufacturer." To qualify as small for Federal government contracting, a nonmanufacturer must: 1) have 500 or fewer employees; 2) be primarily in the wholesale or retail trade and normally sell the type of the item(s) being supplied; 3) take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and 4) supply the end item of a United States small business manufacturer, processor or producer or obtain a waiver of such requirement pursuant to SBA's regulations. This is called the "nonmanufacturer rule." This rule does not apply to supply contracts of \$25,000 or less that are processed under Simplified Acquisition Procedures.
- For SBA's financial assistance and other Federal programs the Retail Trade size standards apply.

#### Services

Most common: \$7 million  
Computer programming, data processing and systems design: \$25.5 million  
Engineering and architectural services and a few other industries have different size standards  
The highest annual-receipts size standard in any service industry: \$35.5 million

Wholesale Trade

For loans and all other Federal government programs: 100 employees is the size standard for all wholesale trade industries.

- However, for Federal contracts set aside for small businesses a concern that supplies a product it did not manufacture is a "nonmanufacturer." To qualify as small for Federal government contracting, a nonmanufacturer must: 1) have 500 or fewer employees; 2) be primarily in the wholesale or retail trade and normally sell the type of item being supplied; 3) take ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and 4) supply the end item of a United States small business manufacturer, processor or producer or obtain a waiver of such requirement pursuant to SBA's regulations. This is called the "nonmanufacturer rule." This rule does not apply to supply contracts of \$25,000 or less that are processed under Simplified Acquisition Procedures.

Other NAICS Sectors and Industries

- Other NAICS Sectors include Agriculture; Transportation and Warehousing; Information (such as telecommunications); Utilities; and Finance, Insurance and Real Estate.

Because of a wide variation in the structure of industries in these Sectors, there is no common size standard pattern.

.....  
PVTA has established a race-neutral small business set-aside for prime contracts under \$500,000. On a fiscal year basis we will review this set aside with the DBELO and the Procurement Officer.

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

Outreach activities through the Springfield Chamber of Commerce and all its affiliates, as well as the Springfield Small Business Administration, the Massachusetts Small Business Development Center at the University of Massachusetts, and the University of Massachusetts Western Region Small Business Development Center will be conducted both annually and whenever procurement opportunities exist. Full contact information for these centers are listed below.

Affiliated Chambers of Greater Springfield, Inc.  
1441 Main St., Suite 136  
Springfield, MA 01103-1449

(413) 787-1555  
Fax: (413) 731-8530

Small Business Administration  
Springfield Branch Office  
One Federal Street  
STTC Technology Park  
Springfield, MA 01105

413-785-0314  
Fax 413-785-0267

Massachusetts Small Business Development Center  
University of Massachusetts  
Georgiana Parkin, State Director  
23 Tillson Farm Road  
Amherst, MA 01003

413- 545-6301  
Fax: 413- 545-1273

University of Massachusetts  
Western Region Small Business Development  
Center  
Dianne Fuller Doherty, Director  
One Federal Street  
Springfield, MA 01105

413-737-6712  
Fax: 413-737-2312

PVTA 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.

PVTA 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**

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

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

#### **Section 26.45, Overall Goals**

In accordance with Section 26.45, the PVTA will submit its triennial overall DBE goal to the FTA on August 1 of the year specified by the FTA. PVTA is assigned to Group B. If for some reason additional time is required to collect data for our new goal. we will request an approval from our FTA RCO for an interim goal and/or goal setting mechanism pursuant to 49 CFR 26.45 (f) at least one week prior to the goal being due. The next 3-year goal is due on August 1, 2020. Our current three-year goals are uploaded on the TrAMS web site.

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

**Step 1.** The following methodology is used to determine a baseline figure for the DBE goal:

The DBE goal baseline figure is determined by identifying anticipated FTA-funded contracting opportunities over the 3 year period and examining the composition of DBEs within the subset of active firms available for such contracting opportunities with the PVTA using the following formula for calculation:

**DBE Baseline Goal = The number of DBE firms that are ready, willing and able to do business with PVTA divided by all firms including DBE firms that are ready, willing and able to do business with PVTA.**

Contracting Opportunities = Anticipated DOT-assisted contracts to be entered into over the upcoming 3 year period.

Available DBE firms = Registered/certified DBE firms in area ready, willing, and able to perform work specific to contracting opportunities (determined by SDO and NAICS coding).

**Step 2. Adjustments Based on Available Evidence:** calls for examination of all available evidence in the jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. PVTA will use historical data to show:

- a. The capacity of DBEs to perform work on projected DOT-assisted procurement, based on volume or work DBEs have performed for PVTA in recent years; and
- b. The probability of construction projects, at least the design and engineering phases beginning in any future fiscal year by utilizing this same data from previous construction projects
- c. Past attainment of the DBE goal will be used to determine if any further adjustment is necessary.

All of these factors will be considered before an adjusted goal is established.

PVTA will participate in public outreach, particularly with the agencies listed below. Attendance at any and all meetings in order to build on its DBE program goals is a high priority. As new agencies are uncovered, PVTA will contact them and build coalitions/relationships when possible. Some of the agencies have provided PVTA with vendor email lists that we are now using in our procurement department in order to reach out during procurement publications.

Affiliated Chamber of Commerce, Professional Women's Chamber  
Small Business Development Center Network  
Business West  
Regional Employment Board  
Greater New England Minority Supplier Diversity Council  
Various Trade Associations

After consultation with CEO's of all these organizations, a final goal will be determined and an advertisement will be published.

PVTA 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 your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be advertised on the PVTA website in order to maximize distribution in our service area. Normally we will issue this notice on June 1st of a goal year. This notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; 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. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

### **Section 26.47, Goal Setting and Accountability**

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

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

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

PVTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, PVTA 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, Meeting Overall Goals/Contract Goals**

The PVTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, PVTA will make an effort to achieve race-neutral DBE participation by doing 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
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- Each time PVTA 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 PVTA will use contract goals to meet any portion of the overall goal PVTA 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.)

We will express our contract goals as a percentage of *the Federal share of a DOT-assisted contract*

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

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, PVTA 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. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

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

The following personnel are 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: Shantaya Williams, Disadvantaged Business Enterprise Liaison Officer.

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 PVTA 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.

PVTA 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 PVTA. 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, PVTA will 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,

PVTA will use the following process to establish good faith efforts were met.

- Soliciting 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. PVTA will solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. PVTA determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- PVTA will select when possible portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, 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.

- PVTA will provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

PVTA will negotiate in good faith with interested DBEs. It is PVTA's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. 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 for DBEs to perform the work.

PVTA will use good business judgment when considering a number of factors in negotiating with subcontractors, including DBE subcontractors, and take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- PVTA will not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- PVTA will make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor. PVTA will also make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- PVTA will effectively use the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- In determining whether a bidder has made good faith efforts, PVTA will take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

PVTA 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)

PVTA treats bidder compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders 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 10 days of being informed by PVTA 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: Sandra Sheehan, Administrator, 413-732-6248, Ext 216. [ssheehan@pvta.com](mailto:ssheehan@pvta.com). 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. 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)

PVTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without PVTA'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 PVTA 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 PVTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise PVTA 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. PVTA 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, PVTA 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, PVTA'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 PVTA 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 (Attachment 1), 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.

Included in the Appendix of this document is **Electronic Attachment 5** which contains a letter of intent and **Electronic Attachment 6** which contains a Good Faith Effort form that PVTA utilizes in its bid documents when DBE contract goals have been established.

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

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

### **CERTIFICATION**

### **Section 26.81, Unified Certification Programs**

PVTA 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. PVTA 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 nonprofit organizations owned and operated by minorities or women. Its website can be found at <https://www.sdo.osd.state.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  
[wsdoMstate.ma.us](https://www.sdoMstate.ma.us)

**Section 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

PVTA 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**

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

PVTA will safeguard from disclose 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**

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

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

PVTA 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.



## APPENDIX

### ELECTRONIC ATTACHMENTS

#### A. Referenced in Document

1. PVTA Organizational Chart (update) — PVTA Org Chart 2022. pdf
2. DBE Directory (2022 Year, updated annually) — DBE Directory 11-28-22.pdf
3. Monitoring and Enforcement Mechanisms & /Legal Remedies - DBE Program-monitoring a
4. Project Manager On-site DBE vendor checklist — Project Manager checklist. pdf
5. Letter of Intent - DBE letter of Intent. pdf
6. Good Faith Effort - DBE Good Faith Effort. pdf

#### B. Other

7. Certification Forms - <https://www.mass.gov/unified-certification-program-ucp>



49cfr26\_main\_02.tpl

8. DBE Regulation: 49 CFR Part 26-
0. Overall goal calculation and breakout of race-neutral and race-conscious participation are included in the current 3 year goal upload on the TRAMS Website. PVTA's recipient ID is 1379.