



CAPE COD REGIONAL TRANSIT AUTHORITY

**Cape Cod Regional Transit Authority
DBE Program and Policies**

2018 -2020

DRAFT

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PURPOSE

Pursuant to Title 49 CFR §§ 26.3 and 26.21, Cape Cod Regional Transit Authority (CCRTA), a recipient of federal financial assistance from the Federal Transit Administration (FTA) of the United States Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with Title 49 CFR Part 26 (Regulations). The requirements of the Regulations are incorporated by reference. In the event of any conflicts or inconsistencies between the Regulations and the DBE Program with respect to U.S. DOT - assisted contracts, the Regulations shall prevail.

SCOPE

The DBE (Disadvantaged Business Enterprise) Program and Policies of the Cape Cod Regional Transit Authority (CCRTA) are set forth in this document to outline the standards the CCRTA will hold itself to which ensures compliance with Federal Law Title 49 CFR Part 26. These standards are furnished to ensure that materials, equipment, construction and services are obtained in a manner that respects the parameters of federal, state, and CCRTA statutory or regulatory requirements. The DBE Program outlined herein applies to all CCRTA contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance.

BACKGROUND

In 1983, Congress enacted the first Disadvantaged Business Enterprise (DBE) statutory provision. This provision required the Department to ensure that at least 10% of the funds authorized for the highway and transit Federal financial assistance programs be expended with DBEs. In 1987, Congress re-authorized and amended the statutory DBE program. In the transportation legislation of that year, Congress, among other changes, added women to the groups presumed to be disadvantaged. Since 1987 DOT has established a single DBE goal, encompassing both firms owned by women and minority group members.

Primarily three major DOT Operating Administrations (OAs) are involved in the DBE program. They are the Federal Highway Administration, the Federal Aviation Administration and the Federal Transit Administration. The DOT DBE program is carried out by state and local transportation agencies under the rules and guidelines in the Code of Federal Regulations. (Title 49, Part 26).

CAPE COD REGIONAL TRANSIT AUTHORITY
DBE PROGRAM POLICY STATEMENT

Objectives/Policy Statement (Section 26.1, 26.23)

The Cape Cod Regional Transit Authority (CCRTA) 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 CCRTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the CCRTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the CCRTA to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also CCRTA 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 CCRTA Grants Manager, John Fuller, has been delegated as the DBE Liaison Officer. In that capacity, the Grants Manager 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 CCRTA in its financial assistance agreements with the Department of Transportation.

CCRTA has disseminated this policy statement to its Board of Directors and all of the components of the organization. CCRTA has distributed this statement to DBE and non-DBE business communities that perform work for CCRTA on DOT-assisted contracts by posting it on the CCRTA website, using CCRTA social media, newspaper advertisements, and making this policy part of the CCRTA contractual documents (before, during, and after award).

SUBPART A – GENERAL REQUIREMENTS

Objectives - Section 26.1

The objectives are defined in the DBE PROGRAM POLICY STATEMENT of this program.

Applicability - Section 26.3

The CCRTA 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 Tea-21, Pub. L. 105-178.

Definitions - Section 26.5

The CCRTA will adopt the definitions contained in Section 26.5 for this program.

Non-discrimination Requirements - Section 26.7

The CCRTA 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 (See Attachment L) on the basis of race, color, sex, or national origin.

In administering its DBE program, the CCRTA 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.

Record Keeping Requirements - Section 26.11 (b) (c)

CCRTA will report DBE participation on a semi-annual basis, via DOT's "Uniform Report of DBE Awards or Commitments and Payments" form, which replaces the DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

CCRTA will create a list of bidders and proposers, consisting of information about all DBE and non-DBE firms that bid, propose or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the list to calculate overall goals. The list of bidders and proposers will include the name, address, DBE/non-DBE status, age of firms, and the annual gross receipts of the firm. CCRTA will collect this information via notice in all solicitations. All DBE firms having done business with, quoted in solicitation responses, and/or requested to be added to the CCRTA bidders' list are included as Attachment J. CCRTA is a member of the Boston based UCP which keeps detailed information, as specified in this paragraph, on an active database and that information is hereby incorporated in this document as eligible bidders in Attachment G and Attachment H and is referenced in the Subparts D and E as to Certification Standards and Procedures.

Federal Financial Assistance Agreement - Section 26.13

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

Assurance: 26.13(a)

CCRTA 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 CCRTA 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 CCRTA 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. CCRTA currently has no sub-recipients.

Contract Assurance: 26.13(b)

CCRTA 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 CCRTA deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates - Section 26.21

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

Policy Statement - Section 26.23

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

DBE Liaison Officer (DBELO) - Section 26.25

CCRTA have designated the following individual as CCRTA DBE Liaison Officer:

John Fuller, Grants Manager, CCRTA, 215 Iyannough Rd, Hyannis, MA, 02601
800-352-7155; jfuller@capecodrta.org .

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the CCRTA 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 Attachment A to this program.

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

1. Gathers and reports statistical data and other information as required by 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 CCRTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Administrator on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Requests certification assurance of DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Massachusetts.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the CCRTA's updated directory on certified DBEs.

Note: Although it is suggested that a procurement person should not be the DBELO, CCRTA is a small Transit Authority with a limited number of positions. All procurements are administered by the DBELO and CCRTA finds that this is the best person to ensure all DBE clauses and outreach are included and completed as part of the Bid Request. Additionally, all procurements are reviewed by the Administrator and Chief Financial Officer, and the DBELO is never the only approving official of contract award.

DBE Financial Institutions - Section 26.27

It is the policy of the CCRTA to investigate, annually, 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. As of the date of this policy, CCRTA continues to issue a request for a Revenue Anticipation Note annually. Prior to the issuance of this request the CCRTA DBELO will review the list of DBE/MBE financial institutions as listed and certified by the Massachusetts Unified Certification Program (UCP) and make inquiries of the Cape Cod Chamber of Commerce. The CCRTA will ensure that all eligible financial institutions are included in the bidder's list for the RAN's issued annually. To date CCRTA has identified the following institutions.

Company Name: One United Bank
DBA: f/k/a: The Boston Bank of Commerce
Address: 100 Franklin Street, Suite 600
City, State & Zip: Boston, MA. 02110
Contact: Mr. Kevin Cohee
Phone: (617)457-4400 Fax: (617)457-4430
Business Type: Business Enterprise (for-profit)
SOMWBA Certification(s): 07/01/1998 MBE
SDO Description: *Full Service Commercial Bank*
ACDBE Description: *N/A*

Company Name: M. R. Beal & Company
Address: 110 Wall Street, 6th Floor
City, State & Zip: New York, NY. 10005-3827
Contact: Mr. Joseph Mendola
Phone: (212)983-3930 Fax: (212)983-4539
Email: jmendola@mrbeal.com
Home Page: <http://www.mrbeal.com>
Business Type: Business Enterprise (for-profit)
SOMWBA Certification(s): 01/06/2011 MBE
SDO Description: *Full-Service Investment Banking Firm; Our Broad Range of Activities Includes Public Finance, Corporate Debt and Equity, Fixed-Income Sales and Trading, and Financial Advisory Services*
ACDBE Description: *N/A*

Company Name: National Capital Resources, LLC
Address: P.O. Box 1145 c/o LVCC
City, State & Zip: Marblehead, MA. 01945
Contact: Mr. Rodney D. Jones
Phone: (610)656-3878 Fax: (484)842-1589
Email: rjones@nationalcap.org
Home Page: <http://www.nationalcap.org>
Business Type: Business Enterprise (for-profit)
SOMWBA Certification(s): 02/13/2003 MBE
SDO Description: *Financial Advisor and Investment Banking; Specializing in Tax-exempt, Privately Placed Bonds, Financing for Equipment Leases, Bonds for Business and Non-profit Organizations*
ACDBE Description: *N/A*

These banking institutions listed above are invited to participate in the CCRTA's annual Revenue Anticipation Note bid.

Prompt Payment Mechanisms - Section 26.29

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from CCRTA. The prime contractor agrees further to return retainage payments, if allowed under the contract, to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CCRTA. This clause applies to both DBE and non-DBE subcontracts. Non-compliance with the prompt payment clause will cause prime contractors to be removed from CCRTA eligible bidders' list for any future procurements and will be put on a non-eligible bidders' list for a period of three years: CCRTA Prime contracts which use sub-contractors will be reviewed by the DBELO and Financial Office for prompt payment to sub-contractors; both for 30-day payment and return of retainages. All prime contractors agree to supply documentation upon request of CCRTA to sufficiently document this requirement and/or other Federal requirements. CCRTA's policy is to pay all vendors in less than 30 days; its AP office traditionally pays invoices 15 days after receipt of invoice. CCRTA's policy on retainages is to hold the payments in a separate account until such time as the work is the percentage completed and accepted and then to immediately release the retainage to the contractor. In the event the prime contractor can show justification for failing to meet the provisions of this clause they may appeal to the Administrator of CCRTA for an alternate dispute resolution. This appeal must be in writing and must be received by the CCRTA DBE representative within 30 days of being notified of future non-eligibility.

Directory - Section 26.31

The CCRTA maintains a bidder's list identifying all previous and present CCRTA DBE contractors. For all future procurements the CCRTA subscribes to the Massachusetts Unified Certified Program (UCP) (DBE) Supplier Diversity Office (SDO) web site that identifies all firms eligible to participate as DBEs in Massachusetts. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The State updates the directory at least annually. The directory is available at <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/>. CCRTA makes the web site address available as follows: on CCRTA's website (www.capecodrta.org) and in all CCRTA procurements. The mailing list of DBE's who have done work for CCRTA and the UCP Plan are both attachments to the CCRTA Plan as Attachments J and I respectively.

Overconcentration - Section 26.33

CCRTA has not identified that overconcentration exists in the types of work that DBEs perform. An annual review is conducted of the CCRTA DBE Goal and its attainment or shortfall prior to issuance of the next fiscal year's capital plan and solicitation of bids. Up to this point, there has

been no identification that there are too many DBE/SBE firms available to bid on CCRTA's capital work. However, "overconcentration" reviews will take place every year during the preparation of the Capital Plan, listing of eligible DBE/SBEs to bid on the work, and the reviewing/editing of the bidder's list for procurement invitations. If overconcentration were found CCRTA would attempt to cull the bidders' list by holding a pre-bidders conference whereby specific requirements would be communicated to the bidder so they would know more completely what was required. CCRTA would also communicate this fact to the UCP to ensure that they were categorizing the DBE's in as wide a variety of NAICS codes as possible. This would assist the DBE's in bidding on other work rather than just a few categories and CCRTA would be able to request bids from those whose NAICS category most closely related to the work being proposed.

Business Development Programs - Section 26.35

CCRTA has not established a business development program.

Monitoring and Enforcement Mechanisms - Section 26.37

The CCRTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 (See Attachment B).

1. CCRTA 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. CCRTA will consider similar action under CCRTA's own legal authorities, including responsibility determinations in future contracts. Reference section 26.29 above for provisions and contract remedies available to CCRTA in the event of non-compliance with the DBE regulation by a participant in CCRTA's procurement activities.
3. CCRTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
4. CCRTA 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 direct observation by a duly appointed Observer. The Observer will visit the work site to observe workers, inquire of their affiliation and identity, and review payee information for reconciliation of workers on site to workers on payroll. Following is an example of a field report that will be used to monitor the subcontractor's work:

CERTIFICATION OF DBE CONTRACTOR

This is to certify that I have reviewed contracting records to determine that _____, a subcontractor to _____, has submitted invoices for the work specified in the contract award. Invoices and payments were reviewed as a means of comparing attainments to commitments for the purpose of DBE reports to the FTA.

On June 30, 20__, I visited the Hyannis Transit Center (HTC) for the purpose of monitoring the worksite to ensure that work committed to the DBE at contract award was actually being performed by the DBE contractor to which the work was committed. The _____ worksite manager was interviewed and several workers were asked who they worked for as further proof that the onsite contractor was the DBE stated in the contract.

This certification complies with the requirements of [64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011].

Signed

Date

Following is an example of a financial record audit that will be used to monitor the subcontractor's work:

FURTHER MONITORING OF DBE CONTRACTOR

My initial letter certified that _____ (contractor) is performing work as a DBE on the contracted work as specified. That certification complied with the DBE regulation's requirement for

- (1) contract assurance and
- (2) on-site monitoring

These requirements were certified based on a visit to the HTC on June 30, 20____, as well as document reviews.

Proof of the final requirement, (3) prompt payment of the sub-contractor by the prime contractor, is contained in the attached documentation provided by _____ (Prime Contractor) and obtained from the CCRTA Accounts Payable office.

This documentation shows that the sub-contractor, _____, invoiced the Prime Contractor on [Date _____] and was subsequently paid on [Date _____]. The Prime has paid the sub-contractor within thirty (30) days which is considered prompt payment.

Also reviewed were the Payroll sheets submitted to CCRTA by (Prime) for (Subcontractor). The pay rates for _____ complied with Prevailing Wage Rates in effect for the contract as specified by the Massachusetts Department of Labor.

Copies of the prompt payment documents as well as the Payroll Sheets are attached. This certification complies with the requirements of [64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011].

Fostering Small Business Participation - 26.39

For purposes of CCRTA's DBE Program, a small business enterprise (SBE) is defined as a Small Business Concern seeking to participate as a DBE or SBE in U.S. DOT - assisted contracts, as defined by section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121) whose average annual gross receipts for the previous three years do not exceed the SBA business size standard and the dollar cap as adjusted for inflation by the Secretary of U.S. DOT pursuant to 49 CFR §26.65(b).

One method of providing race-neutral efforts for DBE participation will be through CCRTA's small business element, which is incorporated into this DBE Program. The small business element is intended to facilitate compliance with the two objectives in 49 CFR 26.51: (1) To meet the maximum feasible portion of the overall goal by using race - neutral means of obtaining DBE participation and (2) to establish DBE contract goals to meet any portion of the overall goal CCRTA is unable to meet using race - neutral methods alone.

An important part of CCRTA's small business element is its outreach activities. These outreach efforts include active, effective steps to increase small business participation, such as soliciting bids/proposals from DBEs and SBEs, responding to requests for information, participating at pre-bid and pre-proposal meetings, and participating at outreach events for DBEs and small businesses. Examples of outreach activities include:

- Annually providing small business contractors information which would allow them to participate in joint venture opportunities and/or as a prime contractor. This information is distributed at the CCRTA's request by the Cape Cod Chamber of Commerce and the Hyannis Area Chamber of Commerce, major advertisers and disseminators of contracting requirements in the region.
- When the fiscal year capital plan is developed, the DBELO employs a strategy to create contracting opportunities for small businesses if possible.
- Annually, the CCRTA hosts a joint meeting with the Chamber of Commerce to invite all small businesses in the Cape Cod and nearby markets to discuss opportunities in contracting. The forum will solicit in-person input from the small businesses as to ways to encourage their participation in CCRTA contracts.
- The Commonwealth of Massachusetts Office of Diversity which maintains the DBE vendor database in Massachusetts hosts regular events to foster DBE participation and offers seminars on how to become a DBE. CCRTA participates at these forums with lists of available procurements and projects for the upcoming year and as well as staff to answer questions.
- On a regular basis, the Administrator and Deputy Administrator travel to the communities within the CCRTA service area for the purpose of assessing capital needs, added services and customer service. During these meetings with the Selectpersons/administrators representing these towns they bring any opportunities which the CCRTA may have for Small Businesses to discuss and provide written material as well as the social media contact information.

Other strategies that CCRTA will consider as a part of its small business element include unbundling contracts and setting SBE contract - specific goals when subcontracting opportunities are available for multi-year design-build contracts or other large contracts. This will be accomplished by requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform rather than self- performing all the work involved.

CCRTA uses its DBE goal as part of its goal for small business participation set-aside.

The award of a contract to a small business is based on its size not race and/or gender.

Qualification and Verification

CCRTA does not allow firms to self-certify as small businesses.

A currently certified DBE is presumed eligible to participate in the small business element of CCRTA's DBE Program.

CCRTA requires all prime or sub-contractors bidding or proposing on U.S. DOT - assisted contracts and claiming SBE status to submit additional documents, as necessary, to verify their eligibility. That information will include but not be limited to the following: the firm's name, address, status as a DBE or non-DBE, age of the firm, annual gross receipts, description of work to be performed or type of materials/supplies to be furnished on the contract, and dollar amount of that prime or subcontract.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas - Section 26.43

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

Overall Goals - Section 26.45

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment C to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the CCRTA will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, CCRTA will consult with the Massachusetts Supplier Diversity Office and the Cape Cod Chamber of Commerce to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the CCRTA's efforts to establish a level playing field for the participation of DBEs.

CCRTA in cooperation with the Cape Cod Chamber of Commerce will hold an annual meeting inviting all minority, women's and general contractor groups, and community organizations, with the intent of disbursing information concerning the availability of disadvantaged and non-

disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and CCRTA's efforts to establish a level playing field for the participation of DBEs. This annual meeting will allow for a scheduled, direct, and interactive exchange with as many interested stakeholders as possible focused on obtaining formation relevant to the goal setting process. This meeting will occur before CCRTA submits its goal to the FTA and will be documented in the goal submittal.

Following this consultation, CCRTA will publish a notice of the proposed overall goals in the Cape Cod Chamber's e-newsletter, on CCRTA's website, and through CCRTA's social media outlets, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at CCRTA's principal office for 30 days following the date of the notice, and informing the public that CCRTA and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, CCRTA will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

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

Transit Vehicle Manufacturers Goals - Section 26.49

CCRTA 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, CCRTA 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.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment D to this program. This section of the program will be updated annually when the goal calculation is updated.

Contract Goals Section - 26.51(d-g)

The CCRTA will use contract goals to meet any portion of the overall goal CCRTA 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 the overall goal that is not projected to be met through the use of race-neutral means.

CCRTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. CCRTA 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.).

CCRTA will express the contract goals as a percentage of the Federal share of a DOT-assisted contract.

Good Faith Efforts Procedures - Section 26.53

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A of 49 CFR Part 26 and spelled out in Attachment M of this document.

The CCRTA Grants Manager 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 (See Attachment E).

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

Information to be submitted (26.53(b))

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

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's 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 CCRTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the CCRTA Administrator, Thomas S. Cahir, reconsideration official: Hyannis Transportation Center, 215 Iyannough Rd, Hyannis, MA, 02601; (800) 352-7155; tcahir@capecodrta.org. The reconsideration official will

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. CCRTA 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 replaced on a contract (26.53(f))

CCRTA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. CCRTA 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. The Prime may only remove a DBE firm with prior written approval from CCRTA and for good cause. The Prime's contract must stipulate an appeal procedure for the sub-contractor which allows them to give reasons for non-fulfillment of their contract and requires the Prime to explain remediation efforts available to the DBE. When the DBE has exhausted its appeal rights and has still not provided a plan to get on schedule to fulfill the contract the Prime will document all findings, including the appeal, and send a written request to CCRTA requesting they be allowed to terminate the DBE.

In this situation, CCRTA will require the prime contractor to obtain the 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, the 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, the contracting officer 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 CCRTA 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.

Note: The sample bid specification above is intended for use in both non-construction and construction contracts for which a contract goal has been established. It can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.

Counting DBE Participation - Section 26.55

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

SUBPART D – CERTIFICATION STANDARDS

Certification Process - Section 26.61 – 26.73

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

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

<http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/ucp/cert-standards-and-proc/> .

SUBPART E – CERTIFICATION PROCEDURES

Unified Certification Programs - Section 26.81

CCRTA is the member of a Unified Certification Program (UCP) administered by the Commonwealth of Massachusetts Supplier Diversity Office (SDO) and meets all of the requirements of this section (see Attachment I). The following is a description of the UCP:

Supplier Diversity Program Overview (effective October 1, 2013)

In 1994, the Commonwealth of Massachusetts, through the Executive Office of Transportation and Construction, initiated the creation of a DBE transportation certification unit at the Supplier Diversity Office (SDO) (Formerly State Office of Minority and Women Business Assistance (SOMWBA)). Under this program, the state's major transportation agencies and authorities dedicated funding to institute efficient certification services needed by DBE firms operating in the transportation industry and in other related industries. Under contract with the state's major transportation agencies and authorities, SDO provided certification services required by federal regulation and state executive orders. SDO is a state regulatory agency within the Department of Economic Development that certifies and promotes businesses for state funded M/WBE programs. A committee of agency representatives was established to monitor operations, refine procedures, address various issues, make adjustments to practices, and provide oversight and other assistance.

For any questions on the Commonwealth's Supplier Diversity Program please contact their office:

The MA Supplier Diversity Office
State Transportation Building
10 Park Plaza, Suite 2600-B
Boston, MA 02116
Attention: Intake Specialist

You can contact the Supplier Diversity Office directly at 617-502-8853.

- The Massachusetts UCP will utilize definitions as outlined in 49 CFR Part 26, including the following, to ensure full participation in the UCP and to determine eligibility.
- Recipient: Any entity to which U.S. DOT financial assistance is extended from programs of the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and/or Federal Transit Administration (FTA), whether directly as the primary recipient or indirectly as a sub-recipient through a primary recipient, or which entity has applied for such assistance.
- Sub-Recipient: Any entity to which U.S. DOT financial assistance is extended through a primary Recipient.
- Disadvantaged Business Enterprise DBE: A for-profit small business concern, at least 51 % owned by one or more individuals who are socially and economically disadvantaged, or, in

the case of a corporation, at least 51 % of the stock of which is owned by one or more such individuals; and the management and daily business operations of such business are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- **Socially and Economically Disadvantaged Individuals:** Any individual who is a citizen or lawfully admitted permanent resident of the United States and who is:
- Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis
- Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
- "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 American Indians, Eskimos, Aleuts 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), The Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, 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 Small Business Administration (SBA) at such time as the SBA designation becomes effective.
- **Small Business Concern:** With respect to firms seeking to participate as DBEs in U.S. DOT -assisted contracts, a small business concern is as defined in Section 3 of the Small Business Act and in the Small Business Administration (SBA) regulations 13 CFR Part 121; which business does not exceed the cap on average annual gross receipts specified in U.S. DOT regulation 49 CFR Section 26.65(b).
- **Personal Net Worth:** Means the net value of an individual's assets remaining after total liabilities are deducted. As used herein, the personal net worth of each individual owner of a DBE applicant firm must not exceed \$750,000, excluding the individual's ownership interest in the applicant firm and the individual's equity in his or her personal, primary residence.

Vendor Certification

[Supplier Diversity Office](#) (SDO) certification qualifies businesses to participate in the Supplier Diversity Program.

The Supplier Diversity Office (SDO) is an agency within the Operational Services Division which promotes the development of certified minority-owned (MBE), women-owned (WBE) and minority-women-owned (M/WBE) business enterprises, including minority-controlled (M/NPO), women-controlled (W/NPO) and minority-women-controlled (W/NPO) non-profit organizations. It does this by facilitating their participation in Massachusetts business and economic development opportunities. Specifically, SDO offers services in certification, enforcement, business assistance and advocacy.

Certification is the process by which SDO reviews and investigates applicants who seek to participate in affirmative business opportunities to determine that they meet the requirements of state and federal statutes and regulations. SDO certification is a marketing tool used to enhance a firm's ability to do business in public markets. Although certification does not guarantee that a business will be successful every time it bids, it may add a competitive edge to firms seeking contracts with the government.

Finally, SDO maintains a directory of certified minority- and women-owned business enterprises and certified minority- and women-controlled non-profit organizations on its website. The website also lists information on how to become certified and provides a calendar of workshops held around the state.

Procedures for Certification Decisions - Section 26.83

Re-certifications 26.83(a) & (c)

The SDO reviews the eligibility of DBEs that they certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26. They will complete this review no later than three years from the most recent certification date of each firm.

“No Change” Affidavits and Notices of Change (26.83(j))

The SDO requires all DBEs to inform them, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with their application.

SDO also requires all owners of all DBEs they have certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to the CCRTA under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

The SDO requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts. SDO notifies all currently certified DBE firms of these obligations. If a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Denials of Initial Requests for Certification - Section 26.85

If the SDO denies a firm's application or decertifies it, it may not reapply until twelve months have passed from their action.

Removal of a DBE's Eligibility - Section - 26.87

In the event the SDO proposes to remove a DBE's certification, they will follow procedures consistent with 26.87. See SDO procedures at <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/>.

Certification Appeals – Section 26.89

Any firm or complainant may appeal the SDO decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

SUBPART F – COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation -Section 26.109

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

Monitoring Payments to DBEs

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

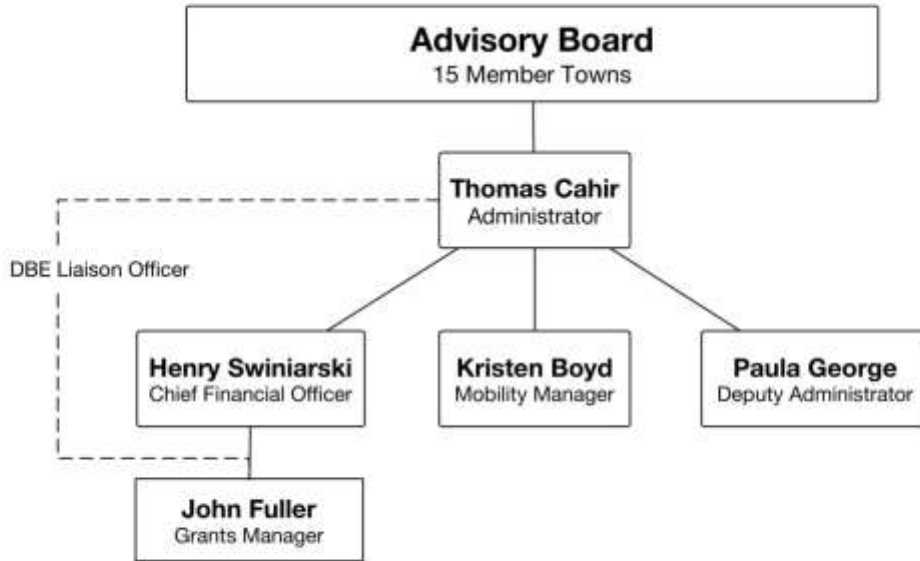
CCRTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

| | |
|--------------|---|
| Attachment A | Organizational Chart |
| Attachment B | Monitoring and Enforcement Mechanisms |
| Attachment C | Overall Goal Calculation |
| Attachment D | Breakout of Estimated Race-Neutral & Race-Conscious Participation |
| Attachment E | Guidance Concerning DBE “Good Faith Efforts” |
| Attachment F | FY18 – FY20 Capital Budget and Calculations |
| Attachment G | UCP Agreement (Supplier Diversity Office) |
| Attachment H | Legal Notice Verbiage |
| Attachment I | Regulation: 49 CFR Part 26 |
| Attachment J | Forms for DBE Commitment and Letter of Intent to Use |
| Attachment K | Executed DBE Program Policy Statement |

Attachment A - CCRTA DBE Organizational Chart

Cape Cod Regional Transit Authority Agency DBE Organization



Attachment B - Monitoring and Enforcement Mechanisms

The Cape Cod Regional Transit Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

Breach of contract action, pursuant to the terms of the contract;

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 part 26
- 2. Enforcement action pursuant to 49 CFR part 31
- 3. Prosecution pursuant to 18 USC 1001.

EXAMPLES OF FIELD REPORTS AND AUDITING MONITORING STATEMENTS

FIELD REPORT CERTIFICATION OF DBE CONTRACTOR

This is to certify that I have reviewed contracting records to determine that _____, a subcontractor to _____, has submitted invoices for the work specified in the contract award. Invoices and payments were reviewed as a means of comparing attainments to commitments for the purpose of DBE reports to the FTA.

On June 30, 20__, I visited the Hyannis Transit Center (HTC) for the purpose of monitoring the worksite to ensure that work committed to the DBE at contract award was actually being performed by the DBE contractor to which the work was committed. The _____ worksite manager was interviewed and several workers were asked who they worked for as further proof that the onsite contractor was the DBE stated in the contract.

Photographs of the CEMAT workers at the HTC are enclosed with this certification.

This certification complies with the requirements of [64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011].

Signed

Date

FURTHER MONITORING OF DBE CONTRACTOR

My initial letter certified that _____ (contractor) is performing work as a DBE on the contracted work as specified. That certification complied with the DBE regulation's requirement for

- (3) contract assurance and
- (4) on-site monitoring

These requirements were certified based on a visit to the HTC on June 30, 20____, as well as document reviews.

Proof of the final requirement, (3) prompt payment of the sub-contractor by the prime contractor, is contained in the attached documentation provided by _____ (Prime Contractor) and obtained from the CCRTA Accounts Payable office.

This documentation shows that the sub-contractor, _____, invoiced the Prime Contractor on [Date _____] and was subsequently paid on [Date _____]. The Prime has paid the sub-contractor within thirty (30) days which is considered prompt payment.

Also reviewed were the Payroll sheets submitted to CCRTA by (Prime) for (Subcontractor). The pay rates for _____ complied with Prevailing Wage Rates in effect for the contract as specified by the Massachusetts Department of Labor.

Copies of the prompt payment documents as well as the Payroll Sheets are attached. This certification complies with the requirements of [64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011].

Attachment C - Overall Goal Calculation - Section 26.45

Amount of Goal

CCRTA's overall goal for FY 2018-2020 is the following: 4% of the Federal Financial assistance CCRTA will expend in DOT-assisted contracts *exclusive of FTA funds to be used for the purchase of transit vehicles*. (NOTE: CCRTA will revisit the Goal Calculation for applicability in FY2019 and 2020 once the Capital Plan for those years is developed and approved by the Advisory Board. Barring unusual changes in the capital plans the 4% calculation will remain unchanged for those fiscal years.)

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

CCRTA used a weighted base figure for the relative availability of DBEs.

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

Project's Percentage of Total Budget x (RWA DBE's / All RWA Firms) = Weighted Base Figure

The data source used to derive the RWA DBE's was:

Computer search of Directory of Certified Businesses in the Massachusetts Operational Services Division (OSD) Supplier Diversity Office database for all categories of capital procurements planned by CCRTA for FY18 – FY20.

The data source used to derive the All RWA Firms was:

Computer search of American Fact Finder Database maintained by the US Census Bureau for all categories of capital procurements planned by CCRTA for FY18 – FY20.

Note: All figures were obtained from the sources mentioned with the exception of those numbers for the Gillig Overhaul Program. This is a highly specialized repair and NAICS codes for general overhaul vehicle work skewed the results significantly. CCRTA contacted Gillig Bus Co. for a list of certified overhaul companies and contacted them to determine DBE status. The numbers are reflected in the table in Appendix F. For this single item, the Local Market Area was expanded nationally. Currently, CCRTA is using a vendor from Florida and it is expected that future vendors will be from out of state as no certified repair facilities operate in Massachusetts.

See Attachments F for calculations.

Using this methodology, CCRTA arrived at a weighted base figure for the overall goal and that number was 4.30% which was rounded to 4%.

Step 2: 26.45(d)

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

Past Participation was considered but rejected as non-contributory. A significant portion of the previous three year goals were met by a single vendor but this contract has ended. The contract will be posted for the next three years and CCRTA would expect a bid from the same vendor but this is a competitive procurement and there is no guarantee that the same vendor will be successful. In the event that this vendor wins again, CCRTA will make adjustments in the second and third year of this plan to accommodate the change.

No other known evidence contributed evidence to support a change in the proposed goal.

In order to reflect as accurately as possible the DBE participation CCRTA would expect in the absence of discrimination CCRTA has adjusted the base figure by 0 %.

From this data, CCRTA has adjusted the base figure to: No Change – adjusted figure is 4 %

Public Participation

CCRTA published the goal information in these publications:

1. Cape Cod Times,
2. World Wide Web: CCRTA web site: <http://www.capecodrta.org/public-notices.cfm>
3. Cape Cod Chamber of Commerce e-newsletter
4. MA State Publications and Regulations Central Register

Wording is contained in Attachment K of CCRTA DBE Plan.

Attachment D - Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

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

Increase public awareness of all contracting opportunities, especially Federal contracts, to ensure the widest participation possible on contract bids. Publishes its DBE goal on the CCRTA website, all social media, and in the newspaper; speaks to the Cape Cod Chamber of Commerce and encourages the distribution of CCRTA contract opportunities; distributes the DBE goal and contract opportunities to the Board of Directors who represent all the towns in the CCRTA service area.

CCRTA extracts the list of all registered DBE's from the Directory of Certified Businesses in the Massachusetts Operational Services Division (OSD) Supplier Diversity Office whenever an RFP is posted that contains opportunities for DBE participation and directly invites by email, all listed DBE's that provide service in the NAICS code matching the requested service.

CCRTA estimate that, in meeting the overall goal of four percent, CCRTA will obtain four percent from race-neutral participation and zero percent through race-conscious measures.

The following is a summary of the basis of the estimated breakout of race-neutral and race-conscious DBE participation:

For the past five years CCRTA has met or exceeded its DBE goal through race-neutral methods. CCRTA proactively seeks out DBE companies as Prime contractors and through discussions with Prime contractors who are not DBE's CCRTA encourages them to make use of subcontractors who are DBE's. CCRTA advertises the DBE goal on all printed materials having to do with procurements; all outreach materials, and all printed publications including the CCRTA website.

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

Attachment E - Guidance Concerning DBE “Good Faith Efforts”

Good Faith Efforts procedures must be documented on contracts utilizing federal funds that have an established DBE goal. Award requires a bidder/offeror be able to show good faith efforts were performed to meet the goal. A good faith effort is defined as one where the bidder:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents adequate good faith efforts, even though it did not meet the goal.

This attachment “Guidance Concerning Good Faith Efforts” provides grantees with suggested types of actions they should perform/document to demonstrate good faith efforts.

These efforts must be active steps, which could reasonably be expected to lead to sufficient DBE participation to meet the contract DBE participation goal. Good Faith Efforts require that the bidder consider all qualified DBEs, who express an interest in performing work under the contract.

This means that the bidder cannot reject a DBE as unqualified unless the bidder has sound reasons based on a thorough investigation of the DBE’s capabilities. Further, the DBE’s standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) is not legitimate causes for the rejection or non-solicitation of bids in the Contractor’s efforts to meet the contract DBE participation goal.

The following, which is not all inclusive, list types of actions which indicate good faith efforts on the part of a bidder to meet the DBE goal. The extent and type of actions required will vary depending on such things as industry practice; the time available for submitting a bid and the type of contract.

1. Attendance at a pre-bid meeting, if any, scheduled to inform DBEs of subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and minority-focus media.
3. Written notification to capable DBEs that their interest in the contract is solicited.
4. Documentation of efforts to negotiate with DBEs for specific sub-contracts including at a minimum:
 - a. The names, addresses, and telephone numbers of DBEs contacted and the date.
 - b. A description of the information provided to DBEs.
 - c. A statement explaining why additional agreements with DBEs were not reached.
5. For DBE bidders contacted but rejected as unqualified, the reason for that conclusion.
6. Documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder.
7. Documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs.
8. Documentation that the bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work.
9. Evidence that adequate information was provided to DBEs about the plans, specifications and requirements of the contract, and that information was communicated in a timely manner.
10. Documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

Source: Best Practices Procurement Manual, 7.3.5.4 “Good Faith Efforts to Meet Contract Goals”

A good video can be found at <http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=85>

Attachment F - CCRTA Goal Setting Calculations

CCRTA started with identifying the capital projects and operating expenses which we expect to incur for the next three years.

Capital projects are those that have been programmed on the Massachusetts Statewide Transportation Improvement Program. The CCRTA expects to spend \$5,036,136 on capital projects in the next three years. We expect to spend those funds in the following categories:

| NAICS Code | Dollar Value |
|--------------|-----------------------|
| 236220 | \$670,000.00 |
| 238160 | \$385,000.00 |
| 238210 | \$150,000.00 |
| 238330 | \$190,000.00 |
| 333112 | \$9,043.50 |
| 332311 | \$101,000.00 |
| 334290 | \$274,666.00 |
| 334514 | \$233,810.00 |
| 441110 | \$191,545.41 |
| 423120 | \$109,154.60 |
| 423420 | \$56,927.00 |
| 423430 | \$3,500.00 |
| 423850 | \$41,490.00 |
| 541310 | \$100,000.00 |
| N/A | \$2,520,000.00 |
| | |
| TOTAL | \$5,036,136.51 |

In these categories, we have identified 185 vendors that are ready, willing and able to perform the services out of a pool of 14,413 vendors. The pool of ready, willing and able was determined by use of the Supplier Diversity Office vendor listing of qualified businesses in Massachusetts. The pool of “all available” businesses in Massachusetts was determined from the U.S. Census Bureau’s American Fact Finder database of businesses. See attached spreadsheet for breakdown. For the final item, Gillig Overhaul Program, NAICS codes proved unusable as the project is so specific as to require factory certification for facilities that perform this service. CCRTA contacted the manufacturer and obtained the list of approved facilities and compiled the list of RWA vendors from this.

The **Step One Base Figure** for DBE effort for the CCRTA for CAPITAL projects is 6.88%. See attached spreadsheet for actual calculations.

Operating expenses have been taken from the budget for 2018 and extrapolated into categories of spending. All non-salaried expenses have been further broken down into percentages of the overall amount and NAICS codes assigned. The resulting computations were evaluated the same as the methodology used for the Capital projects above. See attached spreadsheet for breakdown. Finally the two lists were merged to reach a Base Figure of 5.35%

Given that a large percentage of spending is concentrated in a relatively small number of categories, CCRTA will use a **weighted evaluation** which considers the individual project's percentage of the total budget. With this adjustment, the weighted base figure is 4.30%.

Step two: Base Figure Adjustment

Evaluation of CCRTA's base figure versus past performance requires some explanation. On the surface, it would appear as though CCRTA should consider past performance as relevant as we have traditionally far exceeded our goal of 7% and the Base Figure of 5.35% is far below that. The reason that CCRTA has exceeded their goal for the past three years has been the result of one contract which accounts for more than 50% of our capital spending where the prime contractor is a DBE. That contract has concluded as of June, 2017 and is going out to bid. If the current vendor wins the bid, CCRTA will exceed the goal set in this current year significantly. In the event that this takes place, CCRTA will reevaluate our goal for 2019 and 2020 and resubmit our DBE goal for adjustment.

Step three: "Race/Gender-Neutral and Race/Gender-Conscious Split"

CCRTA expects to meet the maximum feasible portion of our overall goal with 100% race/gender neutral means. All procurements of products and services that CCRTA distributes during any year includes a direct appeal to all DBE's registered with the Commonwealth of Massachusetts with an invitation to bid (see example email). Further, with rare exceptions, CCRTA does not require Bid Bonds to encourage more DBE's to submit proposals. This lowers the cost of responding to a bid for all bidders but DBE's welcome the lighter requirements. It is worth noting that CCRTA has met with mixed results seeking participation from DBE's. Many have declined because of the geographic remoteness of the Cape Cod and others have been too busy when we needed their services. Nevertheless, CCRTA remains committed to meeting our goal by race neutral means.

| DBE Goal Setting Expenditures by Year | | | | | | | | | | | |
|---------------------------------------|--------------------------------------|----|---------------|----------------|------------|----------------------------|---------------|-----------------------|------------------------|---------------------|-------|
| | | | | | NAICS Code | Ready, Willing, Able DBE's | Massachusetts | Percent - RWA Vendors | Percentage of spending | Weighted Percentage | |
| 2018 | HTC Renovations (RMV) | 1 | \$450,000 | \$450,000.00 | 236220 | | | | | | |
| 2019 | Bathroom Renovation (HTC) | 1 | \$120,000 | \$120,000.00 | 236220 | | | | | | |
| 2020 | Misc HTC as needed | 1 | \$100,000 | \$100,000.00 | 236220 | \$670,000.00 | 57 | 856 | 6.66% | 8.79% | 0.59% |
| | HTC Roof (Metal Roof) | 1 | \$385,000 | \$385,000.00 | 238160 | \$385,000.00 | 9 | 942 | 0.96% | 5.05% | 0.05% |
| | PhotoVoltaic Install HTC Roof | 1 | \$150,000 | \$150,000.00 | 238210 | \$150,000.00 | 40 | 6624 | 0.60% | 1.97% | 0.01% |
| | HTC Interior Floor Tile | 1 | \$190,000 | \$190,000.00 | 238330 | \$190,000.00 | 11 | 2335 | 0.47% | 2.49% | 0.01% |
| | Rapid-Hite Lawn Machine w/catcher | 1 | \$9,044 | \$9,043.50 | 444210 | \$9,043.50 | 1 | 68 | | 0.12% | 0.00% |
| | Surveillance System (HTC) | 1 | \$96,000 | \$96,000.00 | 334290 | | | | | | |
| | Surveillance System(Ops) | 1 | \$96,000 | \$96,000.00 | 334290 | | | | | | |
| | Ops Security Equipment | 1 | \$82,666 | \$82,666.00 | 334290 | \$274,666.00 | 3 | 7 | 42.86% | 3.60% | 1.54% |
| 2018 | Parking Vending Machines | 1 | \$30,000 | \$30,000.00 | 334514 | | | | | | |
| 2019 | Automatic Passenger Counters | 29 | \$4,890 | \$141,810.00 | 334514 | | | | | | |
| 2020 | Electronic Farebox System | 2 | \$31,000 | \$62,000.00 | 334514 | \$233,810.00 | 0 | 2 | | 3.07% | 0.00% |
| | 2006 Hybrid Vehicle - Supervisor | 1 | \$33,548 | \$33,547.65 | 441110 | | | | | | |
| | 2006 Hybrid Vehicle - Supervisor | 1 | \$33,516 | \$33,515.62 | 441110 | | | | | | |
| | 2012 Ford Escape | 1 | \$34,500 | \$34,500.00 | 441110 | | | | | | |
| | 2005 Service Truck F450 | 1 | \$55,602 | \$55,602.40 | 441110 | | | | | | |
| | Ford Escape Utility | 1 | \$34,380 | \$34,379.73 | 441110 | \$191,545.41 | 0 | 380 | | 2.51% | 0.00% |
| | Shop Systems and Tools | 1 | \$80,000 | \$80,000.00 | 423120 | | | | | | |
| | Sander | 6 | \$4,859 | \$29,154.60 | 423120 | \$109,154.60 | 4 | 190 | 2.11% | 1.43% | 0.03% |
| | Projectors | 1 | \$6,527 | \$6,527.00 | 423420 | | | | | | |
| | Printer - Color MFP, 26 CPM Stand | 1 | \$6,800 | \$6,800.00 | 423420 | | | | | | |
| | Laptop Computers | 4 | \$1,200 | \$4,800.00 | 423420 | | | | | | |
| | Servers | 4 | \$3,500 | \$14,000.00 | 423420 | | | | | | |
| 2018 | Desktop Computers | 16 | \$1,200 | \$19,200.00 | 423420 | | | | | | |
| 2019 | Laptop Computers | 4 | \$1,400 | \$5,600.00 | 423420 | \$56,927.00 | 3 | 91 | 3.30% | 0.75% | 0.02% |
| 2020 | Software Upgrades (word, office etc) | 50 | \$70 | \$3,500.00 | 423430 | \$3,500.00 | 7 | 304 | 2.30% | 0.05% | 0.00% |
| | Power Washer - HTC | 1 | \$5,595 | \$5,595.00 | 423850 | | | | | | |
| | Power Wash - 3 Phase System | 1 | \$35,895 | \$35,895.00 | 423850 | \$41,490.00 | 10 | 111 | 9.01% | 0.54% | 0.05% |
| | TOD Planning Funds | 1 | \$50,000 | \$50,000.00 | 541310 | | | | | | |
| | TOD Planning Funds | 1 | \$50,000 | \$50,000.00 | 541310 | \$100,000.00 | 39 | 2486 | 1.57% | 1.31% | 0.02% |
| | Gillig Bus Renovation Program Year 4 | 3 | \$275,000 | \$825,000.00 | N/A | | | | | | |
| | Gillig Overhaul (bus only) YR.5 | 3 | \$280,000 | \$840,000.00 | N/A | | | | | | |
| | Gillig Overhaul (bus only) YR.6 | 3 | \$285,000 | \$855,000.00 | N/A | \$2,520,000.00 | 1 | 17 | 5.88% | 33.07% | 1.95% |
| | From the Operating Budget | | ANNUAL | | | | | | | | |
| | Fuel/Lubricants | 3 | \$465,600 | \$1,396,800.12 | 424720 | \$1,396,800.12 | 0 | 1 | 0.00% | 18.33% | 0.00% |
| | Tires | 3 | \$33,267 | \$99,801.33 | 423130 | \$99,801.33 | 0 | 40 | 0.00% | 1.31% | 0.00% |
| | Misc Supplies | 3 | \$13,938 | \$41,814.78 | 424120 | \$41,814.78 | 4 | 89 | 4.49% | 0.55% | 0.02% |
| | Insurance | 3 | \$382,215 | \$1,146,644.55 | 524126 | \$1,146,644.55 | 0 | 241 | 0.00% | 15.05% | 0.00% |
| | | | | | | \$7,620,197.30 | 185 | 14413 | 1.28% | 100.00% | 4.30% |

Attachment G - Supplier Diversity Office Agreement

AGREEMENT
by and between the
COMMONWEALTH OF MASSACHUSETTS
OPERATIONAL SERVICES DIVISION (OSD)
On behalf of the
SUPPLIER DIVERSITY OFFICE
and the
Cape Cod Regional Transit Authority

For the purpose of implementing the Unified Certification Program

See imbedded fully executed document, MA_CCRTA UCP 2014, below:



MA_CCRTA UCP
2014.pdf

Attachment H – Legal Notice Verbiage

CAPE COD REGIONAL TRANSIT AUTHORITY

NOTICE OF PROPOSED DBE GOAL FOR FY 2018-2020

The Cape Cod Regional Transit Authority (CCRTA) proposed overall DBE goal for the federal fiscal year beginning 07/01/2017 is 4% of DOT assisted contracts.

This goal and its rationale have been developed in accordance with the Federal Transit Administration's DBE program under the guidelines of 49 CFR Part 26. The goal and rationale are available for review for 30 calendar days from the date of this notice.

Comments will be accepted for 45 calendar days from the same date. Comments, requests to review or for copies of the proposed goal and its rationale, should be addressed to John Fuller, DBE Liaison Officer, CCRTA, PO Box 1988, Hyannis, MA 02601, telephone (508) 775-8504, or by e-mail at jfuller@capecodrta.org

Thomas S. Cahir

Administrator

Cape Cod Regional Transit Authority

September 1, 2017

Attachment I - Regulations: 49 CFR Part 26 e-CFR

e-CFR Data is current as of July 1, 2017

TITLE 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN
DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—GENERAL

- §26.1 What are the objectives of this part?
- §26.3 To whom does this part apply?
- §26.5 What do the terms used in this part mean?
- §26.7 What discriminatory actions are forbidden?
- §26.9 How does the Department issue guidance and interpretations under this part?
- §26.11 What records do recipients keep and report?
- §26.13 What assurances must recipients and contractors make?
- §26.15 How can recipients apply for exemptions or waivers?

Subpart B—ADMINISTRATIVE REQUIREMENTS FOR DBE PROGRAMS FOR FEDERALLY-ASSISTED CONTRACTING

- §26.21 Who must have a DBE program?
- §26.23 What is the requirement for a policy statement?
- §26.25 What is the requirement for a liaison officer?
- §26.27 What efforts must recipients make concerning DBE financial institutions?

- §26.29 What prompt payment mechanisms must recipients have?
- §26.31 What information must you include in your DBE directory?
- §26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- §26.35 What role do business development and mentor-protégé programs have in the DBE program?
- §26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- §26.39 Fostering small business participation.

Subpart C—GOALS, GOOD FAITH EFFORTS, AND COUNTING

- §26.41 What is the role of the statutory 10 percent goal in this program?
- §26.43 Can recipients use set-asides or quotas as part of this program?
- §26.45 How do recipients set overall goals?
- §26.47 Can recipients be penalized for failing to meet overall goals?
- §26.49 How are overall goals established for transit vehicle manufacturers?
- §26.51 What means do recipients use to meet overall goals?
- §26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

§26.55 How is DBE participation counted toward goals?

Subpart D—CERTIFICATION STANDARDS

§26.61 How are burdens of proof allocated in the certification process?

§26.63 What rules govern group membership determinations?

§26.65 What rules govern business size determinations?

§26.67 What rules determine social and economic disadvantage?

§26.69 What rules govern determinations of ownership?

§26.71 What rules govern determinations concerning control?

§26.73 What are other rules affecting certification?

Subpart E—CERTIFICATION PROCEDURES

§26.81 What are the requirements for Unified Certification Programs?

§26.83 What procedures do recipients follow in making certification decisions?

§26.85 Interstate certification.

§26.86 What rules govern recipients' denials of initial requests for certification?

§26.87 What procedures does a recipient use to remove a DBE's eligibility?

§26.89 What is the process for certification appeals to the Department of Transportation?

§26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—COMPLIANCE AND ENFORCEMENT

§26.101 What compliance procedures apply to recipients?

§26.103 What enforcement actions apply in FHWA and FTA programs?

§26.105 What enforcement actions apply in FAA programs?

§26.107 What enforcement actions apply to firms participating in the DBE program?

§26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

Appendix [Appendix A to Part 26](#)—Guidance Concerning Good Faith Efforts

Appendix [Appendix B to Part 26](#)—Uniform Report of DBE Awards or Commitments and Payments Form

Appendix [Appendix C to Part 26](#)—DBE Business Development Program Guidelines

Appendix [Appendix D to Part 26](#)—Mentor-Protégé Program Guidelines

Appendix [Appendix E to Part 26](#)—Individual Determinations of Social and Economic Disadvantage

Appendix [Appendix F to Part 26](#)—Uniform Certification Application Form

[Appendix](#) [Appendix G to Part 26](#)—Personal Net Worth Statement

Attachment J - Forms for DBE Commitment and Letter of Intent to Use

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____
(Signature, Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.
(Submit this page for each DBE subcontractor.)

Attachment K – Executed DBE Program Policy Statement



CAPE COD REGIONAL TRANSIT AUTHORITY

BARNSTABLE BOURNE BREWSTER CHATHAM DENNIS EASTHAM PALMOUTH HARWICH MASSAPEE ORLEANS PROVINCETOWN SANDWICH TRURO WELLFLEET YARMOUTH

ADVISORY BOARD OFFICERS
Thomas M. Guerino, CHAIRMAN
Robert C. Lawton, Jr., RET. CHAIRMAN
George H. Dunham, CLERK
Thomas S. Cahir, ADMINISTRATOR

CAPE COD REGIONAL TRANSIT AUTHORITY DBE PROGRAM POLICY STATEMENT

Objectives/Policy Statement (Section 26.1, 26.23)

The Cape Cod Regional Transit Authority (CCRTA) 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 CCRTA has received Federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the CCRTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the CCRTA to ensure that DBEs as defined in part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. It is also CCRTA 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 CFR 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 CCRTA Grants Manager, John Fuller, has been delegated as the DBE Liaison Officer. In that capacity, the Grants Manager 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 CCRTA in its financial assistance agreements with the Department of Transportation.

CCRTA has disseminated this policy statement to its Board of Directors and all of the components of the organization. CCRTA has distributed this statement to DBE and non-DBE business communities that perform work for CCRTA on DOT-assisted contracts by posting it on the CCRTA website, using CCRTA social media, newspaper advertisements, and making this policy part of the CCRTA contractual documents (before, during, and after award).



Thomas S. Cahir
Administrator

8/7/17

Date



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