

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
600 5th Street, NW
Washington, DC 20001

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**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY’S
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 26**

POLICY STATEMENT

The Washington Metropolitan Area Transit Authority (WMATA), a recipient of federal financial assistance from the Federal Transit Administration (FTA), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. As a condition of receiving FTA funding, WMATA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of WMATA that DBEs have an equal opportunity to receive and participate in federally-assisted contracts. WMATA also ensures that no contractors or vendors are discriminated against on the basis of race, color, national origin, sex or any other unlawful basis in the award and performance of contracts and subcontracts. It is also our policy:

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

WMATA's Small Business Programs Office (SBPO) Director has been delegated as the DBE Liaison Officer. The Director of SBPO is responsible for implementing all aspects of the DBE Program.

The requirements of the DBE Program are accorded the same priority as compliance with all other legal obligations incurred by WMATA in its financial assistance agreements with the U.S. Department of Transportation. This policy shall be disseminated to the Board of Directors and Executive Officers of WMATA, as well as the DBE and non-DBE business communities. WMATA shall make its DBE Program Plan available to the public through its website.

WMATA recognizes that the achievement of its DBE Program will significantly contribute to the economic and social progress of WMATA's Transit Zone. Thus, WMATA will make every effort to ensure the ongoing success of its DBE Program.

SUBPART A – GENERAL REQUIREMENTS

Objectives (26.1)

(Section 6.3.2 DBE Policy and Procedures Manual)

WMATA's objectives are found in the Policy Statement for this Plan.

Applicability (26.3)

(Section 6 DBE Policy and Procedures Manual)

WMATA is a recipient of Federal Transit Administration (FTA) funds authorized by, among other laws, Title 49, U.S. Code.

Definitions (26.5)

(Section 3 DBE Policy and Procedures Manual)

This Plan adopts the definitions contained in 49 CFR § 26.5.

Non-discrimination Requirements (26.7)

(Section 6.2.1 DBE Policy and Procedures Manual)

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

In administering its DBE program, WMATA will not, directly 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.

Reporting to USDOT (26.11(b))

(Section 6.3.2 DBE Policy and Procedures Manual)

WMATA will report DBE participation to the FTA on a semi-annual basis using the Uniform Report of DBE Awards or Commitments and Payments in TRAMS. The semi-annual form is also found in Appendix B to 49 CFR Part 26. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

WMATA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The SBPO will perform audits of contract payments to DBEs. This information is gathered and housed in the WMATA Prompt Payment tool located on the WMATA website. Each month the Prime contractor required to upload the payments that it has received from WMATA and the

amounts paid to each subcontractor both DBE and non-DBE. Each DBE sub-contractors is required upload into the prompt payment tool the payment received during that month. SBOP will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors is consistent with the dollar amounts stated in the schedule of DBE participation.

Bidders List (26.11(c))
(Section 6.3.2 DBE Policy and Procedures Manual)

WMATA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The SBPO will perform monthly audits of contract payments to DBEs. This information is gathered and housed in the WMATA Prompt Payment Tool located on the WMATA website. Each month each prime contractor is required to upload the payments that it has received from WMATA and the amounts paid to each subcontractor both DBE and non-DBE. Each DBE subcontractor is required upload into the prompt payment tool the payment received during that month. SBOP will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors is consistent with the dollar amounts stated in the schedule of DBE participation.

Bidders List (26.11(c))

WMATA uses its CLM system to maintain the bidders list. Contracting Officers are responsible for updating the bidders list within 5 business days of the bid deadline on each federally-funded procurement.

The purpose of this requirement is to allow use of the Bidders List approach to calculating overall goals. The bidders list will include the following information:

- Firm name;
- Firm address;
- DBE/non-DBE status;
- Age of the firm;
- Annual gross receipts of the firm; and
- Firm telephone number, contact person, and email address.

WMATA will collect this information through a contract clause requiring prime bidders to report the necessary information regarding all firms that quote to them on subcontracts.

Federal Financial Assistance Agreement Assurance (26.13)
(Section 6.2. DBE Policy and Procedures Manual)

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

The Washington Metropolitan Area Transit Authority (WMATA) 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. WMATA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. WMATA's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 WMATA of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance (26.13(b))
(Section 6.2. DBE Policy and Procedures Manual)

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

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

The Office of Procurement and Materials (PRMT) shall insert this language in a template and upload into CLM. The template will be used by the procurement staff in preparing solicitations and awarded contracts. Language shall be added stating that the Contractor also agrees to include all of these requirements in each subcontract financed, in whole or in part, with Federal assistance provided by FTA, modified only, if necessary, to identify the affected parties. The contractor will be required to submit a copy of each subcontract to the Small Business Programs Office (SBPO) for review to ensure that this clause has been included. Failure by the Contractor, sub-recipient, or

subcontractor to carry out these requirements is a material breach of this Contract, that may result in the termination or such other remedy as the Authority deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (26.21)

Section 10 DBE Policy and Procedures Manual)

WMATA will continue to carry out the Plan until all funds from USDOT financial assistance have been expended. WMATA will provide updates to FTA representing significant changes in the Program.

Policy Statement (26.23)

(Section .1 DBE Policy and Procedures Manual)

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

DBE Liaison Officer (26.25)

((Section 1 and Section 5 DBE Policy and Procedures Manual)

WMATA has designated the following individual as our DBE Liaison Officer (See the WMATA Organization Chart in Attachment A):

Name: Sylvia Edwards
Address: 600 Fifth Street, NW
Washington, DC 20001
Telephone number: (202) 962-2480
Email Address: SEdwards1@wmata.com

The Small Business Programs Office will be responsible for implementing all aspects of this Plan and ensuring that WMATA complies with all provisions of 49 CFR Part 26. The DBE Liaison Officer has direct, independent access to the General Manager/CEO concerning DBE program matters. The DBE Liaison Officer administers a specialized unit within the Office of Procurement and Materials, the Small Business Programs Office, to implement the DBE Program. The Small Business Program Office consists of a sufficient number of staff to perform all required duties and responsibilities. All staff are full-time WMATA employees assigned to the Small Business Programs Office. An organization chart displaying the DBE Liaison Officer's position in the organization is found in Attachment A.

The DBE Liaison Officer is responsible for overseeing the development, implementation, and monitoring of the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information required by USDOT.
- Reviews third party contracts and purchase requisitions for compliance with the DBE program.
- Works with all departments to set overall goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies federally-funded contracts and procurements so that DBE goals are included in solicitations and monitors results.
- Analyzes WMATA's progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the General Manager/CEO on DBE matters and achievement.
- During bid/proposal review, participates with legal counsel and project directors to determine contractor compliance with good-faith efforts.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Certifies DBEs according to the criteria set by USDOT and acts as liaison to the Unified Certification Program in the Metropolitan Washington area.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Maintains WMATA's updated directory on certified DBEs.

DBE Financial Institutions (26.27)
(Section 7.1.2 DBE Policy and Procedures Manual)

WMATA will continue to fully investigate services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the Transit Zone, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

To identify and possibly use such institutions, WMATA reviewed the membership list of the National Bankers Association (NBA), an agency that tracks minority-owned banks, and the Federal Reserve's statistical release on minority-owned banks. Both indicate that there is only one bank in the Transit Zone, Industrial Bank, which is owned by socially and economically disadvantaged individuals. Industrial Bank is located at 4812 Georgia Avenue, N.W. Washington, D.C. 20011 - (202) 722-20011. The Small Business Programs Office (SBPO) will use the reports issued by these organizations to re-evaluate the availability of the DBE financial institutions every twelve months. WMATA will decide whether and how the services offered by Industrial Bank can be used.

Additionally, WMATA has posted on its SBPO website a copy of the Federal Reserve's statistical release on minority-owned banks and its website. Moreover, WMATA will provide notification of DBE financial institutions to prime contractors and encourage prime contractors to use such institutions. This notification shall include pre-bid meetings, training seminars offered by WMATA, and outreach to DBEs and community organizations to advise them of the availability of such institutions.

Prompt Payment (26.29)

(Sections 8.3.2; Section 10.1 and Section 10.2.3 DBE Policy and Procedures Manual)

The following clause will be included in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) work days from the receipt of each payment the prime contractor receives from WMATA. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) work days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of WMATA. This provision applies to both DBE and non-DBE subcontractors.

The prime contractor must, in writing, request the delay or postponement at least five (5) work days in advance of the date that the payment in question is due to be made to the subcontractor(s) and must state the reasons upon which such request is made. In the event that a delay or postponement is approved, the prime contractor must include interest, at the prevailing rate, as a part of any such delayed or postponed payment to any subcontractor. A copy of any request for delay or postponement of any payment shall be provided by the prime contractor to any affected subcontractor at the same time that such request is submitted to WMATA for approval.

In the event that the prime contractor does not comply with the prompt payment contract clause, the Authority may impose one, or more, of the following penalties:

- suspension of all payments to the prime contractor until such time that all subcontractors are fully paid, together with interest, at the prevailing rate, for a first offense;
- suspension from participation in DOT-assisted WMATA contracts for a period of time to be determined by WMATA; and
- any other remedy deemed to be appropriate by WMATA, including holding in a reserve or escrow account those funds due to unpaid DBE and non-DBE subcontractors.

In the event that such violation of this provision shall continue after a first offense, WMATA may:

- again, suspend payment(s) to the prime contractor as set forth in this Section;
- suspend the prime contractor for an additional period of time from participating on DOT-assisted WMATA contracts;
- require the prime contractor to submit to third party administration of its payment disbursements involving DOT-assisted WMATA contracts; and/or
- ban the prime contractor from all future participation on DOT-assisted WMATA contracts.

Prime contractors shall include in their contracts with subcontractors a provision that provides for the use, by prime contractors and subcontractors, of alternative dispute resolution mechanisms to resolve payment disputes. Such provisions shall be submitted to WMATA for written approval as a condition of responsiveness to the 49 CFR Part 26 requirements.

All DOT-assisted WMATA contracts shall also contain the following provision:

- No prime contractor shall be reimbursed by WMATA for work performed by any subcontractor unless and until the prime contractor shall have ensured WMATA that the subcontractors are promptly paid for the work that they have performed.

In its discretion, the Authority will deposit payments to a third-party escrow account with a financial institution or other appropriate entity with instructions for the third party to make designated payments to both the prime contractor and subcontractors. The prime contractor shall bear the cost of any expense related to the third-party services pertaining hereto.

To ensure compliance with DBE contract payment requirements, Small Business Program Office staff shall monitor the Prime contractor's issuance of payment and the DBE subcontractor's receipt of payment via the Prompt Payment Tool. Each month, staff shall compare the payment dates reported in the Prompt Payment Tool against the date of WMATA's payment to the Prime.

SBPO staff shall consistently participate in contract pre-bid and pre-award meetings to ensure prime contractors understand their responsibilities and obligations, especially regarding DBE utilization, prompt payment requirements and possible penalties for non-compliance. As part of the awareness efforts, staff shall emphasize the requirement for the inclusion of the prompt payment clause in every sub-contract consistent with 49 CFR Part 26.29. This clause shall read as follows:

The prime contractor shall certify with each payment request to the Authority that payment has been or will be made to all subcontractors due payment, within 10 days after receipt of payment from the Authority for work by those subcontractors. Failure by the contractor to carry-out the requirements of this contract is a breach of the contract. The Contracting Officer shall consider all remedies, including referral to the DOT to initiate suspension or debarment proceedings, enforcement action and/or prosecution if the contractor fails to perform as required by the contract.

Directory (26.31)

(Section 7.2.2 and Section 11.1.3 DBE Policy and Procedures Manual)

WMATA maintains a directory identifying all firms eligible to participate as DBEs. The DBE Directory is available as a source to assist bidders/proposers in meeting DBE contract goals and is revised monthly. The directory lists each firm's name, address, telephone number, the types of work in which the firm has been certified to perform as a DBE, and the corresponding NAICS code(s). Only those firms certified at bid opening date may be utilized in meeting a DBE contract goal. WMATA's Directory of Certified DBE Firms is available at the following website: <https://www.wmata.com/about/business/procurement/dbe/index.cfm>. Interested parties may also contact WMATA'S Small Business Program Office for assistance by sending an email to dbehotline@wmata.com. WMATA has also listed this DBE directory link in Attachment B to this program document.

Overconcentration (26.33)

(Section 11.2.2.1 DBE Policy and Procedures Manual)

Overconcentration is a market condition in which the number of DBEs and the business activities in an area of work cause an undue economic burden to non-DBE firms that participate in this area of work. The SBPO in coordination with the PRC will examine whether overconcentration exists on an annual basis by reviewing the percentage of total federally assisted contract dollars that go to DBE firms in each NAICS category. The PRC determines whether a DBE goal should be established on federally -assisted contracts. The goal is a percentage of the contract based on an actual dollar amount by NAICS code. A running tally of the actual dollar amount will be developed. Should overconcentration exist, WMATA will increase the amount of technical

assistance provided to DBE firms to assist them in performing work outside of the field where overconcentration exists.

Business Development Programs (26.35)

WMATA has not established a business development program.

Monitoring and Enforcement Mechanisms (26.37) **(Section 8.1.2 and Section 10.2.3 DBE Policy and Procedures Manual)**

WMATA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. WMATA's Suspension and Debarment Committee will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment F lists the regulations, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. We will conduct site visits on job sites of federally funded contracting opportunities to ensure that DBE firms are actually performing the stated work contained in bid submittal documentation.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Procedures to monitor payments to DBE prime contractors are set forth below.

- To ensure that all subcontractors are paid on a timely basis, WMATA has developed a Prompt Payment Tool located in PeopleSoft. All prime contractors are required to input the names of all subcontractor, both DBE and non-DBE, contract number, subcontract award amounts; and payment amounts on monthly basis. All DBE subcontractors working on a contract are required to input contract number, subcontract award amounts; and payment amounts on monthly basis.

- Letters of intent and DBE schedules of participation will be reviewed to assess the tasks awarded and dollar value involved on DBE subcontracts before a Notice to Proceed is issued.
- A running tally of payments will be maintained for the duration of the work to be performed.
- WMATA requires prime contractors to electronically submit to the Small Business Program Office a notice of payments disbursed to DBEs and DBE subcontractors. Such notification shall be made to the Small Business Program Office by the 15th of each month.

DBE firms shall provide WMATA with electronic notification of receipt of payment from the prime contractor at the time that payment is actually received.

The prime contractor and DBE subcontractor payment reports and DBE receipt of payment documents will be reviewed by the Small Business Program Office to:

- verify payment and receipt of payment;
- reconcile discrepancies involving the date(s) of the payment made and received pursuant to prompt payment responsibility;
- determine whether the DBE firm actually performed work committed to the firm at contract award;
- assess whether work performed by the DBE firm matches the work promised to the DBE firm at contract award;
- determine whether compliance measures are required when, for example, a prime contractor is deficient in the amount of work provided to a DBE firm, deficient in the dollar value of work paid to a DBE firm or deficient in payment for work performed by a DBE firm as compared to promises made to the DBE firm and the Authority at contract award;
- determine calculation of credit toward DBE goals to be awarded in the event that there are no discrepancies or compliance issues to be considered; and
- develop interim reports and a final report, as appropriate, to be submitted to FTA and maintained in applicable contract files as a permanent record.

Fostering Small Business Participation (26.39)
(Section 10.1.2 and Section 11.2.1 DBE Policy and Procedures Manual)

WMATA is committed to fostering small business participation by meeting the requirements established in 49 CFR 26.39.

The DBE Program includes an element to structure race-neutral contracting opportunities in a way that enables small businesses to compete for contracts. For the purposes of implementing this requirement, WMATA created the Small Business Enterprise (SBE) Program. The Chief Procurement Officer (CPRO) is responsible for the establishment of a Procurement Review Committee (PRC). The purpose of the PRC is to establish on a contract-by-contract basis all DBE goals and SBE Set-Asides. Members of this committee shall include the DBE Liaison Officer, the Contracting Officer, and representative of the Program Office. In determining whether a procurement can be a set-a-side, the PRC in conjunction with the SBPO will review the SBE directory to determine if two small businesses could perform the work or provide the products being purchased. If there are enough SBEs, the solicitation will be identified as a set aside.

This program element includes, but is not limited to, the following strategies:

- Establishing a race-neutral small business set-aside for prime contracts under a certain amount (e.g., \$1 million);
- In multi-year design-build contracts or other large contracts (e.g., for megaprojects) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all of the work involved;
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts; and
- To meet the portion of its overall goal, the Authority shall project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

SBE opportunities will be identified on a contract-by-contract basis on construction and non-construction contracts with a total value less than \$1,000,000 by the Procurement Review Committee (PRC) which determines whether to establish a goal on a procurement and whether that procurement should be a set-s-side. A report will be issued by the SBPO on an annual basis will review the data collected by the Prompt Payment tool to the effectiveness of its Small Business Reserve Procurements in the attainment of its race-neutral and overall DBE goals. The threshold may be satisfied by utilizing one or more small business concerns as primes or subcontractors or suppliers of goods and services, provided that the small business performs a minimum of 51% of the tasks pursuant to the awarded contract. However, WMATA will not use small business

participation when a DBE goal is considered to be in the best interest of WMATA to satisfy the contract solicitation requirement.

An SBE is defined as a firm that:

- Is organized for profit;
- Has a place of business in the United States;
- Makes a significant contribution to the United States economy by paying taxes or using American products, services, materials and/or labor;
- Does not exceed the numerical Size Standard for its industry as established by the U.S. Small Business Administration (SBA);
- Is at least 51% owned, managed, and controlled by one or more economically disadvantaged individuals. Economic disadvantage is defined as an individual with a net worth of less than \$1.32 million (excluding equity in personal residence and applicant firm);
- The 51% economically disadvantaged owner must be a U.S. citizen or Permanent Resident; and
- Average gross receipts, for the last three years, must meet SBA small business size standard (13 Code of Federal Regulations 121.103) applicable to type of work performed (affiliates included);

A small business may be a sole proprietorship, partnership, corporation, limited liability corporation, or any other legally formed entity.

Small businesses are classified through standards promulgated by the SBA. SBA uses the North American Industry Classification System (NAICS) to identify different industries, services, commodities and products. Size Standards indicate the largest size that a business may be to classify as a small business for federally-funded contracting opportunities.

WMATA is committed to the utilization of small businesses and affording those businesses an opportunity to complete for and participate on WMATA contracts. In order to facilitate competition and make contracting opportunities available for small businesses, the following steps have or will be implemented to reduce obstacles to small business participation:

To Avoid unnecessary and unjustified bundling of contracts. The Small Business Reauthorization Act of 1997 defines contract bundling as “consolidating two or more procurements requirements for goods or services previously provided or performed under separate, smaller contracts into a solicitation of offers for a single contract that is unlikely to be suitable for award to a small business concern.” WMATA’s strategy for unbundling contracts recognizes the combined challenges and benefits of a reduced acquisition workforce and the need to maintain an overall acquisition system

that is fair, efficient and transparent to address contract bundling, the following actions will be taken:

- The Procurement Review Committee (PRC) on a yearly basis will gather procurement bundling information (i.e. number of contracts awarded, amounts, subcontracting opportunities) and issue a report to the Executive Management Team.
- Require contract bundling reviews by the Procurement Managers for task and delivery orders under multiple award contract vehicles.
- Require identification of alternative acquisition strategies for the proposed bundling of contacts above \$50 million dollars and written justification when alternatives involving less bundling are not used.
- Mitigate the effects of contract bundling by strengthening compliance with subcontracting plans.
- Mitigate the effects of contract bundling by facilitating the development of small business teams and joint ventures.
- Leverage the “each and any item” basis of award to unbundle larger contracts into smaller contracts that provide SBEs the opportunity to bid in their specific type of expertise and/or commodity.
- Establish a team to diligently facilitate contracting opportunities and increase awareness and recognition of the critical role that small businesses play in advancing WMATA’s procurement activities.
- Equip relevant WMATA employees with the skills needed to be an integral part of WMATA’s procurement practices, acting in partnership to develop strategies to increase small business participation in support of WMATA’s mission.
- Foster an environment that encourages commitment, the use of integrated systems, professional management tools, and pursues innovative solutions in support of small business concerns.
- Coordinate with the Small Business Program Office and/or Contracting Officers’ Technical Representatives to monitor payments to small business contractors. Obligations for monitoring will include: (a) reviewing letters of intent and SBE subcontractor schedules of participation to assess the tasks awarded and dollar

value involved; (b) maintaining a reconciled running tally of payments for the duration of the work to be performed by subcontractors; (c) requiring prime contractors to submit to the Small Business Program Office notification of payments to their subcontractors on a monthly basis or as is appropriate considering the type of work being performed and the relevant length of the contract in question. In any event, the notification shall be made to the DBE Liaison Officer at the time of the actual payment by the prime contractors to subcontractors; (d) requiring all subcontractors to provide notification to the DBE Liaison Officer of receipt of payment from the prime business contractors at the time that payment is actually received; (e) reviewing the prime business contractors' payment documents and subcontractor receipt of payment documents; (f) verifying payments and receipt of payment; and (g) crediting small business concern participation only when payments are actually made to small businesses.

WMATA has developed electronic processes that will enable appropriate monitoring and reporting. The certification process is now paperless. The applicant will access a supplier portal to apply for certification as a DBE/SBE. WMATA has developed a Prompt Payment Tool located in PeopleSoft. All prime contractors are required to input the names of all subcontractor, both DBE and non-DBE, contract number, subcontract award amounts; and payment amounts on monthly basis. All DBE subcontractors working on a contract are required to input contract number, subcontract award amounts; and payment amounts on monthly basis.

- When required, report to FTA small business participation including payments actually made to small businesses on USDOT assisted contracts.
- Provide training to all relevant WMATA officers, managers, and supervisors to fully cooperate with the DBE Liaison in the implementation of the Program. All individuals shall be held accountable for their performance in this area. This function will ensure that representatives from WMATA's DBE team, Office of the General Counsel, Office of Finance and the Department of Engineering will be included, as necessary, in this process for potential contracting opportunities.
- WMATA will provide extensive outreach activities and develop new partnerships that will provide technical assistance, such as The Industrial Bank of Washington, the National Community Reinvestment Coalition and the U.S. Small Business - Small Business Resource Centers. Outreach activities include participation in WMATA's Vendor Fair and prime contractor events, bonding program partnership initiatives with surety bonding companies, and contract solicitation outreach events in partnership with prime contractors.
- Make available an updated on-line directory identifying all firms eligible to participate as small business concerns in the Program. The listing for each small business concern shall include its company name, address, contact person, email address,

telephone/facsimile and NAICS Codes describing types of work the firm has been certified to perform. These directories will be made available at <https://www.wmata.com/about/business/procurement/dbe/index.cfm>

- WMATA will ensure that implementation, monitoring, and enforcement mechanisms are in place to verify that the work committed to small business concerns at contract award is actually performed by small businesses. All prime business contractors shall submit monthly progress reports on Small Business utilization to the DBE Liaison on a form provided by the Office of Procurement and Materials. Enforcement measures may include rescission of contract awards (in whole or in part), administrative fines, debarment from bidders lists, suspensions from awards, sanctions, referral to appropriate federal authorities in instances of suspected fraud, misrepresentation, misappropriation of funds, theft of services and other activities that warrant criminal referrals or other action, and other appropriate administrative actions.
- On contracts that do not include DBE contract goals, small business concerns will be targeted for utilization in contracting opportunities in both prime contractor and subcontracting roles.
- Identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures, which will encourage small businesses, including DBEs, to compete for and perform as prime contractors. Examples include unbundling larger contracts and identifying SBE race-neutral set-aside opportunities.

In June 2019, WMATA will issue the following SBE set aside solicitation: FQ18204, Small Business-NAICS #236220, WMATA System Wide Contract (Washington DC, Maryland, and Virginia). This is a Multiple Award Task Order Contract (MATOC) opportunity. On July 12, 2019, WMATA will host a DBE/Construction workshop to encourage and offer training to small businesses on how to prepare a bid. In order to make the small businesses aware of these procurements, WMATA will conduct outreach by attending the June 13, 2019 Asian American Business Summit in Tysons Corner, Virginia; attending the June 13, 2019 Maryland Transit Authority Outreach Event at Bowie State University in Bowie, Maryland; and on July 12, 2019, hosting the WMATA Procurement Fair at the University of Maryland, in College Park, Maryland. A list of procurements will be handed out and placed on the WMATA website.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Quotas (26.43)

(Section 11 DBE Policy and Procedures Manual)

WMATA does not use quotas in any way in the administration of this DBE Program

Overall Goals (26.45)

(Section 8.1 DBE Policy and Procedures Manual)

A description of the methodology to calculate the overall goal can be found in Attachment C to this program.

In compliance with DOT regulations, WMATA will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange with as many interested stakeholders as possible, such as members of the National Association of Minority Contractors, the U.S. Women's Chamber of Commerce, the Capital Region Minority Supplier Development Council, the Arlington Small Business Program, the Capital Regional Small Business Transportation Resource Center, and the U.S. Black Chamber of Commerce. WMATA will also publish, on its website, its proposed overall goal before its submission to FTA on August 1st.

Our overall goal submission to DOT will include, among other things: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during the public participation process and our responses; and proof that the goal is published on our website. This section of the program will be updated triennially when the goal calculation is updated.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. We will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

Goal Setting and Accountability (26.47)
(Section 10.3 DBE Policy and Procedures Manual)

If the awards and commitments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, WMATA will analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year; establish specific steps and milestones to correct the problems identified in the analysis and to enable WMATA to meet fully the goal for the next fiscal year; and submit, within 90 days of the end of the fiscal year, the analysis to FTA for approval. In determining the reasons for the shortfall, WMATA will analyze data from FTA assisted awards CLM contracting records, Metropolitan Washington Unified Certification Program (MWUCP) certifications records, system safety issues, and the WMATA Bidders List to identify factors that contributed to the shortfall, which shall include DBE availability, DBE Utilization on Large Contracts, and DBE Utilization on Professional Services Agreements (PSAs).

WMATA will develop a shortfall action plan to increase the DBE participation, which shall include the following:

1. Ensure DBE awareness of subcontracting opportunities through pre-bid notification of subcontracting opportunities; SBPO will build on the WMATA Website Public Notices service, which will allow interested subcontractors/consultants to connect with prime contractors bidding on federally-assisted contracts; and explore automating notifications to DBEs when projects containing work in their certified work categories are advertised. WMATA expects that continuing to notify firms of upcoming subcontracting opportunities will help to encourage more DBEs to submit bids.
2. Establish aspirational goal-setting, which serves several purposes in the race-neutral program and gives WMATA a standard against which DBE utilization on individual projects can be measured. Aspirational goals are calculated in the same manner as race-conscious contract goals; however, they are not advertised.
3. Draft contract provisions that require prime contractors to detail their outreach efforts to procure DBE participation. By monitoring the efforts made by prime contractors to obtain DBE participation, and in some circumstances the reasons why those efforts fail, WMATA can tailor its future efforts to increase DBE utilization on its FTA-assisted contracts.
4. Perform outreach to non-certified DBEs including activities related to building the population of available DBEs to perform work on FTA-assisted contracts.
5. Conduct a disparity study during the upcoming triennial period. The disparity study update should include analyses of DBE availability and utilization on FTA-assisted contracts across all procurement types and identify any evidence of discriminatory behavior in the market area.

We will respond to any FTA modifications of the analysis or corrective actions, and fully implement the corrective actions.

Transit Vehicle Manufacturers Overall Goals (26.49)
(Section 8.2.1 DBE Policy and Procedures Manual)

WMATA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR 26.49(b). Office of Procurement and Materials (PRMT) staff will review FTA's list of Eligible Transit Vehicle Manufacturers prior to awarding contracts for FTA-assisted transit vehicle purchases. Within 30 days of making an award, PRMT staff will notify FTA by entering the name of the successful bidder and the dollar value of the contract into FTA's online Transit Vehicle Award Reporting form. This procedure is found in the Office of Procurement and Materials, Standard Operating Procedure 19-03, Transit Vehicle Manufacturer Reporting.

WMATA will not include FTA assistance used in transit vehicle procurements in the base amount from which its overall goal is calculated.

WMATA may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the procedures set forth in 49 CFR 26.49.

Registrations and filings by DBE and non-DBE firms shall be considered filed or registered as of the date and time stamp affixed by the electronic service for purposes of determining whether a registration or filing is timely or within an applicable due date.

Meeting Overall and Contract Goals (26.51)
(Section 8.3.3 and section 11.2.3 DBE Policy and Procedures Manual)

The breakout of the estimated race-neutral and race-conscious participation can be found in Appendix C to this program. Appendix C also includes a description of how WMATA will meet the maximum feasible portion of its overall goal by using race-neutral means. This section of the program will be updated triennially when the goal calculation is updated.

Race Neutral Means

The maximum feasible portion of WMATA's overall goal will be met by using race neutral means. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award.

Race-neutral means include, but are not limited to, the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

- Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
- Performing outreach to non-certified DBEs which will include activities related to building the population of available DBEs to perform work on FTA-assisted contracts;
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and
- WMATA will conduct a disparity study during the upcoming triennial period. The disparity study will include analyses of DBE availability and utilization on FTA-assisted contracts across all procurement types and identify any evidence of discriminatory behavior in the market area.

WMATA will hold a yearly procurement fare. Emails will be sent to Prime contractors, DBE subcontractors and local minority, women and local associations setting for the dates and location of the procurement fare. Workshops will be held on where to find WMATA solicitations and how to access them; how to respond to a solicitation; information on electronic bidding; networking and joint ventures.

Monitoring Race-Neutral Measures.

DBE participation will be monitored throughout each federal fiscal year to determine the effectiveness of race-neutral measures, and WMATA will accordingly make adjustments to meet the maximum feasible portion of its overall goal by using race-neutral means. WMATA will use race neutral means such as outreach, technical assistance, and procurement process modification, which can be used to increase opportunities for all small businesses, not just DBEs, and do not involve setting specific goals for the use of DBEs on individual contracts. On a quarterly basis, the Small Business Programs Office (SBPO) in consultation with Office of Procurement and Materials (PRMT) and the Procurement Review Committee (PRC), shall prepare an internal report reflecting race-neutral DBE participation for federally funded contracts. The PRC will determine:

- whether there are DBE subcontracting opportunities on all federally-assisted WMATA solicitations;
- whether a DBE goal is necessary or appropriate for the federally assisted contract;
- the percentage of the DBE goal on the solicitation;
- if a solicitation should be an SBE solicitation; and
- whether the contract will be either race-conscious or race-neutral

The internal quarterly reports shall be evaluated to determine whether any adjustment to the contract goals is necessary based on the contracts awarded and the DBE participation to date. A determination will be made by the Chief Procurement Officer (CPRO) in conjunction with the DBELO as to whether the number of race-conscious goals on federally funded solicitations should be reduced and for how long.

If it is determined that the actual race-neutral awards and commitments at the end of any fiscal year are less than the race-neutral DBE goal applicable to that federal fiscal year, the SBPO in consultation with PRMT, will analyze the reasons for the difference in that federal fiscal year and establish a plan to correct any identified problems in the new federal fiscal year. The analysis and corrective action plan shall be submitted to the appropriate FTA office within ninety (90) days of the end of the fiscal year for approval.

Contract Goals

WMATA will express its contract goals as a percentage of total DOT-assisted contracts. WMATA will use contract goals to meet any portion of the overall goal that WMATA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The following parameters apply to contract goals:

- Goals can only be set on DOT-assisted contracts with subcontracting possibilities.
- WMATA need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).
- The goal for a specific contract may be higher or lower than the 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.
- Contract goals will include participation by all certified DBEs and will not be subdivided into group-specific goals.

To ensure that the DBE program is narrowly tailored to overcome the effects of discrimination, WMATA will adjust its contract goals as follows:

- If WMATA projects that the entire overall goal can be accomplished for a given year through race-neutral means, no contract goals will be set for that year.
- If during the course of any year in which contract goals are used WMATA determines that it will exceed its overall goal, WMATA will 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 the Authority determines that it will fall short of its overall goal, appropriate modifications will be implemented

in the use of race-neutral and race-conscious measures to allow the overall goal to be met.

- If the DBE participation obtained by race-neutral means alone meets the overall goals for two consecutive years, contract goals will not be set on any contracts during the next year. Only race-neutral means will continue to be used thereafter to meet overall goals unless and until such time as the overall goals are not met for a year.
- If DBE participation through the use of contract goals exceeds WMATA's overall goal in two consecutive years, use of contract goals will be reduced proportionately in the following year; or
- In any year that WMATA projects meeting part of its goal through race-neutral means and the remainder through contract goals, data will be maintained separately on DBE achievements in those contracts with and without contract goals, respectively. This data will be reported to the FTA as required by 49 CFR 26.11.

Good Faith Procedures (26.53)

(Section 8.1.1, Section 9.2, and Section 9.2.2 DBE Policy and Procedures Manual)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, WMATA will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Demonstration of Good Faith Efforts (26.53(a), (c))

(Section 8.1.1, Section 9.2, and Section 9.2.2 DBE Policy and Procedures Manual)

The obligation of each bidder/proposer on a DOT-assisted contract is to make good faith efforts to meet the contract goal. The bidder/proposer can demonstrate that it has done so by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

WMATA will ensure that all good faith effort information supplied by each bidder/proposer is complete, accurate, and adequately documented before the award of any contract.

The DBE Program Manager is responsible for determining whether a bidder/proposer has made sufficient good faith efforts.

Information to be Submitted at Time of Bid (26.53 (b))

(Section 8.1.1, Section 9.2, and Section 9.2.2 DBE Policy and Procedures Manual)

WMATA treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness. When a DBE Goal has been established for a proposed contract, the bidding contractor shall demonstrate a good faith effort to meet the DBE goal before WMATA will accept their bid or proposal. Evidence of a good faith effort must be submitted by a bidder upon submission of their Proposal.

Each solicitation for which a contract goal has been established will require the bidder to submit:

- (1) The names and addresses of DBE firms that will participate in the contract;
- (2) A description of the work that each DBE will perform;
- (3) The dollar amount of the participation of each DBE firm participating;
- (4) Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- (5) Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- (6) If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration (26.53(d))
(Section 8.1.1, Section 9.2, and Section 9.2.2 DBE Policy and Procedures Manual)

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

Chief Procurement Officer
Washington Metropolitan Area Transit Authority,
600 Fifth Street NW,
Washington, DC 20001

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

- (1) As a part of this reconsideration, the bidder/offeror will have an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts.
- (2) The reconsideration official will provide for a timely in-person meeting, upon request, with affected bidders/offerors, to reconsider instances in which such bidder/offeror has

been denied a contract award on the basis of not having met their responsibility to make adequate good faith efforts.

(3) The reconsideration official will thoroughly review all written documentation and/or oral argument submitted by the bidder/offeror regarding whether it met the goal or adequate good faith efforts to do so.

(4) Within five (5) days after hearing and considering the reconsideration matter, the reconsideration official will render a decision on whether the bidder/offeror made met the goal or made adequate good faith efforts to do so.

(5) The reconsideration official will immediately, subsequent to making a determination, notify, in writing, the bidder/offeror of the decision. The written decision shall be sent to the bidder/offeror by certified U. S. mail service, return receipt requested. The written decision shall include an explanation of the basis for finding that the bidder/offeror did not meet the DBE goal or lacked good faith efforts in its attempt to do so.

(6) The results of the reconsideration process is final and is not appealable to DOT.

(7) The reconsideration official will maintain records and documentation of all reconsideration requests and the disposition thereof.

Good Faith Efforts When a DBE is Removed/Terminated from a Contract (26.53(f))
(Section 8.1.1, Section 9.2, and Section 9.2.2 DBE Policy and Procedures Manual)

WMATA will require a prime contractor to make good-faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor will be required to notify the Small Business Program Office in writing immediately upon learning of the DBE's inability or unwillingness to perform work as required on the contract.

In this situation, WMATA will require the prime contractor to give written notice to the DBE subcontractor (and submit a copy of this notice to WMATA's DBE Liaison Officer) of its intent to request termination and the reason for the request. The DBE subcontractor will have five days to respond in writing (a copy of response needs to be submitted to WMATA'S DBE Liaison Officer) and explain why it objects to the proposed termination and why WMATA should not approve the prime contractor's proposed termination. If the contractor still believes that it must substitute the DBE, the prime contractor must receive written consent from WMATA's DBE Liaison Officer before replacing a designated DBE subcontractor. 49 C.F.R. 26.53(f). To support its request, the prime must provide supporting documentation (e.g., new or amended subcontracts, documentation of good-faith efforts) of why good cause exists to terminate the DBE.

The prime contractor may not terminate the agreement for the convenience of the prime contractor. The ability of the contractor to negotiate a more advantageous contract with another subcontractor **will not** be considered a valid basis for the substitution. Under no circumstances will a prime

contractor be allowed to perform work designated for a DBE except in those extreme (or emergency) circumstances where it becomes necessary to perform a particular task to protect public safety (e.g., traffic control, erosion control). Under those circumstances, the prime contractor is required to identify additional work for the contracted DBE or make a good-faith effort to do so. The prime contractor must receive written approval from WMATA's DBE Liaison to perform the work with his/her own forces or with a non-DBE firm.

If WMATA agrees with the substitution, the prime contractor will be required to make good-faith efforts to designate other work to DBE firms, provided those items are not already contracted out. Other DBE commitments on the project will remain in effect.

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

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

The bidder/offeror must present the information required by paragraph (b)(2) of this section at any time before WMATA commits to the performance of the contract by the bidder/offeror, as a matter of responsibility.

Before the Authority commits itself to the performance of the contract by the bidder/offeror, it will determine that all information is complete and accurate and adequately documents the bidder/offeror's good-faith efforts.

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

Counting DBE Participation Toward Goals (26.55)
(Section 8.1.2 and Section 8.3.3 DBE Policy and Procedures Manual)

WMATA will count DBE participation toward overall and contract goals as provided in 49 C.F.R. 26.55. This includes verifying the accuracy of race-conscious and race-neutral DBE payment. WMATA has developed a prompt payment tool for monitoring and verifying payments made to DBEs on race-conscious and race-neutral contracts. It is WMATA's policy that the prime contractor certify, with each payment request to the Authority, that payment has been or will be made to all subcontractors due payment, within 10 days after receipt of payment from the Authority for work by those subcontractors. Failure by the contractor to carry-out the requirements of Appendix B is a breach of the contract. The Contracting Officer shall consider the suspension of contract payments or other remedies if the contractor fails to submit the status report in a timely fashion.

- Each month both the prime-contractor must upload in the prompt payment tool a status report of payments (e.g. description work, amount of sub-contract award, amount paid during the reporting period; total amount paid to the sub-contractor; percentage of the work completed, date of invoice; and invoice number.
- Each month both the sub-contractor must upload in the prompt payment tool a status report of payments (e.g. description work, amount of sub-contract award, amount received from the prime contractor during the reporting period; date of invoice; and invoice number.
- SBPO will review the documents to verify the accuracy of the payments to the DBE sub-contractor by comparison of the invoices, scope of work performed and make site visits..

The Administration's DBE Compliance Officer shall provide prior written notification to the contractor for purposes of a scheduled on-site document review. This notification shall inform the contractor of the date, time and location of the review. For this review, the contractor shall have the following documents available for inspection to the Administration's representative:

- Copies of purchase orders and subcontracts.
- Records to indicate the names of the DBEs working on the Project, the type of work, the dollar value of the subcontracts, scheduled times for each DBE to be on the site, the amount of money paid to date and financial records to verify (i.e. invoices, cancelled checks, bank records, etc.); percentage of budget expended to date and the amounts billed by DBE firms compared to the amounts billed to non-DBE firms (consulting); resumes, payroll records, accounts receivable, accounts payable, ledgers, bank records, job costing records and correspondence.
- Any other appropriate documents requested to establish and verify compliance.

Commercially Useful Function (26.55)
(Section 8.1.2 and Section 8.3.3 DBE Policy and Procedures Manual)

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. In order to determine whether a DBE is performing a commercially useful function, WMATA 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 along with other relevant factors.

A DBE does not perform a commercially useful function if its 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. In determining whether a DBE is such an extra participant, WMATA 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 a normal industry practice for the type of work involved, WMATA will presume that it is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided in this Section, the DBE may present evidence to rebut this presumption. WMATA may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. WMATA's decisions on commercially useful function matters are subject to review by the FTA but are not administratively appealable to USDOT.

SUBPART D – CERTIFICATION STANDARDS

Certification Process (26.61-26.73)

(Section 7.6.2, Section 7.5.1, Section 7.1.2.1, Section 7.1.2.2, Section 7.1.3.2, and Section 7.6.2.1 DBE Policy and Procedures Manual)

WMATA will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. The certification process is now paperless. The applicant will access a supplier portal to apply for certification as a DBE/SBE. Our certification application forms and documentation requirements are also found at:

<https://www.wmata.com/about/business/procurement/dbe/index.cfm>.

SUBPART E – CERTIFICATION PROCEDURES

Unified Certification Program (26.81)
(Section 7.5.1 DBE Policy and Procedures Manual)

WMATA is a member of the District of Columbia Unified Certification Program (DCUCP), which is administered by WMATA and the District of Columbia Department of Transportation (DDOT).

It is the policy of the DCUCP to ensure that only firms certified by the DCUCP, through its participating members (DDOT and WMATA), will be eligible to participate in the DBE programs operated by the participating members.

Procedures for Certification Decisions (26.81)
(Section 7.1.2.1 DBE Policy and Procedures Manual)

WMATA is a member of the MWUCP administered by WMATA and DDOT. The UCP follows the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of the DCUCP's certification procedures and/or UCP program is included in Appendix D, and is available at:

<https://www.wmata.com/about/business/procurement/dbe/index.cfm>. For information about the certification process or to apply for certification, firms should contact: DBE Liaison Officer, WMATA – Small Business Programs Office, 600 Fifth Street NW, Washington, DC 20001.

No Change Affidavits & Notices of Change (26.83(j))
(Section 7.1.2.1 DBE Policy and Procedures Manual)

Certified DBEs shall provide to WMATA, every year on the anniversary date of certification, an affidavit sworn to by the firm's owner(s) before a person who is authorized by state or local law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 or any material changes in the information provided in its application form, except for changes about which the DBE has notified WMATA under Paragraph (i) of this section. The affidavit shall specifically affirm that the DBE continues to meet SBA business size criteria and overall gross receipts cap of Part 26, documenting this affirmation with supporting documentation of the DBE's size and gross receipts. A DBE will be deemed to have failed to cooperate under 49 CFR 29.109(c), if the DBE fails to provide this affidavit in a timely manner.

WMATA's DBE certification program shall make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under 49 CFR Part 26. WMATA may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. WMATA may establish a different time frame in the DBE program, upon a showing that this time frame is

not feasible, and subject to the approval of the concerned operating administration. WMATA's failure to make a decision by the applicable deadline shall be deemed a constructive denial of the application, on the basis of which the firm may appeal to USDOT under 49 CFR § 26.89.

WMATA's DBE certification program will electronically notify all currently certified DBE firms of no change affidavit and notice of change submission obligations through mail correspondence. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Section 26.85: Denials of Initial Requests for Certification
(Section 7.3.2 DBE Policy and Procedures Manual)

If WMATA's DBE certification program denies a firm's application or decertify it, it may not reapply until twelve months have passed from our action or, if applicable, twelve months from final determination by USDOT.

Section 26.87: Removal of a DBE's Eligibility
(Section 7.6.1 DBE Policy and Procedures Manual)

In the event WMATA's DBE certification program proposes to remove a DBE's certification, it will follow procedures consistent with 26.87. Attachment H to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the DCUCP has determined that the District of Columbia Department of Transportation will serve as the decision-maker in de-certification proceedings. The DCUCP has established an administrative "firewall" to ensure that the District of Columbia Department of Transportation will not have participated in actions leading to or seeking to implement the proposal to the remove the firm's eligibility.

Section 26.89: Certification Appeals
(Section 7.6.2 DBE Policy and Procedures Manual)

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

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F - COMPLIANCE AND ENFORCEMENT

Confidentiality (26.109)

Section 10.2.1.2 DBE Policy and Procedures Manual)

WMATA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with applicable Federal law and WMATA's Public Access to Records Policy (PARP), which can be found online at <http://intranet/pi/docs/9.3.0%20PARP%20Policy%202-3-11.pdf>.

When consistent with applicable Federal law and WMATA's PARP policy, WMATA will not release any information including applications for DBE certifications and supporting information that may reasonably be considered confidential business information to any third party without the written consent of the firm that submitted certification.

Payment Monitoring

All prime contractors shall electronically submit monthly prompt payment reports on DBE utilization to the Small Business Programs Office. Failure to submit the reports by the fifteenth day of each month may result in the imposition of a penalty of \$100 per day, per report. We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of WMATA or USDOT. This reporting requirement also extends to any certified DBE subcontractor. We will perform interim audits of contract payments to DBEs. These audits will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

List of Attachments:

1. **ATTACHMENT A – ORGANIZATIONAL CHART**
2. **ATTACHMENT B – DBE DIRECTORY**
3. **ATTACHMENT C – FFY 2017-2019 DBE GOAL METHODOLOGY** (See Attachment)
4. **ATTACHMENT D – CERTIFICATION APPLICATION FORMS** (See Attachment)
5. **ATTACHMENT E – BREAKOUT OF ESTIMATED RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION**
6. **ATTACHMENT F – MONITORING AND ENFORCEMENT**
7. **ATTACHMENT G – FORMS 1 & 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS**
8. **ATTACHMENT H – PROCEDURES FOR REMOVAL OF DBE'S ELIGIBILITY**
9. **ATTACHMENT I – REGULATIONS 49 CFR PART 26**

List of Attachments:

ATTACHMENT A – ORGANIZATIONAL CHART (See Attached)

ATTACHMENT B – DBE DIRECTORY

WMATA's DBE Vendor Directory is available as a source to assist bidders/proposers in meeting DBE contract goals. The directory alphabetically lists each firm's name, address, telephone number, the types of work in which the firm has been certified to perform as a DBE, and the corresponding NAICS code(s). Only those firms certified at bid opening date may be utilized in meeting a DBE contract goal. WMATA's DBE Vendor Directory is available at the following website: <https://www.wmata.com/about/business/procurement/dbe/index.cfm>.

ATTACHMENT C – FFY 2017-2019 DBE GOAL METHODOLOGY (See Attachment)

ATTACHMENT D – CERTIFICATION APPLICATION FORMS (See Attachment)

ATTACHMENT E – BREAKOUT OF ESTIMATED RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION

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

- Coordinate effectively with its internal offices to unbundle large contracts and present opportunities for DBEs to secure prime contracts;
- Use race-neutral small business set asides and unbundle large contracts;
- Work with other WMATA departments to target contracting opportunities in technical areas;
- Conduct more effective outreach by providing training and partnering opportunities for DBEs and small businesses, such as training DBEs and small businesses on financing, banking, lending, and bonding;
- Conduct listening sessions to focus on receiving DBE input to address DBE concerns;
- Work with potential prime contractors to set up outreach events to network with DBE firms;
- Improve communication with DBEs by providing more advanced notice of upcoming contracting opportunities.
- Make the DBE page more prominent on the wmata.com website;
- Institute an email hotline address dedicated to assisting DBEs and potential DBEs; and
- Establish regularly-scheduled training for DBEs and potential DBEs (e.g., training on certification process, business management, recordkeeping, and financial and accounting capability; assistance in overcoming bonding and insurance requirements).

We estimate that, in meeting our overall goal of 22%, we will obtain 8% from race-neutral participation and 14% through race-conscious measures. The estimate was derived from assessing the number of ready, willing, and able DBE firms within WMATA's local market area along with incorporating input provided by members of the National Association of Minority Contractors, the U. S. Women's Chamber of Commerce, the Capital Region Minority Supplier Development Council, the Arlington Small Business Program, the Capital Regional Small Business Transportation Resource Center, and the U. S. Black Chamber of Commerce.

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

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

ATTACHMENT F – MONITORING AND ENFORCEMENT

WMATA has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract reporting to the Office of Inspector General;
3. Breach of contract reporting to the USDOT's Office of Civil Rights
4. Rescission of contract awards (in whole or in part;
5. Administrative fines;
6. Debarment from bidders lists; and
7. Suspensions from awards and other applicable sanctions.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

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

ATTACHMENT G – FORMS 1&2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror’s firm: _____

State Registration No. _____

By _____

(Signature) (Title)

FORM 2: LETTER OF INTENT

Name of bidder/offeror’s firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____

(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

ATTACHMENT H – PROCEDURES FOR REMOVAL OF DBE’S ELIGIBILITY

WMATA’s District of Columbia Unified Certification Program will use the following procedures for removal of a firm’s DBE eligibility:

- Provide written notification of the proposed decision to remove eligibility including the reasons for the proposed removal
- Provide the firm an opportunity to participate in a hearing process
- Gather all evidence during hearing process to rebut reason(s) for proposed eligibility removal
- Provide written notification to the firm of the decision rendered

If a firm’s DBE eligibility is removed, the firm may not reapply until twelve months have passed.

ATTACHMENT I – REGULATIONS 49 CFR PART 26

Title 49 of the CFR, or Code of Federal Regulations, regulates transportation. Section 26 seeks to ensure nondiscrimination in the award and administration of Department of Transportation (DOT) contracts in the highway, transit, and airport financial assistance programs. 49 CFR Part 26 is focused on participation of Disadvantaged Business Enterprises, or DBEs. You may be required to adhere to 49 CFR Part 26 if you receive any of the following types of department of transportation funds:

- Federal-aid highway funds
- Federal transit funds

- Airport funds

49 CFR Part 26 adds several requirements to the process of receiving DOT funding. For example:

- Records must be kept for reporting
- Contractors and recipients must make DBE assurances
- Policy statements
- A liaison officer may be necessary
- Prompt payment mechanisms
- A DBE directory
- Training programs
- Monitoring
- Goal setting
- Certification
- Responding to audits

For more information, and to view the guidance of: 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, visit:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl