



# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

2022

Rhode Island Department of Transportation  
2 Capitol Hill  
Providence, Rhode Island

**Rhode Island Department of Transportation**  
**Disadvantaged Business Enterprise (DBE) Program Protocols**

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## INTRODUCTION

The Rhode Island Department of Transportation (RIDOT or the Department) Disadvantage Business Enterprise (DBE) Program is comprehensive program, developed by the U.S. Department of Transportation (USDOT), which establishes guidelines for the participation of firms owned and operated by socially and economically disadvantaged persons in DOT-assisted contracting.

The USDOT DBE (Disadvantaged Business Enterprise) program provides a vehicle for increasing the participation by socially and economically disadvantaged business owners in state and local procurement. USDOT DBE regulations require state and local transportation agencies that receive USDOT financial assistance to establish goals for the participation of DBEs. Each USDOT-assisted state and local transportation agency is required to establish annual DBE goals, review the scopes of anticipated large prime contracts throughout the year, and establish contract-specific DBE subcontracting goals. Along with the Office of Small and Disadvantaged Business Utilization (OSDBU), the Departmental Office of Civil Rights, and the Office of the General Counsel, there are three major USDOT operating administrations involved in the DBE program: the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA).

As a major provider of public transportation and whose employees have extensive daily contact with the public, the RIDOT recognizes its responsibility to the community which it serves and is committed to a policy of nondiscrimination. The Authority has posted the Objectives/Policy Statement (26.1, 26.3) for the Public.

In addition to establishing goals, state and local recipients also certify the eligibility of DBE firms to participate in USDOT-assisted projects. Some groups are presumed to be socially and economically disadvantaged for the purposes of participation in this program. The main objectives of the DBE program are:

- To ensure nondiscrimination in the award and administration of federally funded transportation-related projects in the Department's highway, transit, and airport financial assistance programs;
- To create a level playing field on which DBEs can compete fairly for federally funded transportation related projects;
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in federally funded transportation-related projects;
- To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients.
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.



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**DBE Policy Statement and Objectives**

49 CFR § 26.1; 26.23

The Rhode Island Department of Transportation (RIDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. RIDOT has received Federal financial assistance from USDOT, and as a condition of receiving this assistance, RIDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of RIDOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts, regardless of race, color, sex, national origin, age, disability, income status, or limited English proficiency. To this end, it is also RIDOT's policy to ensure that the following program objectives are achieved:

- a) To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in RIDOT's highway, transit, and airport financial assistance programs;
- b) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- c) To ensure that RIDOT's DBE program is narrowly tailored in accordance with applicable law;
- d) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e) To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients;
- g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Implementation of the DBE program is given the same priority as compliance with all other legal obligations incurred by RIDOT in its financial assistance agreements with USDOT.

RIDOT has designated Sheree Gomes, as the Department's DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE program. The DBELO has direct and unimpeded access to the agency's director.

RIDOT has disseminated this policy statement to the Director's Office and Division Administrators and all of the related areas of our organization. We have distributed this statement to DBE and non DBE business communities that perform work for RIDOT on USDOT-assisted contracts in a widespread email distribution and via our website, [www.dot.ri.gov](http://www.dot.ri.gov).

Peter Alviti, Jr., P.F., Director

Date

## SUBPART A—GENERAL REQUIREMENTS

### **Section 26.1 Objectives**

The DBE objectives can be found within the RIDOT DBE Policy Statement found located on page 6.

### **Section 26.3 Applicability**

The RIDOT is the recipient of federal–aid highway funds authorized under:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
- (2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
- (3) The Fixing America’s Surface Transportation (FAST) Act, Public Law No. 114-94, December 4, 2015, and other authorizing legislation to be enacted.

### **Section 26.5 Definitions and Terms**

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation* (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).



*Assets* mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

*Business, business concern or business enterprise* means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States, or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contingent Liability* means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Days* mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Department or DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

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

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

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

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of

their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Liabilities* mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

*NAICS Code* means the North American Industry Classification System (NAICS), the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the US business economy.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Non-DBE* means any firm that is not certified as a DBE

*Operating Administration* or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Primary industry classification* means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*RIDOT* means Rhode Island Department of Transportation.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Reportable Contracts* means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

*Spouse* means a married person, including a person in a domestic partnership or a civil union recognized under State law.

*Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

### **Section 26.7 Non-Discrimination Requirements**

RIDOT and its Subrecipients will not exclude any person from participation, 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, RIDOT 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, age, or disability.

If a contractor feels they have been discriminated against, they should contact:

Solight Sou, Title VI Coordinator  
Rhode Island Department of Transportation  
Office of Civil Rights  
Two Capitol Hill Room -110E  
Providence, Rhode Island 02903  
E: DOT.TitleVI@dot.ri.gov

### **SECTION 26.11 RECORD KEEPING**

#### **26.11(a) Reporting to USDOT/FHWA/FTA**

As a recipient FHWA and FTA federal funding RIDOT will report DBE participation to the appropriate Operating Administrations (OA) as follows:

DBE participation data from will be reported on a semiannual basis utilizing the Uniform Report of DBE Awards/Commitments and Payments form. Data captured during reporting period includes:

- Awards/Commitments this Reporting Period
- Breakdown by Ethnicity and Gender of Contracts Awarded to DBEs this Period
- Payments made this Period
- Total Payments on Contracts Completed this Reporting Period

## Reporting Periods

DBE participation from October 1 through March 31<sup>st</sup> will be submitted by June 1<sup>st</sup>

DBE participation from April 1 through September 30<sup>th</sup> will be submitted by December 1<sup>st</sup>

**FHWA** – Submission of the Uniform Report of DBE Awards/Commitments and Payments will occur via FHWA Connect

**FTA** – Submission of the Uniform Report of DBE Awards/Commitments and Payments will be occur via Transit Award Management System (TRAMS).

RIDOT is responsible for the collection and reporting of contracts awards, DBE commitments, in addition to Prime Contractor and Subcontractor (including lower tier) payments occurring on all RIDOT and Subrecipient contracts. For all RIDOT awarded contracts, prime and subcontractors demonstrate a running tally of actual payments to DBEs for work committed to them at any time during the life of the contract. All contractors are required to report payments utilizing RIDOT's web-based Contract Compliance Management System (CCMS), currently known as Prism pursuant to RIDOT Code 929.0300 included in Federal Aid contract proposals bid any time after February 17, 2021.

### **Section 26.11(c) Bidders List**

Per DBE regulations, RIDOT must maintain a bidders list, to provide an accurate data set of the DBE and Non-DBE Contractors and DBE Subcontractors seeking work on federally assisted contracts. The data collected will assist RIDOT in computing the 3-year Annual DBE goal. RIDOT is currently in the process of identifying the best to collect required information.

Information to be collected:

- i. Firm name;
- ii. Firm address;
- iii. Firm's status as a Prime, DBE or non-DBE;
- iv. Age of the firm; and
- v. The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; *etc.*) rather than requesting an exact figure from the firm.

The Department of Administration, Office of Diversity, Equity and Opportunity (ODEO), MBE Compliance Office (MBECO) maintains the Unified Certification Program (UCP) database of certified DBEs. One of the purposes of these databases is to collect as accurate data as possible about the universe of contractors who seek to work on federally assisted contracts for analysis as part of RIDOT triennial goal-setting methodology.

Division.

### **Section 26.11(d) Availability of Records**

(1) In responding to requests for information concerning any aspect of the DBE program, the DOA complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C.552 and 552a). The DOA may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, DOA must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, DOA must transmit this information to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

Procedures on maintaining and retention of records can be found at [www.mbe.ri.gov](http://www.mbe.ri.gov)

### **Section 26.11(e) UCP Information to USDOT/FHWA/FTA**

As discussed further in Subpart E, RIDOT does not certify firms to participate as DBEs. Instead, RIDOT is a participating member of a Unified Certification Program (UCP), administered by the Department of Administration Office of Diversity, Equity and Opportunity (ODEO)/Minority Business Enterprise Compliance Office (MBECO). As part of the MOU entered into with RIDOT, the MBECO is designated to perform all DBE certification activities in accordance with the criteria and procedures of 49 CFR Part 26, Subparts D and E and to otherwise comply with all provisions of subparts D and E, unless specifically exempt. As such, MBECO reports to RIDOT and RIDOT will report to USDOT/FHWA/FTA, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

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

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

#### **Section 26.13(a) Assurances**

Each financial assistance agreement RIDOT signs with a DOT operating administration must include the following assurance:

*The recipient 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 recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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.).*

#### **Section 26.13(b) Contract Assurance**

RIDOT will ensure within each contract signed with the contractor (and each subcontract the prime contractor signs with a subcontractor) the following clause is included:

*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 USDOT-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 RIDOT deems appropriate, which may include, but is not limited to:*

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

## SUBPART B – ADMINISTRATIVE REQUIREMENTS

### **Section 26.21 DBE Program Requirement**

As a primary recipient of FHWA funds and a recipient receiving more than \$250,000 in FTA funds, RIDOT has established a DBE Program to remain in compliance with 49 CFR 26.21 and will carry out this program until it has spent all available funds from USDOT. The Department will seek approval from USDOT prior to making significant program changes. RIDOT will review its sub-recipient contracts and ensure that suitable contract language is included to ensure its sub-recipients will comply with RIDOT's DBE Plan. The Chief Contracts Administrator has been advised of this requirement.

Furthermore, as rules pertaining to 49 CFR Part 26 are revised or significant change in RIDOT policies and procedures that affect implementation of this DBE Program Plan as written, RIDOT will update its plan and obtain approval from DOT regarding changes made to the plan. Any changes in rules pertaining to 49 CFR Part 26 made by DOT, that are not a part of this DBE Plan, will become effective on the date of the change by DOT, whether or not RIDOT has updated its DBE Program Plan with those changes, as long as the changes have been incorporated into DBE contract specifications and/or are widely communicated and disseminated to DBEs, contractors, Subrecipients/Subgrantees, and other affected stakeholders. RIDOT's DBE Program Plan will be updated as soon as possible to reflect any changes to 49 CFR Part 26 or guidance from DOT related to DBE regulations.

### **Section 26.23 Policy Statement**

RIDOT's policy statement that outlines and expressed its commitment to the DBE Program can be found on page 6 of this plan. The policy can also be found on RIDOT's website at [www.dot.ri.gov](http://www.dot.ri.gov).

### **Section 26.25 DBE Liaison Officer (DBELO) Program Responsibilities**

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

Sheree Gomes, DBELO  
Rhode Island Department of Transportation  
Office of Civil Rights  
Two Capitol Hill Room 110  
Providence, Rhode Island 02903  
E: DOT.DBE@dot.ri.gov

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that the RIDOT complies with all provision of 49 CFR Part 26.

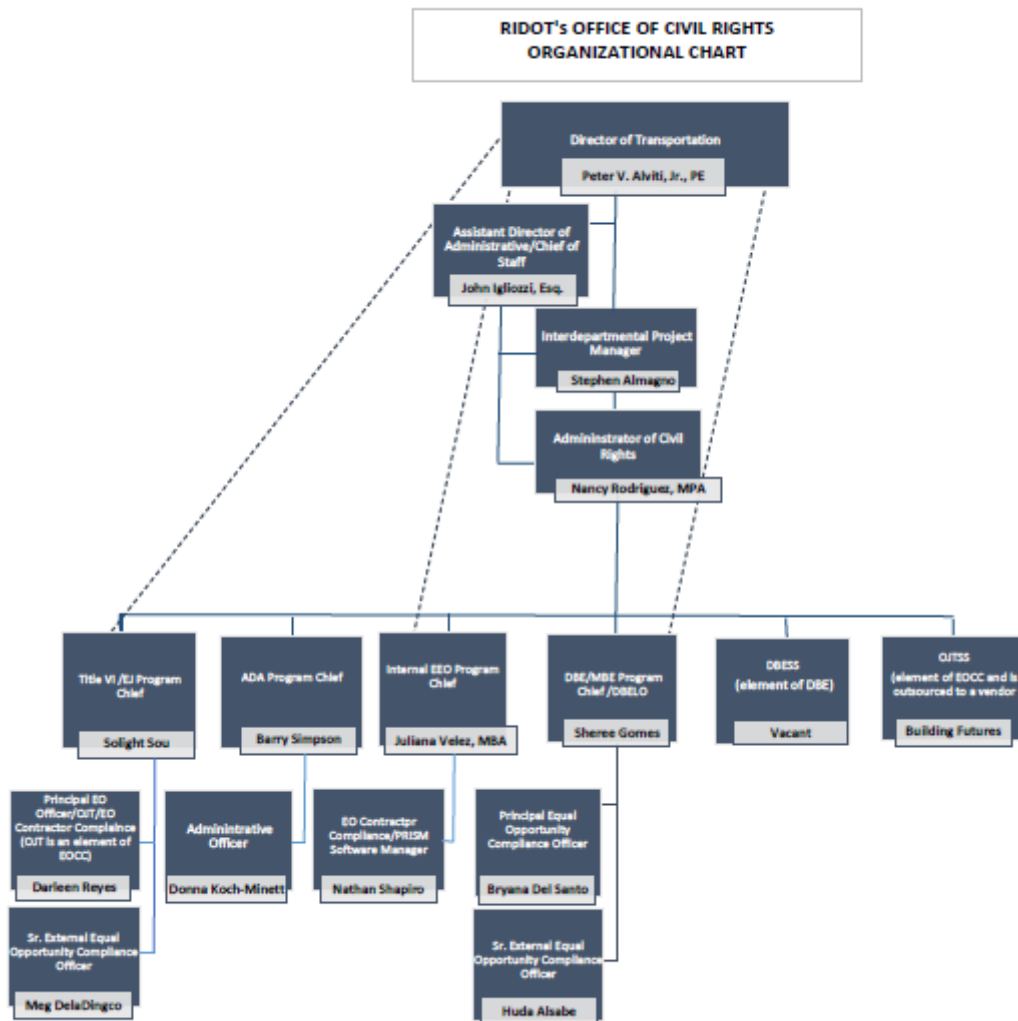
The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a dedicated staff to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
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 RIDOT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Director on DBE matters and achievement.
9. Ensures that DBEs are provided with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

RIDOT OCR Organizational Chart – 2022





**Section 26.27 DBE Financial Institutions**

It is the policy of the RIDOT 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 USDOT-assisted contract to make use of these institutions.

In an effort to identify and use such institutions, RIDOT’s Office of Civil Rights works closely with the State Office of Diversity, Equity and Opportunity, the designated DBE Certification body in Rhode Island to identify any new financial institution owned and operated by socially and economically disadvantaged individuals during the certification process. When a financial institution, owned and operated by socially and economically disadvantaged individuals, is opened during the period of this approved Program, the State of Rhode Island may use their services when feasible and provide

notification to prime contractors within the bid documents. Currently there are no financial institutions owned and controlled by socially and economically disadvantaged individuals in existence in Rhode Island.

The Federal Deposit Insurance Corporation maintains a database of Minority-Owned Depository Institutions at:

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

Contractors utilizing these financial institutions may be eligible for DBE credit.

## **CONTRACT ADMINISTRATION AND ASSOCIATED REQUIREMENTS**

### **Section 26.29(a) Prompt Payment Mechanisms**

RIDOT requires that all subcontractors (including lower tier contractors) performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all federal, state and local law.

In accordance with 49 CFR Part 26.29, RIDOT established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractors' receipt of payment from RIDOT. Prompt Payment Regulations are applicable to multi-tier subcontract agreements. RIDOT utilizes contract compliance software, Prism to monitor and track subcontractor payments.

The Prompt Payment requirement is a Race Neutral (RN) mechanism deeming it applicable to all subcontractors not just DBEs.

### **Section 26.29(b) Retainage**

RIDOT is committed to ensuring full and prompt payment of retainage from the prime contractor to the subcontractor within 30 days. RIDOT has elected to withhold retainage on all prime contracts. Per RIDOT Standard Specification 109.06(b) Payment for Work, progress payments made on the prime contract will be subject to 5% retainage. Currently, retainage is addressed by Standard Specification 109.06 PARTIAL PAYMENTS, and is held in the amount of 3% of the value of the work performed and is released when all punch list work is completed.

Additionally, RIDOT Standard Specification 109.06(f) states the contractor (Prime) shall notify RIDOT within 7 days upon the contractor's assessment that the subcontractors work is complete and ready for inspection for partial acceptance by RIDOT. Upon receipt of prime contractor notification, RIDOT will inspect the subcontractor's work within 14 days. If accepted RIDOT will issue payment for all work covered by acceptance including the relevant portion of retainage due to the subcontractor. Upon receipt of RIDOT partial acceptance payment, prime must issue payment to subcontractor for all accepted work, including retainage. Should a delay or postponement of payment occur for good cause, the prime contractor must obtain RIDOT's prior written consent.

### **Section 26.29(c)**

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract or such portion of the work have been accomplished and documented as required. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

### **Section 26.29(d) Monitoring Payments to DBEs**

Subcontractors should enter all payment invoices in PRSIM within 72 hours of sending the hard copy of the payment invoice to the Prime. All Prime payments issued by RIDOT will be uploaded to the system two times per week. All payments made from the Prime to the subcontractor will be tracked through PRISM. Upon receiving subcontractor payment from Prime, subcontractor is required to be acknowledged in the system.

NON-COMPLIANCE. Failure to comply with the above will lead to a notice of non-compliance and may result in delay of progress payments and/or any other sanctions deemed appropriate by RIDOT. Continued violations will lead to RIDOT determining whether to take additional actions including, but not limited to, initiating debarment or suspension proceedings. Should a delay or postponement of payment occur for good cause, the prime contractor must obtain RIDOT's prior written consent.

### **Section 26.29(e)(3) Other Enforcement Mechanisms for Prompt Payment**

RIDOT's Office of Civil Rights receives, processes, and investigates prompt payment complaints. If a prompt payment complaint is found to be valid, the Department withholds payments in the amount of the complaint from the Contractor until proof of payment is provided.

With the recent implementation of PRISM, RIDOT is in the process of identifying additional appropriate enforcement mechanisms to address prompt payment non-compliance.

### **Section 26.31(a) DBE Directory**

The RIDOA maintains a directory identifying all firms eligible to participate as DBEs in the state of Rhode Island. The directory lists the firm's name, address, contact information, description of services offered and the NAICS codes the firm has been certified to perform within as a DBE.

The DBE directory can be found at:

<https://dedi.ri.gov/divisions-units/minority-business-enterprise-compliance-office/us-dot-disadvantaged-business-0>\*

\* Please be sure to use the DBE/ACDBE Directory for DOT-assisted contracts. Only firms certified as a DBE are eligible for DBE credit. RIDOA also maintains a *separate* Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) directory. Firms certified solely as an MBE or WBE are NOT eligible for DBE credit on DOT-assisted contracts.

Firms seeking certification to perform as a DBE should complete required certification application and forward to:

Minority Business Enterprise Compliance Office  
RI Department of Administration  
One Capitol Hill,  
Providence, RI 02908

### **Section 26.33 Over-concentration**

RIDOT has not identified that overconcentration exists in the types of work that DBEs perform here in Rhode Island. If RIDOT determines that DBE firms are over-concentrated in certain types of work as to unduly burden the opportunity of non-DBE firms to participate or allow contracting opportunities for other DBEs in other available disciplines, RIDOT will take appropriate measures as specified in 26.33 (b).

These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which non-DBEs are unduly burdened. RIDOT may also consider varying contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

RIDOT will obtain approval from the concerned USDOT operating administration regarding its determination and any measures to address it. Once approved, these measures will become part of the RIDOT DBE Program until the overconcentration is reduced.

## **SUPPORTIVE SERVICES**

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

RIDOT has a business development program. The rationale for the program is described below:

There is an urgent need to address the underutilization of DBEs so that all firms can experience success within the DBE Program. The RIDOT has collected and analyzed over ten (10) years of historical data on the utilization of DBE firms, both prime and as sub-contractors, on RIDOT projects. Our analysis of the contracting data over this period has shown that, statistically, DBE firms of African-American, Asian-American, Hispanic American, and Native American ownership have been severely underutilized and have not been able to benefit from the DBE program in the same manner as other groups.

One method of addressing this underutilization is providing targeted and comprehensive business development assistance for these firms. In the past, RIDOT has held various networking and/or other meetings with underutilized DBE firms. RIDOT utilized information collected through surveys and questionnaires that indicate the need for individual assistance as opposed to group sessions that were held in the past. To assess the specific needs of the DBE firms, RIDOT continues to conduct comprehensive evaluations of each firm in the program, both through targeted surveys and questionnaires, as well as through customized and specific interviews to identify strengths, weakness, and areas of need.

General supportive services are available to all certified DBEs doing business with RIDOT in accordance with 49 CFR Part 26. Information can be obtained from the DBELO.

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

The DBE Program is committed to performing regular project site visits and compliance reviews of participating contracting partners. With respect to DBE reporting, commercially useful function (CUF) reviews shall be conducted regarding the distinct elements of work under each approved DBE contract and subcontract (See Appendix C). This element is part of a broader effort to ensure that contractors understand all federal-aid contract provisions promulgated through the regulations at 26 CFR Part 26, Appendix A of Subpart C, Part I.

The following personnel are responsible for monitoring the accuracy of information submitted:

- ❑ Administrator, Office of Civil Rights (ADA/Title VI/DBE/Contractor Compliance/OJT) Nancy Rodriguez
- ❑ Chief Program Development (DBELO) Sheree Gomes
- ❑ Principal EEO Compliance Officer (DBE) Bryan Del Santo
- ❑ Senior EEO Compliance Officer (DBE) Huda Alsabe
- ❑ Diversity & Compliance Management System Coordinator (DBE/Contractor Compliance/OJT) Nathan Shapiro

RIDOT employs the following methods to ensure compliance with 49 CFR Part 26:

- a) The RIDOT will utilize the legal instrument of a contract clause to ensure compliance with the bid specifications. After award of the contract, the assigned RIDOT staff will conduct audits and reviews as necessary to assure contractor compliance.
- b) RIDOT also employs a monitoring and enforcement mechanism to verify that work subcontracted to DBEs at contract award is actually performed by DBEs. RIDOT actively monitors work performed and payments made to DBE firms. As previously mentioned, monitoring via PRISM is expected to greatly facilitate this process.

Records of all progress payments made by prime contractors are required with each invoice. Prime contractors must also report to the DBELO when a DBE is terminated for any reason. The DBELO will monitor the running tally of actual payments to DBE firms for work committed to them at the time of contract award. These records will be periodically verified by obtaining certified statements from DBE subcontractors.

Other appropriate actions taken to ensure that prime contractors and subcontractors comply with the DBE provisions will include the following:

1. Desk audits to review all material and information concerning the contractor's compliance.
2. On-site reviews that include interviews, visits to project locations, and inspection of documents and/or information not available at the desk audit which pertains to the contractor's compliance.
3. Any additional investigation that may be deemed necessary due to a lack of proper record keeping; failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evidence of unsatisfactory performance; and other evidence as may warrant further investigation.

The DBELO will monitor prompt compliance determinations regarding prime contractors.

Documentation of noncompliance will include the specific areas in which the contractor/subcontractor failed to comply. In these instances, appropriate legal action consistent with the DBE and other contract provisions will be taken.

RIDOT keeps a running tally of actual DBE attainments (goals achieved - payments actually made to DBE firms) and compares these attainments to commitments. RIDOT reports both DBE commitments and attainments.

### **DBE Special Provision**

The Prime Contractor shall cooperate with the RIDOT in implementing the requirements concerning DBE utilization in accordance with 49 CFR Part 26. The Prime Contractor shall also cooperate with the RIDOT and USDOT in reviewing the Contractor's activities relating to this provision. The DBE Special Provision is in addition to all other EEO requirements of the contract listed in FHWA Form 1273.

### **Section 26.39 Fostering Small Business Participation**

#### **RIDOT's Small Business Initiative Mission**

To encourage participation and competition among very small businesses in the U.S. Department of Transportation-funded procurement activities and to ensure that these businesses have an equal opportunity to provide goods and services to RIDOT.

#### **General Description**

RIDOT encourages very small businesses to participate in the procurement process and will strive to purchase commodities and services from very small businesses, both DBE and non-DBE. To expand these efforts, RIDOT may utilize a Set-Aside

Program to increase the participation of all very small businesses in the procurement process. Accordingly, RIDOT has established a Very Small Business Program (VSBP).

### Definition

A Very Small Business (VSB) is one that:

- Is either a DBE or non-DBE
- Is organized for profit;
- Has a place of business in the United States;
- Makes a significant contribution to the U.S. economy by paying taxes or using American products, materials or labor; and
- Does not exceed the size standard for its industry in RI as defined below.
- It may be a sole proprietorship, partnership, corporation, or any other legal form.

A very small business is one that does not have more than 15 employees and has annual revenue not to exceed \$1.5 million. A very small business is a business with annual gross receipts well below the SBA small business size criteria.

### RIDOT Very Small Business Participation Plan

This Plan will be updated annually to include the following protocol:

- a. Identify potential projects and tag as potential Very Small Business Projects;
- b. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses,);
- c. Providing referrals in overcoming limitations such as inability to obtain bonding or financing (e.g., reducing bonding requirements, eliminating the impact of surety costs from bids, and providing referral services to help very small businesses obtain bonding and financing);
- d. Providing referrals to Rhode Island Commerce Corporation (RICC) for technical assistance and other services;
- e. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other very small businesses on RIDOT 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);
- f. Implementing a referral process to RI CC to: develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for small businesses;
- g. Providing referral services to RI CC to help small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- h. Establishing a referral process to RI CC to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- i. Encouraging very small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

## SUBPART C—GOALS, GOOD FAITH EFFORTS, AND COUNTING

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

The RIDOT does not use set-asides or quotas in any way in the administration of race-/gender-conscious DBE program elements.

### **Section 26.45 Overall DBE Goals**

RIDOT is required to identify and submit a triennial DBE goal for each USDOT operating agency. Overall DBE goals are identified by analyzing the number of available ready, willing and able (RWA) DBEs per the RI DBE directory in comparison to the number of all RWA businesses per the US Census to participate on RIDOT-assisted contracts (hereafter referred to as the “relative availability of DBEs”). The overall DBE goal identified reflects RIDOT determination of the level of DBE participation we would expect absent the effects of discrimination.

#### **RIDOT Annual DBE Goals**

<b>USDOT Operating Agency</b>	<b>Federal Fiscal Year</b>	<b>Overall DBE Goal</b>	<b>Race-Conscious</b>	<b>Race Neutral</b>
FHWA	2021-2023	6.65%	2.53%	4.12%
FTA	2021-2023	1.51%	1.21%	.3%

RIDOT is required to review, set and submit triennial DBE goals to each operating agency based upon three-year cycles established by each agency. See below table below for future submission dates:

<b>USDOT Operating Agency</b>	<b>Submission Due Date</b>	<b>Effective Dates for Triennial Goal</b>
FHWA	August 1, 2023 August 1, 2026	Federal Fiscal Years 2024-2026 Federal Fiscal Years 2026-2028
FTA	August 1, 2023 August 1, 2026	Federal Fiscal Years 2024-2026 Federal Fiscal Years 2026-2028

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

RIDOT is committed to successful implementation of the DBE program in compliance with 49 CFR Part 26. RIDOT cannot be penalized or treated by the operating agency as being in non-compliance if DBE participation falls short of overall goal unless:

- a) RIDOT has failed to administer its DBE program in good faith
- b) RIDOT does not have an approved DBE program; or
- c) RIDOT does not have an overall DBE goal

For each operating agency, at the end of each fiscal year, RIDOT will review all DBE participation as reported on the RIDOT Uniform Report of Awards/Commitments and Payments. If the awards and commitments shown on RIDOT’s Uniform Report of Awards/ Commitments and Payments at the end of any fiscal year are *less than* the overall goal applicable to that fiscal year, RIDOT will generate a Shortfall Analysis and Corrective Action Plan (CAP) to:

- a) Review and analyze all contributing factors that lead to the difference between the overall goal and the actual DBE participation (Uniform Report of Awards/Commitments and Payments). Examples of factors to be considered, number DBE goals set compared to the goals achieved, efficacy of DBE goal setting methodology, number of good faith efforts approved, DBE termination and substitutions approved, efficacy of training etc. This list is not intended to be exhaustive or exclusive.

- b) Establish specific steps and milestones to correct the problems RIDOT has identified in its analysis and enable it to meet fully the goal for the new fiscal year
- c) Submit, within 90 days of the end of the fiscal year, the analysis and corrective actions identified in sections (a) and (b) above to the appropriate Operating Agency for approval

FHWA and FTA, may impose conditions on RIDOT as part of its approval of RIDOT's analysis and corrective actions including, but not limited to, modifications to the overall goal methodology, changes in the race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

RIDOT may be regarded as being in noncompliance with this 49 CFR Part 26, and therefore subject to the remedies in 49 CFR 26.103 or 26.105 and other applicable regulations, for failing to implement the DBE program in good faith if any of the following things occur:

- a) RIDOT does not submit an analysis and corrective actions to FHWA or FTA in a timely manner as required under paragraph (c)(3) of this section;
- b) FHWA or FTA disapproves of the analysis or corrective actions; or
- c) RIDOT does not fully implement the corrective actions to which we have committed or conditions that FHWA or FTA has imposed following review of RIDOT’s analysis and corrective actions.

If, as recipient, our Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA or FHWA, demonstrates that current trends make it unlikely that the program will achieve DBE awards and commitments that would be necessary to allow RIDOT to meet its overall goal at the end of the fiscal year, FHWA or FTA, as applicable, may require RIDOT to make further good faith efforts, such as modifying the race-conscious/race-neutral split, or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

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

**Step-by-Step Methodology**

The U.S. Department of Transportation (USDOT) regulations appearing at 49 Code of Federal Regulations (CFR), part 26, requires each recipient of USDOT financial assistance to establish an annual goal for participation of Disadvantaged Business Enterprises (DBEs) in its USDOT-assisted contracting activities funded through the Federal Highway Administration (FHWA). The annual overall goal must be based on demonstrable evidence of the availability of ready, willing, and able (RWA) DBEs relative to all businesses ready, willing, and able to participate on Rhode Island Department of Transportation (RIDOT), USDOT-assisted contracts (“Relative Availability of DBEs”).

In establishing its goal, RIDOT acknowledges the importance of fully engaging stakeholders and the public in meaningful ways to obtain relevant information in establishing its overall goal, and therefore has carefully considered all information gained through discussions with the public and program stakeholders. RIDOT may also undertake a mid-cycle review of the methodology if necessary to ensure the goal continues to reflect conditions that exist in the local highway transportation contracting market.

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

RIDOT must establish contract goals to meet any portion of its overall goal projected to be unachievable using race-neutral means.

The following provisions apply to the use of contract goals:



- (1) We may use contract goals only on those USDOT-assisted contracts that have subcontracting possibilities.
- (2) We are not required to set a contract goal on every USDOT-assisted contract. We are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by the overall goal, contract goals are set to cumulatively result in meeting any portion of the overall goal projected as being unachievable using race-neutral means.
- (3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal we establish.
- (4) Our contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

To ensure that our DBE program continues to be narrowly tailored to overcome the effects of discrimination, we must adjust our use of contract goals as follows:

(1) If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we must implement the program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

(2) If, during the course of any year in which we are using contract goals, we determine that we will exceed our overall goal, we must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If we determine that we will fall short of our overall goal, then we must make appropriate modifications in our use of race-neutral and/or race-conscious measures to allow RIDOT to meet the overall goal.

(3) If the DBE participation we have obtained by race-neutral means alone meets or exceeds our overall goals for two consecutive years, we are not required to make a projection of the amount of our goal we can meet using such means in the next year. We do not set contract goals on any contracts in the next year. We continue using only race-neutral means to meet our overall goals unless and until we do not meet our overall goal for a year.

(4) If we obtain DBE participation that exceeds our overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), we must reduce our use of contract goals proportionately in the following year.

(g) In any year in which we project meeting part of our goal through race-neutral means and the remainder through contract goals, we must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. We must report this data to the concerned operating administration as provided.

### **Section 26.53(a) Demonstration of Good Faith Efforts**

#### **Pre-Award Good Faith Efforts**

When RIDOT establishes a DBE contract goal, RIDOT must award the contract only to a bidder/offeror who makes good faith efforts to meet it. RIDOT must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

- (1) Documents that it has obtained enough DBE participation to meet the goal; ***or***

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, RIDOT must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal.

RIDOT utilizes the Appendix A- Guidance concerning Good Faith Efforts, found in 49 CFR Part 26 to assist in the determination of adequate good faith efforts.

### **Section 26.53(b) Information to be Submitted**

Award of the contract will be conditioned on meeting the requirements of this section.

- (1) All bidders or offerors will be required to submit the following information to the RIDOT, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (2) At RIDOT's discretion, the bidder/offeror must present the information required in section 1, within 5 days after bid opening, as a matter of responsibility
  - (ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

### **Section 26.53(d) Administrative reconsideration**

If RIDOT determines that the apparent successful bidder/offeror has failed to meet the requirements of 49 CFR Part 26.53b, RIDOT must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

- (1) As part of this reconsideration, the bidder/offeror must 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.
- (2) RIDOT's decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

- (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) You must 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.
- (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Within 10 days of being informed by RIDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Stephen Almagno, Interdepartmental Project Manager  
R.I. Department of Transportation  
Two Capitol Hill  
Providence, RI 02903  
E: Stephen.Almagno@dot.ri.gov

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. RIDOT 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.

### **Section 26.53(f) Good Faith Efforts When a DBE is Replaced on a Contract**

#### **Post-Award Good Faith Efforts**

RIDOT and its subrecipients must require that Prime contractors not terminate an RIDOT approved DBE commitment in whole (end contract) or in part (reduction in scope of work) without prior written consent from RIDOT OCR. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

In each prime contract, RIDOT must include a contract provision stating:

- a) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains RIDOT's written consent and,
- b) That, unless RIDOT's consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

For purposes of this paragraph, good cause includes the following circumstances the listed DBE :

- a) Fails or refuses to execute a written contract;

- b) Fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- c) Fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- d) Becomes bankrupt, insolvent, or exhibits credit unworthiness;
- e) Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- f) RIDOT determines that the listed DBE subcontractor is not a responsible contractor;
- g) Voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- h) The listed DBE is ineligible to receive DBE credit for the type of work required;
- i) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- j) Other documented good cause that RIDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before submitting written request to RIDOT for the termination, substitution and/or reduction in scope of work of a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to RIDOT of its intent to initiate request and the reason why.

The prime contractor must give the DBE five days to respond to the written notice and advise RIDOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why RIDOT should not approve the prime contractor's action.

Upon review of submitted documentation, if RIDOT determines the prime contractor has demonstrated *good cause* for termination, substitution or reduction in scope of work, RIDOT may provide such written consent, stating the reasons for concurrence only if it agrees.

Please note: This section is applicable to pre-award deletions of or substitutions for DBE firms listed on approved DBE Utilization Plan.

**Section 26.53(g) Good Faith Efforts to Replace**

If RIDOT approves the requested termination or a DBE subcontractor fails to complete its work on the contract for any reason, RIDOT requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. All good faith efforts shall be documented by the contractor and if requested by RIDOT, the contractor shall submit the documentation within 7 days of request. An additional 7-day extension may be requested by the contract if necessary. Based upon submitted documentation, RIDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to self-perform does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE(s), and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote. The termination of a DBE firm will not relieve the contractor of its obligations to meet the DBE goal, the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal and the contractor must make good faith efforts to the extent needed to meet the established contract DBE goal. If for any reason it becomes apparent that the DBE goal will not be met then the contractor shall: (1) immediately notify the RIDOT Engineer, and RIDOT DBELO or the applicable Subrecipient/Subgrantee of the potential or actual decrease in DBE compensation, and (2) make good faith efforts to obtain DBE participation to meet or exceed the project DBE goal.

In each prime contract, RIDOT must include the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

### **Section 26.53(i) Applying Good Faith Efforts When DBE is Prime**

RIDOT applies the requirements of this section to DBE bidders on prime contracts. In determining whether a DBE prime has met a contract goal, RIDOT counts the work the DBE prime has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers according to Section 26.55.

### **Section 26.53(j) Requiring All Contracts and Subcontracts Comply**

RIDOT requires the Prime Contractor to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions. RIDOT may reject a proposed DBE which is not in compliance with the policies and guidelines of the program.

### **Section 26.55 Counting DBE Participation towards Goals**

When a DBE participates in a DOT-assisted contract, RIDOT will only count the value of the work actually performed by the DBE toward DBE goals. To do this RIDOT will:

- a) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (b) of this section, that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE will be counted. Note: If the DBE subcontractor purchases or leases supplies and equipment from the prime contractor or its affiliate, these items will not be counted.
- b) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- a) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, RIDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

RIDOT will only count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a Commercially Useful Function (CUF) on that contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, RIDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

If the DBE subcontractor's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation, the DBE does not perform a commercially useful function. In determining whether a DBE is such an extra participant, RIDOT will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, RIDOT presumes that it is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided, the DBE may present evidence to rebut this presumption. RIDOT will determine whether the firm is performing a commercially useful function given the type of work involved and normal industry practices.

RIDOT's decisions on commercially useful function matters are subject to review by the concerned operating administration but are not administratively appealable to DOT.

### **Trucking**

When determining whether a DBE trucking company is performing a commercially useful function, RIDOT will consider the following:

- a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- c) The DBE will receive credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a

result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

- f) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- g) A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

### **Materials and Suppliers**

RIDOT will count expenditures with DBEs for materials or supplies toward DBE goals as follows:

- a) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- b) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A regular dealer is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in paragraph (a) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (a).
- c) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- d) RIDOT must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

### **DBE Decertification**

If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in 49 CFR Part 26.87(i).RIDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

## **DBE Final Payment**

Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 DBE Certification**

The RIDOA will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine eligibility of firms to participate as DBEs in USDOT - assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certification decisions will be based on the facts as a whole.

The RIDOT does not certify firms to participate as DBEs. Instead, the RIDOT is a participating member of a Unified Certification Program (UCP), administered by the Department of Administration Office of Diversity, Equity and Opportunity (ODEO)/Minority Business Enterprise Compliance Office (MBECO). By Memorandum of Understanding (MOU) entered into in September 2005 among Rhode Island Department of Transportation (RIDOT), Rhode Island Airport Corporation (RIAC), and Rhode Island Public Transit Authority (RIPTA), the MBECO was designated to perform all DBE certification activities in accordance with the criteria and procedures of 49 CFR Part 26, Subparts D and E and to otherwise comply with all provisions of subparts D and E, unless specifically exempt.

The certification application forms and documentation requirements are found [www.mbe.ri.gov](http://www.mbe.ri.gov)

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

Elvys Ruiz Assistant Administrator (Acting)  
Minority Business Enterprise Compliance Office  
R.I. Department of Administration  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02908  
(401) 574-8670  
Fax (401) 574-8387

### **Section 26.63 Social & Economic Disadvantage**

In reviewing an applicant for Social and Economic Disadvantage (“SED”), the MBECO will analyze the Personal Financial Statement(s) and Affidavit of Certifications for each individual relied upon to establish social and economic disadvantage.

The MBECO will ensure that the individuals relied upon meet the requirements of social disadvantage as defined in 49 CFR §26.63. If they have a well-founded reason to question the applicant’s claim to group membership, they may also request additional documentation justifying the individual’s inclusion.

While 49 CFR §26.67 defines the classes presumed to be socially disadvantaged, any individual may apply provided they can establish a pattern and history of disenfranchisement including, but not limited to, decreased access to education and/or capital. Such decisions will be made in accordance with 49 CFR 26, Appendix A.

In reviewing any Personal Financial Statements, the MBECO will validate the statements against the individual’s business and personal tax returns. The UCP Supporting Documents Checklist requires review of three years of individual and business tax returns.

In determining that the individual(s)’s personal net worth (see <http://odeo.ri.gov/documents/dbe-and-acdbe-personal-financial-statement.pdf>) does not exceed \$1.32M or the current threshold established by 49 CFR 26.67, the MBECO will



exclude the eligible principal(s)'s share of the equity in his or her primary residence and the eligible principal(s) ownership interest in the applicant firm but include the present value of all other assets. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, the MBECO will include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

Additional factors may be reviewed including the PNW of the applicant's spouse, the overall value of the individual's primary residence regardless of equity value.

The MBECO will review any transfers of assets to or from the applicant and/or to or from any of its owners over the past two years, including any marital transfer.

### **Section 26.65 Business Size Standards**

Contract Compliance Officer conducts an initial review of the application to ensure that it meets the bare minimum entrance requirements of: that the applicant concern is a small business, within the size cap as set by USDOT; that there is 51% ownership and control by one or more socially and economically disadvantaged individuals; compliance with all state laws governing its industry; and a valid home state certification and site visit, if applicable. SBA business size standards found in 13 CFR 121 appropriate to the types of work, as defined by the 2002 North American Industry Classification System (NAICS) codes, are utilized for ODEO/MBECO certification.

### **Section 26.69 Ownership**

The MBECO will evaluate ownership and capital contribution percentages for each individual involved in the company to ascertain that the SED principal(s) own the applicant firm in both substance and form.

The MBECO must determine not only that the paper ownership of the company reflects a true and accurate statement of the eligible principal(s)'s ownership, but that the substance of the company reflects 51% or more of an ownership interest, including, but not exclusively, the salary disparities.

In validating the SED(s)'s substantive ownership, the MBECO will analyze the capital contribution provided the company by each owner, including monetary payments, debt instruments, tangible assets, or services in lieu of payment.

Where the eligible principal used marital assets to acquire ownership, a verification that the assets belonged to the eligible principal, or the ineligible spouse legally denounced any right to the assets will be done. Where the SED alleges to have provided services in lieu of payment, the MBECO must determine that the services provided were (a) in a specialized field; (b) of outstanding quality; (c) in areas critical to the firm's operations; (d) indispensable to the firm's potential success; (e) specific to the type of work the firm performs; and (f) documented in the records of the firm, clearly showing the contribution and its value to the firm.

The MBECO must also evaluate the transfer or general acquisition by the eligible principal(s) of any ownership interests from an ineligible individual, especially one who retains ownership or remains involved with the company. In analyzing any transfer of assets, the MBECO must pay careful attention to any inter-spousal transfer, even one for value, to ensure the SED spouse owns and controls the firm.

In companies, securities, or any other assets held in trust, the MBECO will collect the entire trust instrument. Where the ownership is held in trust, the MBECO will request that the applicant provide a notarized statement as to the trust's (a) Settler; (b) current Trustees; and (c) the current and expected beneficiaries.

## **Section 26.71 Control**

To verify the independence of the applicant company and its eligible principal(s), the MBECO must evaluate the applicant's relationship(s) with non-DBE firms regarding personnel, facilities, and equipment as compared to standard operating procedures within the applicable industry; review, the financial, bonding support, and resources, of the applicant, as well as its prime- and sub-contractor dealings; and if applicable, determine the binding effect of any franchise agreement on the applicant's operations.

In determining whether the eligible principal(s) control the applicant, the MBECO must evaluate whether they have the "power to direct or cause the direction of the management and policies of the firm and to make day to day as well as long term decisions on matters of management, policy, and operations."

In performing this analysis, the MBECO will look to see if the eligible principal has both the legal (paper) and the actual (physical) authority to control the company. They must be able to direct the applicant's actions without undue assistance from ineligible owners, employees, or spouses.

The eligible principal(s) must have sole discretion to make any business decision of the firm; hold the highest officer position; and control any board of directors, or be general partner with control over all decisions in a partnership. While delegation of some aspects of management, policymaking, or daily operations is permissible, the eligible principal(s) must retain the authority to revoke the delegation and have the power to fire the person to whom the delegation is made.

The MBECO must closely examine the relationship between the eligible principal and the individual with delegated authority. Spousal or familial relationships may indicate that the eligible principal lacks the actual ability to fire or revoke the delegation granted to an individual.

Where an individual who has delegated authority is a previous owner or equity stakeholder in the applicant company, the delegation may create the presumption that the ineligible person(s) controls the company.

The MBECO must determine that the eligible principal(s) have the technical expertise in the specific areas and directly related to the scope of business the company performs. Technical expertise does not require the principal to actually perform the work of the company, rather the ability to "intelligently and critically evaluate information presented" by the firm members and be able to "use this information to make independent decisions concerning the firm's daily operations, management, and policymaking." However, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

Particular focus will be paid to the scope of the work performed by the company and the expertise of the eligible individuals. Where the eligible individual lacks the background or licenses in revenue-generating areas of the company, it is evidence that the principal lacks the control of the company.

The MBECO must ensure that the eligible principal(s) hold any licenses required, by state or local law, to operate the company or perform its work. The MBECO may have to undertake research to determine whether or not state or local ordinances require the company or its employees to be licensed.

The MBECO must evaluate the compensation paid to all officers and employees of the company, as well as each individual scope of participation in the company's operations (i.e. fulltime or part-time employment with the applicant). While, the eligible principal(s) need not be the highest paid employees, discrepancies in compensation may indicate that the principal does not share in the risks and profits commensurate with their ownership interest.

The participation by non-eligible family members, other non-eligible individuals, or prior owners in the business of the firm must be evaluated under 49 CFR § 26.71(k) (1)-(2), 49 CFR § 26.71(e) and 49 CFR § 26.71(l). The MBECO must pay careful attention to situations where non-eligible family members participate in the business, particularly if they used to own all or part of the business. If the MBECO cannot

determine that the eligible individual controls the business separate and distinct from the non-eligible family members, the business has failed to carry its burden.

The MBECO will determine the applicant's independence and viability, by comparing its relationships with other companies or individuals with normal industry practices in the acquisition of personnel, facilities or equipment; financial and bonding support or resources; and whether the business actually exists and performs the functions in claims to perform based on interviews, site visits, and other information in the applicant's file.

A franchise agreement does not preclude a company's inclusion into the DBE program but the franchise agreement cannot unduly bind the eligible principal's ability to control the applicant's daily and long-term operations.

### **Section 26.71(n)(1) NAICS Codes**

With respect to assigning NAICS Codes, MBECO first reviews the business profile and NAICS Codes requested by the applicant on their application for certification (applicable to RI based firms only). This information is found under Section 2, Items A(1) and A(2) of the Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) Uniform Certification Application. In the review of the application, MBECO, as the UCP, carefully reviews and evaluates the scopes of work identified by the firm to determine that the socially and economically disadvantaged owners have the ability to control those types of work. In the event that a particular scope of work falls under a licensed trade in the State of Rhode Island, MBECO confirms that the socially and economically disadvantaged owner and the company (as applicable) possess those valid RI licenses. In the evaluation of the type of work, MBECO also ensures that the applicant is properly staffed and equipped to perform those scopes of work, as applicable. NAICS Codes are assigned by MBECO for each applicant that most specifically describes the type of work for which an applicant would provide goods or services to DOT recipients. In addition to assigning appropriate NAICS Codes to applicants, MBECO also applies a detailed narrative product description providing further specificity regarding the goods and/or services provided by the applicant.

With respect to firms located outside of the State of Rhode Island, those applicants seeking Interstate DBE and/or ACDBE Certification are granted the same NAICS Codes as provided by their home state UCP, provided that the scopes of work identified by the home state UCP do not fall under a licensed trade in the State of Rhode Island. For those NAICS Codes provided by the home state UCP that do fall under a licensed trade in the State of Rhode Island, MBECO ensures that the socially and economically disadvantaged applicant and/or the applicant firm, as applicable, possess those valid RI licenses, prior to granting those specific NAICS Codes.

Once certified, firms may seek additional NAICS Codes (a/k/a category expansion). For those firms based in the State of Rhode Island, the firm shall submit such request to MBECO in writing and shall include all necessary supporting company documentation for said request. MBECO, as the UCP, shall review and evaluate such request for additional NAICS Codes in order to determine that the socially and economically disadvantaged owner has the ability to control those scopes of work. MBECO shall also review said documentation to ensure that all licensing requirements are met, if applicable, and that the firm is properly staffed and equipped to perform the additional work for which they are seeking certification. Upon satisfaction of these requirements, MBECO will assign those additional NAICS Codes that most narrowly describe the type of work, and MBECO will also modify the detailed narrative product description for the firms, as appropriate.

With respect to certified firms located outside of the State of Rhode Island, those firms must first seek additional NAICS Codes (a/k/a category expansion) from their home state UCP. Once a home state has granted additional NAICS Codes, MBECO will grant the same additional codes to the certified firm, provided that all licensing requirements are met, as outlined above.

### **Section 26.73 Other Rules**

In the review of applications for DBE certification and/or requests for category expansions, MBECO does not consider commercially useful function issues.

MBECO does not refuse to certify firms as DBEs based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past. Rather, all certification eligibility determinations shall be made based upon the present circumstances of the applicant firm at the time of the application.

MBECO does not refuse to certify a firm as a DBE solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success.

MBECO does not require DBE firms to be prequalified as a condition for certification.

## SUBPART E – CERTIFICATION PROCEDURES

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

The RIDOT is a participating member of a Unified Certification Program (UCP) administered by the MBECO. MBECO, under its Unified Certification Program (UCP) agreement, makes all certification decisions on behalf of FHWA, and FTA recipients. Certification decisions under the UCP are DBE Program Administration Manual binding on all USDOT recipients in Rhode Island. The ODEO/MBECO Department coordinates the UCP responsibilities for FHWA, and FTA recipients. There is no cost to FTA for these coordinated efforts. See <http://odeo.ri.gov/documents/dbe-and-acdbe-certification-application.pdf>

The Department certifies the eligibility of DBE firms for purposes of this program. The Department certifies eligible firms that primarily provide services and/or products related to the development, construction, maintenance, and operation of a transportation system. It is the responsibility of the applicant to provide the necessary information as requested by the Department. The burden of proof of eligibility within the program is upon the applicant, not the MBECO. If another state or USDOT recipient has already certified the applicant as a DBE, the applicant firm may seek Interstate DBE and/or ACDBE certification by submitting the Interstate DBE and/or ACDBE Certification Request Form.

### **Section 26.83 Procedures for Certification Decisions**

The MBECO will endeavor to complete all determinations into an applicant's eligibility within 90 days from the date it is complete for Rhode Island based firms. During the course of processing an application, however, the Contract Compliance Officer may determine that additional information or documentation is necessary. The Contract Compliance Officer will provide a written request to the applicant for the documentation and the determination process will be suspended until information is received.

Where the applicant fails or delays in making its staff, key employees, managers, and eligible principals available to the Contract Compliance Officer, it will be deemed to have waived any time-based requirements.

The Assistant Administrator - MBE assigns the Contract Compliance Officer to cases on a weekly basis using a first in—first out methodology to ensure equity in the assignment process.

Upon receipt of a case, the Contract Compliance Officer will conduct a desk audit of the application and its accompanying documents to determine the applicant's eligibility.

If the Contract Compliance Officer determines that any additional documentation or further information is needed specific to issues pertaining to certification, he/she will notify the applicant in writing of the specific documents needed and provide it thirty (30) days to respond. The Contract Compliance Officer may grant a one-time extension to an applicant, if requested or necessary at their discretion.

If the Contract Compliance Officer determines the desk audit is complete, they will notify the client and arrange for a mutually convenient time to conduct a site visit. Whenever possible, the Contract Compliance Officer will schedule visits

so as to reduce travel costs and time out of the office. The Contract Compliance Officer will complete a Site Visit Questionnaire that will be included in the file.

The Contract Compliance Officer will record all communications and interactions with the applicant in the Agency's client file. Information to be recorded includes, but is not limited to, meetings, emails, and letters sent to the company.

After conducting the site visit, the Contract Compliance Officer will prepare a detailed report on the applicant firm recommending to either certify or deny the applicants request for certification. The report will detail how the company either did or did not comply with the regulatory requirements of 49 CFR Part 26, Subpart D.

Where an applicant withdraws its request or is non-responsive, the Contract Compliance Officer will prepare a brief report detailing the basis for the action.

The Contract Compliance Officer will submit a report and recommendation to the Assistant Administrator – MBE and the Associate Director, Office of Diversity, Equity and Opportunity.

(ODEO) for review and approval. Once approved by the Assistant Administrator – MBE and the Associate Director, ODEO, the Contract Compliance Officer will prepare a Control Sheet and the applicant will receive a letter notifying it of the certification determination decision.

### **The Department of Administration Office of Diversity, Equity and Opportunity (ODEO)/Minority Business Enterprise Compliance Office (MBECO)**

In order to be a Disadvantaged Business Enterprise (DBE), a firm must be a small business concern as defined by the Small Business Administration (SBA) in 13 CFR 121.

Firms seeking to participate in the Disadvantaged Business Enterprise Program must comply with the regulations in accordance with 49 CFR Part 26. The requirements apply to all DBEs.

RIDOT uses ODEO/MBECO to determine the eligibility of firms to participate as DBEs in USDOT—assisted contracts. To be certified as a DBE, a firm must meet all MBECO certification eligibility standards.

### **ODEO/MBECO Certification**

Individuals seeking to participate in the DBE Program must become certified. The certification process requires that applicants provide information concerning social and economic status, gender, ownership, independence and control of their firms. Applications for DBE certification can be obtained from the ODEO/MBECO. See [www.mbe.ri.gov](http://www.mbe.ri.gov)

### **MBECO Federal DBE Certification Program**

By contract with RIDOT, MBECO processes applications for certification in the U.S. Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) Program. The purpose of the DBE program is to increase the opportunities for minority and women-owned small businesses to participate in federally funded projects. Unlike the voluntary goals now set in the State program, DBE goals are mandatory.

### **Annual Update**

The MBECO will review each DBEs certification on an annual basis. DBE firm is required to submit annually: no change affidavits, corporate taxes, current licenses if applicable, and a copy of the most recent home state certification letter if an out-of-state firm. During the time of certification, the DBE is obligated to notify MBECO of any and all changes in ownership or financial the portion of the firm that would impact its eligibility under the regulations.

Since RIDOT does not certify DBE firms, annual update of eligible firms will be provided by MBECO. The MBECO will provide the company written notification of all the documents required 30 days prior to its certification annual update. In order to have their certification annual updated, firms must complete requested documentation with updated

documentation concerning ownership, size standards, gross receipts, and social and economic disadvantage status. The MBECO requests Personal Net Worth Statements, Statements of Social Disadvantage, and updated specialty codes from each DBE currently certified.

If a firm fails to submit the requested information by the anniversary date or if it submits information which reflects the firm is no longer eligible to participate in the DBE program, the MBECO will commence decertification procedures. MBECO will notify the company of its deficiency, by certified mail, and give the DBE 10 business days to show cause as to why it should remain certified.

Should the company fail to respond to the “show cause” notification, the MBECO will send a final notification that its failure to provide a complete response, within 10 business days, will result in its administrative removal of its certification. A DBE may request a 30-day extension in order to submit all of its document.

The Assistant Administrator - MBE will assign all certified firms for a more substantive certification review by a Contract Compliance Officer every 5 years, including an updated SED determination and updated site visit. For those certified firms located outside of Rhode Island, the MBECO shall request the most current site visit from the home state UCP, as applicable.

### **Department-Initiated Proceedings**

If, based on notification by the firm of a change in its circumstances or other information that comes to the MBECO’s attention, the Department determines that there is reasonable cause to believe that a currently certified firm is ineligible, the MBECO must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

### **USDOT Directive to Initiate Proceeding**

If the USDOT determines that information in the Department’s certification records, or other information available to the USDOT, provides reasonable cause to believe that a firm certified by RI does not meet the eligibility criteria of 49 CFR Part 26, the USDOT may direct the MBECO to initiate a proceeding to remove the firm's certification.

The USDOT must provide the MBECO and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

The MBECO must immediately commence and prosecute a proceeding to remove eligibility.

### **Section 26.85 Interstate Certification**

If another state or USDOT recipient has already certified the applicant as a DBE, the applicant firm may seek Interstate DBE and/or ACDBE certification by submitting the Interstate DBE and/or ACDBE Certification Request Form.

(b) Applicants certified by another state or USDOT recipient must submit the Interstate DBE and/or ACDBE Certification Request Form, along with a copy of the home state certification approval letter or certificate. Additionally, if the applicant firm is seeking certification for work covered under a licensed industry, the applicant must include copies of their valid Rhode Island licenses for those covered scopes of work.

## **Section 26.86 Denials of Initial Requests for Certification**

Once accepted, the MBECO will determine whether the applicant carried its burden as to affirmatively establishing that it meets the regulatory requirements of 49 CFR Part 26 Subpart D. Should the MBECO determine that an applicant's request for certification lacks merit, notification will be sent to the company in writing, specifically listing the regulatory criteria the applicant failed to establish.

An initial denial affords the applicant the opportunity to appeal the MBECO's decision for a local hearing before the Certification Review Committee (CRC). Applicants have 10 days from the receipt of the notice in order to request a local appeal before the CRC. Applicants are also afforded the opportunity to appeal initial denials directly to the USDOT. The MBECO notifies the company, by certified mail, of its determination and includes the address at USDOT to send its appeal and that it has 90 days from the date of receipt of notice to appeal. Applicants that choose to exercise their option to a local appeal hearing before the CRC may still exercise their option to appeal any adverse determinations to the USDOT.

The MBECO will treat any affirmative requests by the company to withdraw its certification in a similar manner and administratively remove the company. The MBECO will accept the written withdrawal request of a company as final notice, and immediately remove the company from the directory.

## **Section 26.87 Removal of a DBE's Eligibility**

The MBECO will apply an administrative removal to any certified company deemed nonresponsive during the annual update process. In the process of communicating with its certified companies, the MBECO will make every effort to contact or locate those companies up for the annual update. The Contract Compliance Officer assigned to the company will attempt to contact the company by mail, email, phone, and fax, if necessary. In communications by mail, the MBECO will give the company 3 opportunities to respond, with at least 1 letter sent by certified mail.

Applicants who have been denied certification by the MBECO have the option of requesting a local appeal hearing before the Certification Review Committee (CRC). The CRC is an appellant body, separate and distinct from the MBECO. The CRC consists of five (5) member's appointment by the Director of the RI Department of Administration. The five (5) members will consist of one (1) individual from the RI Dept. of Transportation and four (4) individuals from the public or private sector. Each member, including the chairperson, will serve at the pleasure of the Director of Administration and their term will be perpetual or until a replacement is appointed. No person involved in the original determination shall serve as a member of the CRC during an appeal. In the event that the CRC upholds the original denial determination of the MBECO, applicants will still have the ability to seek an appeal directly to USDOT. All denial determinations of either the MBECO or the CRC will provide applicants with information on appealing directly to USDOT.

In administratively removing a company, the MBECO will remove a company from its directory based upon the failure to respond. The company may reapply at any time.

The administrative removal does not engender a right of appeal or provide any opportunity for a local hearing. Rather, the company's non-responsiveness creates the presumption that the company no longer wishes to remain certified.

### **Ineligibility complaints**

When the Department notifies a firm that there is reasonable cause to remove its eligibility, as provided for in 49 CFR Part 26.89(a-c), the MBECO must give the firm an opportunity for a local hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

Where the MBECO, whether through its own review or that of another recipient, believes that sufficient cause exists to remove a certified company's certification, it will notify the company, in writing of the reasons and basis for its proposal to remove the firm's eligibility.

Any preliminary finding serves only as proposed action by the MBECO and can be withdrawn, amended and restated without prejudice.

Although the MBECO Office will notify a company that sufficient grounds exist to remove its certification, the MBECO can and will continue its investigation of the company until either of the following occurs: the applicant firm appears at a hearing or submits written arguments and information within the allotted timeframe; or the applicant firm fails to request a hearing within 10 business days of receipt of the notification. The for-cause notice of the MBECO's proposal to remove eligibility of a company permits the company to seek a local hearing, by contacting the MBECO and requesting, in writing, such a local appeal hearing before the CRC.

Should the company fail to reply within 10 days, the MBECO's proposal will be forwarded to the CRC for a final decision. A written decision will be sent within 15 business days, and will include reference to appeals before the USDOT.

As the MBECO's preliminary finding serves as the basis for a recommendation, the company remains certified during the period leading up to any hearing. During which time, the MBECO reserves the right to continue to collect evidence, and generally investigate the company.

### **Section 26.88 Summary Suspension of Certification**

The MBECO may provide notice of suspension of a DBE's certification for cause, including when an individual whose ownership and control of the firm are necessary for the firm's certification dies or is incarcerated, or when there is adequate evidence to believe that a material change in the circumstances that affect eligibility of the DBE to remain certified has occurred. The MBECO shall notify the DBE firm, via certified mail, of the notice of suspension and shall schedule a show cause hearing/proceeding to determine whether or not the DBE's eligibility to participate in the program should be removed. Failure of the DBE firm to respond to the Notice of Suspension, or failure to adequately address the eligibility concerns as outlined in the Notice of Suspension will result in a removal proceeding under 49 CFR 26.87.

### **Section 26.89(a)(3) Certification Appeals**

The submission of ineligibility complaints by third parties should be sent to:

Department of Administration  
Office of Diversity, Equity, and Opportunity  
MBE Compliance Office  
1 Capital Hill, 3<sup>rd</sup> Floor  
Providence, RI 02908

The submission of requests to the CRC for local hearings should be sent to:

Department of Administration  
Office of Diversity, Equity, and Opportunity  
MBE Compliance Office  
1 Capital Hill, 3<sup>rd</sup> Floor  
Providence, RI 02908



Appeals should be sent to:

U.S. Department of Transportation  
Department Office of Civil Rights  
External Civil Rights Program Division (S-3)  
1200 New Jersey Ave., SE  
Washington, D.C. 20590  
Phone: (202) 366-4648  
TTY: (202) 366-9696  
Fax: (202) 366-7717

### **Section 26.91 Actions Following USDOT Denial of Certification**

With respect to appeal decisions before USDOT, if USDOT determines that the certification decision of the MBECO was erroneous, and USDOT overturns a denial determination as made by the MBECO, the MBECO will immediately certify the applicant firm under the DBE program. If USDOT affirms or upholds a denial determination decision made by the MBECO, no further action will be necessary.

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

### **Section 26.101 Compliance Procedures**

RIDOT acknowledges that if it fails to comply with any requirement of this part, RIDOT may be subject to formal enforcement action under Section 26.103 or Section 26.1056 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C 47106(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.107 Participating Firms in DBE Program**

If you are a firm that does not meet the eligibility criteria of Subpart D of this part and that attempts to participate in a USDOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honest, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any USDOT-assisted program or otherwise violates applicable Federal statutes.

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

#### **Availability of Records**

RIDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. RIDOT complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C 552 and 552a).

This would include any information that was relied upon for the certification or renewal of a DBE firm.

Notwithstanding any contrary provisions of state or local law, RIDOA/RIDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter. However, the ODEO/MBECO is required to transmit this information to USDOT in any certification appeal proceeding under 26.89 or upon request to any other state in which a firm has applied or is currently certified under 26.85.

#### Confidentiality of Information on Complainants.

Notwithstanding the provisions of 49 CFR part 26.109 (a), the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

#### Cooperation

RIDOT and the ODEO/MBECO will cooperate fully regarding any request for information, including but not limited to, investigations, compliance reviews, and certification reviews. Additionally, RIDOT will require its program participants to cooperate fully and may impose sanctions described at 26.109(c) and the RIDOT DBE Special Provision.

#### Intimidation and Retaliation.

Sub-recipients, contractors, or any other participants in their USDOT's DBE Program, shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this program. Violations of this prohibition constitute noncompliance with the regulations at 49 CFR Part 26. RIDOT reserves the right to impose sanctions and administrative remedies, RIDOT may be obligated to report such violations to the appropriate USDOT authority for consideration of enforcement action. This shall not preclude RIDOT from implementing administrative remedies or any sanctions authorized under the program regulations.