

Commonwealth of Massachusetts

Nantucket Regional Transit Authority

Federal Disadvantaged Business Enterprise Program Plan

Amended

June 2006

March 2008

March 2015

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COMMONWEALTH OF MASSACHUSETTS

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

**SECTION I
PROGRAM AUTHORITY**

A. NRTA's DBE POLICY STATEMENT

The Nantucket Regional Transit Authority (hereinafter referred to as the "NRTA") is committed to carrying out all pertinent DBE requirements as contained in 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department Of Transportation Programs." This DBE program will include small business requirements per CFR 26.39. The elements presented in the Authority's Program Plan are intended to assure that all contracts and procurement will be administered without discrimination on the basis of race, color, national origin or sex. The NRTA ensures that Disadvantaged Business Enterprises (DBEs) shall have an equal opportunity to compete for and participate in the performance of all contracts and subcontracts awarded by the Authority.

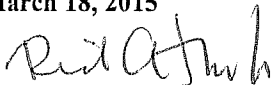
The NRTA Administrator is responsible for carrying out the policies and procedures as approved by the Advisory Board in the execution of the DBE Program Plan. The designated DBE Liaison Officer, NRTA Administrator will be responsible for the development, implementation, monitoring, compliance and record keeping functions associated with this program. The Advisory Board and Administrator fully intend to see that the provisions of the DBE Program Plan are thoroughly understood by all suppliers, vendors, contractors and subcontractors and addressed in both the spirit and letter of the final rule.

This policy statement will be publicly announced and widely circulated to parties with an interest in DBE pursuits. This includes those community and business organizations engaged in pursuits and activities designed to advance and promote the broader participation of DBEs in the economic mainstream.

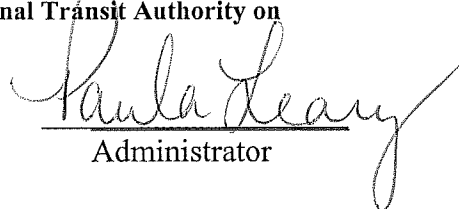
Approved by the NRTA Advisory Board of the Nantucket Regional Transit Authority on
June 21, 2006.

Amended by the NRTA Advisory Board of the Nantucket Regional Transit Authority on March 5, 2008.

Amended by the NRTA Advisory Board of the Nantucket Regional Transit Authority on
March 18, 2015



Chairman of the Board



Administrator

B. Applicability

The Nantucket Regional Transit Authority (NRTA) Disadvantaged Business Enterprise (DBE) Program is based on provisions found in 49 CFR Part 26 and thus observes certain statutory and regulatory requirements as a condition of law and federal funding requirements. The DBE Program will apply to all projects receiving the following types of funds:

Federal transit funds authorized by Titles I, III, V and VI of the Intermodal Transportation and Efficiency Act (ISTEA) of 1991, Public Law 102-240 or by Federal transit laws in Title 49 CFR, or Titles I, III, and V of the Safe Accountable, Flexible, and Efficient Transportation Equity Act – A Legacy for users of 2005 (SAFETEA-LU), Public Law 105-178.

C. DBE Program Requirements

In accordance with 49.CFR 26.21, the NRTA has a DBE program meeting the requirements of the DBE regulations in response to NRTA receiving funds from any of the following sources and when getting DOT-assisted contracts under the following conditions:

Federal Transit Administration (FTA) recipients that receive \$250,000 or more in FTA planning, capital, and/or operating assistance in a Federal fiscal year.

D. Objectives

As a recipient of Federal transit funds authorized by Title I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, CFR, or Titles I, III, and V of SAFETEA-LU, Pub. L. 105-178, the RTA DBE Program seeks to achieve the following objectives:

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

E. Forbidden Discriminatory Actions

It is the policy of the NRTA that no person (s) will ever be excluded from participation in, denied the benefits of, or otherwise be discriminated against 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 the administration of the DBE Program, the NRTA 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 this program with respect to individuals of a particular race, color, sex, or national origin.

SECTION II

RESPONSIBILITY FOR DBE PROGRAM

A. Duties of DBE Liaison Officer and Other Staff

The DBE Program function is managed by the NRTA Administrator of responsibility, due to the small staff of the NRTA the NRTA Administrator will act as the DBE Liaison Officer. An organizational chart is provided in Exhibit 1.

DBE Liaison Officer:

This position is responsible for developing, implementing and monitoring the DBE program, in coordination with NRTA procurement and contracting activities. Duties and responsibilities include:

1. Gathers and reports statistical data and other information as required by FTA.
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 procurement so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes NRTA progress toward goal attainment and identifies ways to improve progress
7. Participates in pre-bid meetings.
8. Advises the Administrator and Advisory Board on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and guidance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Assures the certification of DBEs according to the criteria set by DOT.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains an updated directory on certified DBEs.

B. Reconsideration Official

In accordance with 49 CFR Part 26.53(d)(2) and 26-87(e), all proceedings by the NRTA regarding the reconsideration of compliance with the provisions of the DBE regulation concerning a contract award or the DBE status of a firm shall be made by the Martha's Vineyard Transit Authority's Assistant Administrator* that did not take part in the original determination.

*due to the NRTA's small staff this is an attempt at segregating the responsibilities. This was approved by the NRTA Advisory Board on March 5, 2008

Reconsideration procedures may be found in the Appendix material.

SECTION III ADMINISTRATIVE REQUIREMENTS

A. Financial Institutions

The NRTA shall investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the state and will make efforts to use these institutions. To date the names of such financial institutions are not known, as there are no financial institutions meeting this criterion in our immediate community, the island of Nantucket. However, we intend to explore this possibility across the state.

B. DBE Directory

The NRTA will maintain a directory identifying all firms eligible to participate as DBEs. These firms will have been certified per the certification standards listed in Sections 26.61, 26.63, 26.65, 26.67, 26.69, 26.71 and 26.73, Certification will remain in effect for three years with an annual update of any changes that may have occurred.

The NRTA will utilize SDO as the DBE certifying agency. As the state designated agency for DBE certification and certain compliance functions, SOMWBA is fully responsive in meeting DBE certification standards and criteria as outlined in the above mentioned sections of 49 CFR Part 26.

The compilation of certified businesses will lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. The directory is revised at least annually and, for recertification purposes, will determine if the firm is within the criteria of a small business as specified in 13 CFR 121, by SIC Code/NAICS Codes. The directory will be distributed to staff members and prime contractors. It is also made available to the public on request.

C. Overconcentration

In cooperation with SDO, the DBE Liaison Officer will monitor industries or fields of work to determine if they are so over concentrated with DBEs as to unduly burden the opportunity of non-DBE firms to participate in this type of work. If it is determined there is overconcentration of DBE firms in a certain type of work, the corrective measures outlined in 49 CFR Part 26.33 will be utilized. Examples of measures to address DBE overconcentration in a particular field may include:

1. Once that industry is identified, the DBE Liaison Officer will work with a Business Development consultant to develop ways to assist the DBE to move in a non-traditional area of work.

2. The DBE Liaison may also discontinue assigning a goal on a contract that offers a particular NAICS Code for subcontracting in an overconcentrated field.
3. The DBE Liaison may also work with prime contractors to find and use DBEs in other industry areas.
4. Any industry limitations met by NRTA will be explained in the procurement document.
5. To determine which areas are over concentrated, the DBE Liaison Officer will keep a statistical count of the number of actual bidders on DOT assisted contracts and the areas of work they perform, or would like to perform.
6. The information gathered will assist the, DBE Liaison Officer in making the over-concentration determination. Census Bureau information will also be included to identify over concentrated areas.
7. Once the area is determined by NRTA to be over concentrated, the DBE Liaison Officer will present this information to FTA's Regional Civil Rights Officer along with recommended measures to address it. These measures will be implemented upon FTA's approval.

D. Business Development and Mentor Programs

1. Business Development Program

One method of providing race-neutral means of DBE and small business participation will be through the Massachusetts Office of Business Development (MOBD) Program. MOBD is the state Agency responsible for providing a capacity development program for minority and women businesses seeking to do business with the Commonwealth. The capacity program includes, but is not limited to the following core areas of business development:

- Strategic planning
- Financial management planning
- Human resource management
- Planning, information technology access and management
- Marketing

E. Massachusetts Supplier Diversity Office (SDO)

Another approach to providing race-neutral means for broader DBE and small business participation will be through SDO's Business Development Program. Each year the Agency schedules a number of training courses, workshops and procurement fairs throughout the Commonwealth that are open to all small

businesses. At these sessions small businesses will have an opportunity to meet with NRTA officials and prime contractors and to gain a better understanding of the process and procedures associated with DBE procurement practices. Conversely, NRTA will have the opportunity to become acquainted with qualified business owners who may supply services or products. The specifics of doing business with the NRTA will be discussed at each training event.

Workshops and training sessions will include the following subjects:

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

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

SECTION IV

DETERMINING, MEETING AND COUNTING OVERALL ANNUAL DBE GOAL FOR FEDERALLY-ASSISTED CONTRACTS

A. Methodology Used: Step One, Base Figure; and, Step Two Adjustments

The DBE Liaison will set an annual overall DBE goal to be submitted to FTA by August 1st of each year. A preliminary budget and the five year Transit Development Plan (TDP) will be used to identify projects that are federally assisted. NRTA will also be requested to identify projects for the following year.

Statistics will be utilized from the Census Bureau, the Department of Commerce, Bidder's lists, and Certified DBEs in each of three categories: construction; professional services; and materials and supplies. Consultation will be held with minority, women and general contractor groups as well as other community organizations in an effort to establish a level playing field.

The goal methodology will include a two-step process. Step one will include a determination of a base figure for the relative availability of DBEs to participate on RTA federally-assisted contracts. Step two will include an examination of all the evidence available in NRTA geographical area to determine what adjustments, if any, are needed to the base figure in order to arrive at the overall annual DBE goal. (Please see Attachment A for a description of the goal methodology NRTA utilizes in developing an annual DBE goal.) Using data collected regarding over concentration, DBE availability of firms ready, willing and able, and other necessary adjustments such as how long each project will span, a goal will be set at the level of DBE participation expected absent the effects of discrimination. Within the goal, data will demonstrate the parts of the goal that will be race-conscious and those that will be race-neutral. Any overconcentration of DBEs in a particular trade will be excluded from race-conscious contract goals. The NRTA will attempt to meet the maximum feasible portion of the overall goal by using race-neutral means.

The annual overall goal will be submitted to the NRTA Advisory Board for adoption, after which it will be submitted to FTA for review. Notices will be published in general circulation media, minority focused media and trade association publications announcing the proposed overall goal. The rationale for the goal will be made available for inspection during normal business hours for 45 days following the date of the notice, and comments will be accepted on the goal for 45 days from the date of the modes.

B. Transit Vehicle Manufacturers (TVMs) Participation and Qualifications

NRTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurement, to certify that it has

complied with the requirements of this section. Or, the NRTA may, at its discretion and with FTA approval, establish project specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this section.

C. Using Race-Neutral and Race-Conscious Measures to Establish DBE Annual and Contract Goals

NRTA will establish an overall goal for DBE and small business participation in MassDOT-assisted contracts. The overall goal will be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on NRTA's DOT-assisted Contracts.

1. Race-Neutral Methods

NRTA will meet the maximum feasible portion of the overall goal by race-neutral methods, having no history of DBE and small business participation, the NRTA cannot justify the expectation of reaching that goal solely by race-neutral methods, and thus have set 80% of its goal by race-neutral methods. It is an estimate by the NRTA, as we do not have data to justify a calculation of said percent. The NRTA will work with the Massachusetts Supplier Diversity Office ("SDO") to develop its race-neutral means to facilitate DBE or small business participation.

2. Race-Conscious Methods

Each time the NRTA establishes an annual DBE or small business goal, the goal will include a projection of the portion of the goal that NRTA expects to meet through race-neutral means and the basis for the projection. Contract goals are established to meet any portion of the overall goal. NRTA does not project being able to meet using race-neutral means. DBE or small business race-conscious contract goals are only on those MassDOT assisted contracts that have subcontracting possibilities. Contract goals are established so that is not projected being able to meet through the use of race-neutral means. The NRTA will work with SDO to develop its race-conscious means to facilitate DBE or small business participation. The NRTA believes it would be overly optimistic to anticipate reaching its overall goal entirely through race-neutral means.

D. Good Faith Efforts

To award a contract to a bidder or proposer that has failed to meet the DBE or small business contract goals, NRTA will decide whether the bidder or proposer made a Good Faith Effort to actively and aggressively seek DBEs and/or small businesses to meet those goals. The Good Faith Efforts Committee, which consists of the DBE Liaison Officer, Legal Counsel, and the Project Director, will review the documentation and determine if certain requirements have been met.

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

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

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

- Whether the contractor solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract.
- Whether the contractor solicited interest within sufficient time to allow the DBEs to respond and if appropriate steps were taken to follow up with interested DBEs.
- Whether the contractor selected portions of the work to be performed by DBEs and where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Whether the contractor negotiated in good faith with interested DBEs. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached.
- Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Whether the contractor made efforts w assist interested DBEs in obtaining

bonding, lines of credit, or insurance as required by the recipient or contractor.

- Whether the contractor effectively used the services of available minority/women community organizations, contractors groups and other organizations to provide assistance in the recruitment and placement of DBEs.
- Whether other bidders on the procurement met the DBE goal. If the GFE Committee determines that the apparent successful bidder/proposer has failed to meet the GFE requirements, the bidder/proposer has an opportunity for administrative consideration. The reconsideration official will be a member of the NRTA staff who did not take part in the initial GFE decision.

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

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

Good Faith Efforts, Terminations

The prime contractor may not terminate for convenience of DBE subcontractor (or an approved substitute DBE firm).

Further, the prime contractor may not terminate a DBE subcontractor and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the NRTA's prior written consent.

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

If the contractor fails or refuses to comply in the time specified, the NRTA's Administrative Office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Contracting Officer may issue a termination for default proceeding.

E. Counting DBE Participation

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least 30 percent of the total cost of its contract with its own work force. Decisions on commercially useful functions are subject to review by FTA, but can not be administratively appealed to DOT.

If materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost will be counted. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost will be counted. DBE achievement will not be counted toward the overall goal until the DBE has been paid.

F. Quotas, set-asides and penalties

The NRTA will not use quotas for DBE's on MassDOT assisted contracts. Further, it will not set-aside contracts for DBE's on MassDOT assisted contracts, except that, in limited and extreme circumstances, it will use set-asides when no other method could be reasonably expected to redress gregarious instances of discrimination.

The NRTA will administer its DBE program in good faith in its effort to meet its DBE goal and will faithfully submit and have approved a DBE program or overall goal in order to comply with 49 CFR part 26.47.

SECTION V REQUIRED CONTRACT PROVISIONS

A. Nondiscrimination Assurance

Each financial assistance agreement that the NRTA signs with the FTA or other DOT operating administration shall include the following statement:

"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 RTA 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 1996 (3 U.S.C. 3801 et seq.)."

Each contract the NRTA signs with a contractor, and each subcontract a prime contractor signs with a subcontractor, shall include the following statement:

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

B. Advertisement

All invitations to bid shall include the following language:

"Disadvantaged Business Enterprise (DBE) and small business will be afforded full opportunity to submit proposals and will not be subject to discrimination on the basis of race, color, sex, national origin, or disability in consideration of an award."

C. DBE Notification - Procurement Above the Level of Small Procurement

The procedures for notifying the certified DBE community of the NRTA procurement opportunities above the level of small procurement (\$50,000) are as follows:

1. Direct DBE Solicitation

1. Certified businesses listed in the SDO Directory with experience in the supply/service being procured and which may be reasonably expected to be interested shall be informed about the solicitation through electronic bulletin boards and other established channels of communication.
- a. Notice will be circulated in appropriate daily and weekly publications, including those publications catering to the minority community. Copies of solicitation notices will also be forwarded to the following organizations:
 - (1) DBE Technical Assistance Organizations
 - (2) Appropriate DBE Business Associations
 - (3) Appropriate DBE Trade Associations
 - (4) The State Office of Affirmative Action

2. Subcontracting Opportunities

1. Each contract above the level of small procurement shall be assessed as to the potential for DBE procurement participation for such purchases. Supply, maintenance, and service contracts shall contain a DBE subcontract participation goal consistent with these procurement procedures.
2. Whenever the NRTA establishes a subcontract goal for a contract, each prime contractor must solicit quotations from certified DBEs. Contractors may obtain the names of certified DBEs from the SOMWBA Directory, which is available online via the Internet at **www.com-pass.com**.
3. The following statement will appear in bid documents when subcontracting to DBEs is indicated:

“A certified DBE subcontract participation goal of _____ percent of the contract has been established for this procurement. The bidder or offeror agrees that unless a formal waiver is requested and is granted that not less than this amount of the contract will be performed by disadvantaged business enterprises.”

D. DBE Notification - Small Procurement

For small procurement (below \$49,999), the cognizant procurement official shall make a concerted effort to attain the NRTA goal by direct solicitation from certified DBEs for each procurement category.

E. Recurring Contracts

Each fiscal year, the NRTA will develop, in writing, a complete listing of the approximate solicitation dates of known regularly recurring procurement opportunities of (\$100,000) or more. The list shall include the category of the contract, where the work is to be performed, or delivery made, and the name and telephone number of the cognizant agency official.

F. Contract Awards - Supply and Services

1. Direct Procurement

1. Firms interested in furnishing supplies or providing a service in accordance with federally assisted contract provisions must be a bona fide DBE and be certified as such by SDO.
2. Failure of a DBE to furnish requested information within 10 working days of bid opening may result in the firm being disqualified and the bid determined as not responsive.

3. Subcontracting to DBEs

1. Based upon the NRTA procurement official's evaluation and approval of the proposed DBE goal for the subject contract, a contract may be awarded to the successful bidder according to standard procurement practices and procedures.
2. The apparent low responsive and responsible bidder will provide the cognizant NRTA official with the following items:
 - (1) A completed Schedule for Participation of Minority Business Enterprise Form
 - (2) NRTA Minority Contractor Project Disclosure and Participation

4. Failure of A Bidder to Furnish Information or Otherwise Participate

A bidder's failure to participate in any of these proceedings or failure to furnish information after a NRTA written request for same may result in a bid rejection on the basis of non-responsiveness and not awarding the contract to the apparent low bidder.

5. Amendment for Unforeseen Circumstances

If, at any time before contract award, an unsuccessful bidder has reason to believe that a DBE listed, as a participant in the successful bid award is ineligible, unqualified or otherwise unavailable to participate, it must be reported to the NRTA cognizant procurement official. Within five (5) working days, the apparent low bidder must, if necessary to achieve the stated goal for DBE participation, make every reasonable effort to amend the participant list.

G. DBE Goal Waiver Request

If, for any reason, a bidder or offeror is unable to achieve the established DBE goal, the bidder or offeror may submit a written request for an exception to the goal as outlined below:

1. If a bidder or offeror is unable to achieve the DBE participation goal, they must provide a detailed statement of the good faith efforts made to select portions of the work/service/supply proposed to be performed by DBEs and a detailed statement of the good faith efforts made to contract and negotiate with SDO certified DBEs.

The statement to include: 1) name, address and telephone number of certified DBEs contacted with dates; 2) description of the information provided the DBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed; 3) a detailed statement of the reasons why a quotation was considered unacceptable; and 4) a list of ready, willing and able certified DBE subcontractors found to be unavailable.

Each waiver request shall be accompanied by a Minority Contractor Unavailability Certificate signed by the DBE or a statement by the bidder or offeror that the DBE declined to provide written certification.

2. An affidavit completed and signed by the prime contractor stating that in the solicitation of subcontracts, quotations or offers, DBE subcontractors were provided the same information and amount of time to respond as were non-DBE subcontractors and the solicitation process was conducted in such a manner as to otherwise not place DBE subcontractors at a competitive disadvantage to non-DBE subcontractors.
3. Any other documentation considered appropriate by the cognizant NRTA

procurement official to ascertain bidder compliance in responding to the subject contract DBE participation goal. The contractor, by submitting a bid or offer, consents to provide such documentation as may be requested by the NRTA pursuant to the compliance section, and to provide right of entry at any reasonable time to an NRTA representative for the purpose of verifying compliance with DBE subcontractor requirements.

H. NRTA's Prompt Payment Policy and Provisions

Every Contract with a prime contractor will have a clause requiring said contractor to pay its DBE subcontractors for satisfactory performance of their contracts within seven days from receipt of each payment that the NRTA makes to its prime contractor. Further, the clause will require the prompt return of retainage payments from the prime contractor to the subcontractor within seven days after the subcontractor's work is satisfactorily completed.

I. Legal and Contract Remedies: Monitoring and Enforcement Mechanism to Verify Work

All contracts will include a clause stating that to insure compliance with Sec. 26.37 requirements by all program participants, all legal and contract remedies available under Federal, state and local law will be pursued.

The NRTA will include in all contracts a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by DBEs. The NRTA will require a running tally of DBE attainments. Namely, the prime contractor will have to submit to the NRTA a running tally of payments actually made to DBE firms. It will also include a requirement that the NRTA may audit DBE participation.

J. Contractor Reporting Requirements: Work credited toward goals only when payments are actually made to DBEs.

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted,

Work that a DBE contracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least 30 percent of the total cost of its contract with its own work force. Decisions on commercially useful functions are subject to review by FTA, but can not be administratively appealed to MassDOT.

If materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost will be counted. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the

cost will be counted.

DBE achievement will not be counted toward the over goal until the DBE has been paid.

SECTION VI CERTIFICATION STANDARDS

A. Burden of Proof

A firm seeking certification has the burden of demonstrating, by a preponderance of evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership, and control.

B. Group Membership Determinations

NRTA will rebuttably presume that numbers of the designated groups, who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals.

C. Social and Economic Disadvantage Determinations; Statement of Personal Net Worth

Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification must submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. Excluded in determining personal net worth are the individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence.

Individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification and SOMWBA will make a case-by-case determination using the criteria as cited in Appendix E to Part 26.

D. Business Size Determinations

A firm must be an existing small business as defined by Small Business Administration standards. However, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$16.6 million.

E. Ownership and Control Determinations

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals, the firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The contributions of capital or expertise must also be real and substantial.

The owner's expertise must be:

1. In a specialized field
2. Of outstanding quality
3. In areas critical to the firm's potential operations
4. Indispensable to the firm's potential success
5. Specific to the type of work the firm performs
6. Documented in the records of the firm to clearly show the contribution of expertise and its value to the firm.

F. Other Considerations

NRTA will consider whether a firm performs a commercially useful function or is a regular dealer in deciding how to count that DBE firm's participation towards the prime contractors' DBE goal attainment. The only instance in which the NRTA will consider the effect of a DBE's commercially useful function in a certification decision is when, in accordance with 49 CFR 26.73, the DBE firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirement of the DBE Program.

SECTION VII CERTIFICATION PROCEDURES

A. Unified Certification Program

A unified Certification Program Plan ("UCP Plan") has been established consistent with all applicable provisions of 49 CFR. 26, et, seq. for "one stop shopping" for DBE certification applicants.

B. Recertification Procedures

Once a firm has been certified as a DBE, it remains certified for a period of at least three years, or unless its eligibility is removed by SDO through procedures outlined in 49 CFR 26.87.

All DBEs must inform NRTA or the UCP in writing of any change in circumstances affecting the ability to meet size, disadvantaged status, ownership, or control requirements of the NRTA's DBE Program or any material change in the information provided in your application form.

C. Denials and Reapplication Procedures

A firm that is denied certification will be provided a written explanation of the reasons for the denial from SDO, specifically referencing the evidence in the record which supports each reason. Documents and other information on which the denial is based will be made available to the applicant upon request.

A firm may reapply for certification within one year from the date of denial.

D. Removal Procedures

Any person may file a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The NRTA is not required to accept a general allegation or an anonymous complaint. If there is reasonable cause to believe the allegation, NRTA will provide such complaint to SDO. If it is determined that reasonable cause does not exist, the complainant will be notified in writing and the reasons for it.

FTA may determine that information in the certification records, or other information available, provides reasonable cause for eligibility removal and may direct the initiation of a proceeding to remove the firm's certification.

Firms will be given an opportunity for an informal hearing at which time the firm may respond to the allegations made and why it should remain certified.

A complete record of the hearing will be maintained. The decision in a proceeding to remove a firm's eligibility will be made by an officer and personnel that did not take part in actions leading to, or seeking to implement, the proposal to remove the firm's eligibility.

F. DOT Review of Certification Decisions

APPEALS TO THE DEPARTMENT OF TRANSPORTATION

Anyone wishing to file an appeal must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed.

Send appeals to: U.S. Department of Transportation
 Office of Civil Rights
 400 7th Street, S.W., Room 2401
 Washington, DC 20590

SECTION VIII

MONITORING AND RECORD KEEPING

A. Bidders List

The NRTA will also require all prime contractors bidding on MassDOT assisted contracts to furnish at the time of bid opening (options may be exercised as to the time this information is required so long as it is prior to award of the contract) the following information about the prime contractor and all subcontractors who provided a bid to the prime contract:

- Firm Name
- Firm Address
- Firm's status as a DBE or non-DBE
- Age of the firm
- Annual gross receipts of the firm
- Scope of work
- Dollar amount

If the information is not returned with the bid, the bidder/proposer will be deemed non-responsive. The specific information contained on the form will be used for statistical purposes only and will not be considered in the decision making process of awarding the contract

B. Records and Reports

1. The bidder will keep such records as are required by the NRTA to determine compliance with its certified business utilization obligations. These records, to be kept by the bidder, are designed to identify:
 1. The type and actual values of work performed, goods furnished or services rendered, and copies of payments to certified and non-certified businesses;
 2. Documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of certified DBEs on the procurement.
2. The bidder shall, on an agreed upon periodic basis, submit reports on subcontract performance and other business transactions entered into with certified DBEs with respect to the records as referenced in Subparagraph 1.a. above, in such format and content as prescribed by the NRTA.

Such reports shall be submitted in a timely manner as requested by the NRTA. If, for any reason, a report cannot be submitted on time, the contractor must notify the cognizant NRTA official to that effect and request additional time to furnish the report. Failure of the contractor to submit reports in a timely manner may result in a finding of breach of contract due to non-compliance.

3. This reporting requirement also extends to any certified DBE subcontractor.
4. All such records must be retained for a period of three years following the completion of the contract work and will be available for inspection by the NRTA representative and/or SOMWBA officials.
5. A NRTA representative or SOMWBA officials will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

C. Reporting to U.S. DOT

The NRTA will continue to report DBE participation and annual overall goal setting methods to the Federal Transit Administration as directed. Statistical data will be maintained as prescribed. NRTA will provide reports to FTA on the appropriate timely basis (monthly, quarterly, semi-annually, or annually), which reflects the DBE participation on federally-assisted procurement activities. These reports will provide DBE participation information on race-neutral contracts; race-conscious contracts; and, the combined DBE participation on all NRTA federally-assisted procurement activities.

SECTION IX

PUBLIC PARTICIPATION AND OUTREACH EFFORTS

Activities designed to foster and promote public participation and outreach efforts are directed toward assisting the NRTA to:

1. solicit public input to set overall DBE participation goals; and
2. meet their overall DBE goals.

In establishing an overall DBE goal, the NRTA will provide for public participation. This will include:

1. NRTA consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the liability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and NRTA efforts to establish a level playing field for the participation of DBEs.
2. Publishing an annual notice announcing the proposed overall DBE goal and informing the public that the rationale and data used to establish the proposed DBE goal are available for inspection during normal business hours at the NRTA office. This notice is published annually for a period of 30 days. The NRTA and the US DOT will accept comments on the goals for 45 days from the date of the notice. The NRTA notice is distributed to the general circulation media; local minority-focused media; and, various trade association publications.

In conjunction with NRTA's activities to meet overall DBE goals, SDO, NRTA and its contractors will implement various public participation and outreach activities designed to promote and assist NRTA in the recruitment and utilization of DBEs as both prime contractors and subcontractors.

Public participation activities are initiated either by NRTA, SDO or participating prime contractors using suggested activities as referenced in 49 CFR Part 26.51.

APPENDIX A

APPENDIX A

PROGRAM DEFINITIONS

The following explanation of terms have been provided to ensure consistent definition of keywords and terms associated with the NRTA's DBE Program.

ACT -- The Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17) and Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 104-12).

ADMINISTRATION -- Any one of the Administrations within the Massachusetts Department of Transportation (Massachusetts Bay Area Transit Authority, Massachusetts State Highway Administration, Massachusetts Port Administration, Massachusetts Aviation Administration, Massachusetts Motor Vehicle Administration, and the Office of the Secretary).

ADMINISTRATION REPRESENTATIVE -- A DBE Officer or employee of the RTA or other state Agency who deals with the laws and regulations pertaining to disadvantaged and minority business enterprises and contract compliance.

ADMINISTRATIVE LAW JUDGE --An official of the Office of Administrative Law who presides over contested decertification hearings.

ADMINISTRATOR -- The chief executive of the agency, which is charged with implementation of the DBE Program for the state.

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:
 - 3) One concern controls or has the power to control the other; or,
 - 4) A third party or parties controls or has the power to control both; or
 - 5) 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.

AFFIRMATIVE ACTIONS -- Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantage and minority business enterprises fully in state and federally funded contracts and programs.

AFFIRMATIVE MARKET PLAN - - The use of racial and gender based classifications for the purposes of remedying past discrimination and promoting other, non-remedial objectives such as the delivery of effective human services in the areas of public health, safety and welfare.

AFFIRMATIVE MARKET PROGRAM -- Activities of the Commonwealth of Massachusetts designed to promote equality in the public marketplace and to encourage the full participation minority and women owned businesses in all areas of state contracting, including contracts for construction, design, goods and services.

AFRICAN AMERICAN/BLACK AMERICAN -- A person having origins in any of the black racial groups of Africa and is regarded as such by the African American community of which the person claims to be a part.

ANALYST/AGENT -- A staff member of the State Office of Minority and Women Business Assistance (SOMWBA) who conducts investigations in response to requests for DBE certification and/or recertification.

ANNUAL RECEIPTS -- For the purpose of determining annual receipts of a business concern, the RTA is incorporating into this document by reference 13 CFR, Part 121 Section 121.402 Annual Receipts.

APPLICANT -- A business which has applied to a state Agency for certification as a bona fide DBE.

APPLICATION -- The Disclosure Affidavit which is completed by an applicant for certification or for recertification.

BROKER -- An agent of a buyer or a seller who buys or sells stock, bonds, commodities, or services, usually on a commission basis. For purposes of DBE certification, only brokers who are recognized in their respective industry prior to the establishment of the DBE Program will be certified. Included are Insurance Brokers.

BUSINESS -- A for-profit legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

CERTIFICATION -- The process by which a business is determined to be a bona fide DBE.. Certification is required for counting the DBE contract participation to meet a contract DBE participation goal. A firm that is not certified may be included and may participate on any contract. The participation of that firm cannot be used to meet the contract goal.

CERTIFIED BUSINESS -- A business which has met the qualification as determined by regulation and has been certified as a bona fide DBE. Certification does not equate to a pre-qualification status.

CHAIR/MWBEOC -- The person designated to preside over meetings of the Massachusetts Minority and Women Business Enterprise Advisory Oversight Committee.

COMMERCIALLY USEFUL FUNCTION -- Work performed by a DBE in a particular transaction can be counted towards goals only if the Administration determines that it involves a commercially useful function. A certified business is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. That is, in light of industry practices and other relevant considerations, the DBE must have a necessary and useful role in the transaction of a kind for which there is a market outside the context of the DBE Program. The firm's role cannot be a superfluous step added in an attempt to obtain credit goals.

COMMISSION -- Represents monies charged for commercially useful and bona fide services.

COMPETENCY -- Competency is not an issue in determining if a firm meets the criteria for certification as a DBE. In reviewing the firm's operations, SOMWBA evaluates: (1) evidence of financial responsibility; (2) evidence of ability to perform the work or service; and, (3) evidence of actual contract performance. These factors assist SOMWBA to determine if the firm is functioning independently and under managerial and operational control of the applicant.

To aid in the review of operational and management control if the applicant is a new business and has engaged in no contracts, a reasonable business plan will be prepared and submitted with the application for DBE certification in lieu of evidence of actual contract performance. A DBE must demonstrate technical knowledge in the area for which his/her business is certified and demonstrate evidence of supervision and management of his/her work force.

Since the status of firms may fluctuate according to external factors (economy, interest rates, etc.), RTA cannot guarantee that DBE's determined at the time of original certification to be bona fide and are able to work throughout the life of the certification period.

Competency as it relates to contract performance shall be an element to be considered in contract administration. In order to continually monitor the competency of certified minority and socially and economically disadvantaged business enterprises, RTA's DBE Liaison Officer will ensure that the appropriate reports are promptly completed and forwarded to the proper Agency. These reports will become an integral element in the recertification process.

Attachment A:	Form SPE-PC	Subcontractor's Performance Evaluation Project Completion
Attachment B:	Form SPE-AR	Subcontractor's Performance Evaluation Annual Report
Attachment C:	Form RUSP	Report of Unsatisfactory Subcontractor Performance/Progress
Attachment D:	Form MBER	Minority Business Evaluation for Recertification.

(**Note** The above forms are cited for illustration purposes only. If furnished, the content and format are subject to revision/modification and are not to be considered as official .)

COMPLIANCE - - Means that a recipient has correctly implemented the requirements of the subject part(s).

CONTRACT - - Means a legally binding relationship obligating a seller or provider of goods and services (including, but not limited to, construction and professional services) and the buyer to pay for them.

CONTRACT COMPLIANCE OFFICER -- The official who is responsible for monitoring contracts for compliance with Federal DBE regulations regarding nondiscrimination in RTA's DBE Program.

CONTRACTOR/SUBCONTRACTOR-- One who participates through a prime contract, second tier subcontract, or lease agreement, in any matter covered by this Program. For the purposes of the DBE Program, a consultant will be defined as a contractor/subcontractor.

CONTROL -- The power of the business owner(s) to direct the management and operation of a business enterprise. (See Operational Control and Managerial Control.)

CORPORATION -- An artificial person or legal entity created by or under the authority of the laws of any state of the United States, the District of Columbia or a territory or commonwealth of the United States and formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation and other forms of commercial or industrial activity where the purpose of the organization is profit. For eligibility for certification, disadvantaged and/or minority individuals must own at least 51 percent of the voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued by the corporation. (Note: stock held in trust is not considered as stock held by the disadvantaged business persons when computing the business person(s) ownership.)

DAY -- Any day except Saturdays, Sundays, and legal State holidays.

DECERTIFICATION -- Specific administrative steps taken to remove the certification from a business which had been previously certified by the certifying agency.

DEPARTMENT -- The Massachusetts Department of Transportation.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) --

(Reference 49 CFR, Part 26, Subpart A) a small business concern:

- (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Where stock ownership is involved, the disadvantaged owner(s) must own at least 51% of each class of voting stock and at least 51% of the aggregate of all classes of stock that have been issued (also applies to publicly owned businesses); and

- (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who have ownership.

B. A 'Disadvantaged Business Enterprise' shall be defined as a minority business certified by the State Office of Minority and Women Business Assistance (SOMWBA) or another state Agency. A "Woman Business Enterprise" (WBE) shall be a business certified as such by SDO or another state agency.

DISABLED -- A condition describing a person who has a physical or mental impairment that substantially limits one or more major life activity. This may include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing or learning. The disability is of a nature that it permanently limits a person (or his/her firm) from obtaining contracts. A person with disabilities must be able to demonstrate that: (1) he/she has a history or the disability; (2) he/she is generally regarded as having such disability; and (3) the disability has substantially limited his/her ability to engage in competitive business.

DBE DIRECTORY -- A compilation of businesses certified by the state certification agency as a disadvantaged or minority business or a socially and economically disadvantaged business. The directory shall be published annually with quarterly supplements.

DBE PROGRAM -- A program developed by the RTA to implement the requirements of 49 CFR, Part 26, for all FTA Financial Assistance Programs.

DBE PARTICIPATION PACKET -- The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions.

EXECUTIVE DIRECTOR -- The individual designated by the Secretary of the Executive Office of Administration and Finance as being responsible for the direction and management of the State Diversity Office. The position includes responsibility for the establishment of DBE policy and certification procedures affecting all executive offices, agencies, departments, boards and commissions of the Commonwealth.

EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE (EOAF) - - The office designated by the Governor of the Commonwealth of Massachusetts as having responsibility for carrying out the Affirmative Market Program of the Commonwealth.

EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION - - The office of the Commonwealth with responsibility for public transportation policy development and program implementation.

FEDERAL-AID CONTRACT -- Any contract awarded to any contractor by the RTA, whose funds are derived in whole or in part from the U.S. DOT. This also includes consultant agreements, modification of contracts, and leases.

FEE -- A fee is money charged for providing a commercially useful and bona fide' service.

A recipient or contractor may count towards its DBE goals the following expenditures to DBE firms that are not manufacturers or regular dealers:

- A. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- B. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- C. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

GOAL, CONTRACT -- Overall program goals must be submitted to U.S. DOT for approval annually, however, "contract goals need not be submitted to the U.S. DOT for approval, but the Program shall contain a description of the methodology to be used in establishing them." 49 CFR Part 26.45 (Subpart C).

The overall RTA DBE program goal is set annually. A contract goal may be higher or lower than overall goals. When establishing contract goals, the following will be used as goal determining factors:

- A. Items of work which feasibly and reasonably can be sublet;
- B. Availability of certified businesses within a reasonable geographical area in which the contract is to be performed; and
- C. Contracts which hold the greatest business potential for the minority business enterprise community.

GOOD FAITH EFFORT (GFE) -- Documented efforts on the part of a bidder which were intensive, aggressive and of a sincere nature for a specific project far beyond a simple paperwork exercise.

GROSS RECEIPTS -- Same as Annual Receipts.

JOINT VENTURE -- A joint venture is a limited legal entity engaged in the joint pursuit of a particular transaction for mutual profit. Joint ventures require special analysis to determine what percentage of the dollar value of the prime contract should be credited toward a contract DBE

goal.

Because a joint venture consists of enterprises temporarily brought together, a joint venture itself can never be certified. This is true even though most or all of its component elements are certified DBE businesses. A joint venture, therefore, is an association of two or more businesses (sole proprietorships, partnerships, corporations, or any combination thereof) formed to carry on a single business activity which is limited in scope and duration. A joint venture is an association which is intended to exist only for a single business endeavor.

Ordinarily the amount of money invested in a joint venture reflects the percentage of participation by the parties of a joint venture. Only the money paid to a certified DBE in a joint venture may be credited by a prime contractor toward reaching a DBE goal unless the non-minority prime contractor has certified DBE as subcontractors, which may also be counted.

A joint venture agreement must reveal the scope of the DBE's managerial and financial responsibilities. A joint venture cannot serve as a conduit to meet the DBE contract goal in a situation in which the DBEs are not given the opportunity to make and exercise independent judgments as a viable joint venture. The Massachusetts Executive Office of Administration and Finance Joint Venture Disclosure Affidavit is required for contract administration for joint ventures for RTAs.

LIMITED LIABILITY COMPANY -- A permitted form of unincorporated business organization having two (2) or more members which is organized and existing under certain federal and state laws and annotated codes.

LESSEE -- A business or a person who leases, or is negotiating to lease property from the RTA or the U.S. DOT in an RTA or U.S. DOT facility for the purpose of operating a transportation-related activity or for the provision of goods or services to a facility or to the public in a facility.

MANAGERIAL CONTROL -- Control in this instance means that a disadvantaged or minority owner(s) has the demonstrable ability to make independent and unilateral business decisions needed to guide the future and destiny of a business.

Control may be demonstrated in many ways. For a minority owner to demonstrate control, the following examples are put forth, but are not intended to be all inclusive:

- A. Articles of Incorporation, Corporate Bylaws, Partnership Agreements and other agreements shall be free of restrictive language which would dilute the minority owner's control thereby preventing the minority owner from making those decisions which affect the destiny of a business;
- B. The minority owner shall be able to show clearly through production of documents the areas of the disadvantaged business owner's control, such as, but not limited to:
 - 1. Authority to sign payroll checks and letters of credit;

2. Authority to negotiate and sign for insurance and/or bonds;
 3. Authority to negotiate for banking services, such as establishing lines of credit;
 4. Authority to negotiate and sign for contracts.
- C. Agreements for support services that do not lessen the minority owner's control of the company are permitted as long as the disadvantaged or minority business owner's authority to manage the company is not restricted or impaired.

MANUFACTURER REPRESENTATIVE - - A business that transfers title of a product from a manufacturer to an ultimate purchaser (e.g., a sales representative who invoices a steel product from the steel company to the contractors). Such a business would not be considered a "Regular Dealer." The contractor could not receive credit based on a percentage of the cost of the product for working with such firms. Only the fee received by the manufacturer's representative can be counted towards a DBE goal. For example: use of a disadvantaged or minority sales representative or distributor for a steel company, assuming it is performing a commercially useful function, would entitle the contractor receiving the steel to count only the fee paid to the representative or distributor towards its goal. No portion of the price of the steel could count towards the goal. Basically, manufacturer's representatives and brokers are treated alike and only their fees for services can be counted.

MANUFACTURER -- A firm that produces a product from raw materials or substantially after a previously manufactured product by operating or maintains a factory or establishment that produces on the premises.

MINORITY OR MINORITY PERSON - -

For Federal-Aid Contracts Under 49 CFR, Part 26, Subpart D (FHWA and FTA) - Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black/African Americans, Hispanic Americans, Native Americans, Asian-Indian Americans, Asian Pacific Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. SOMWBA shall make a rebuttable presumption that individuals in the groups listed below are socially and economically disadvantaged. SOMWBA shall also determine and identify, on a case-by case basis, those individuals who are not members of the following groups, but who are socially and economically disadvantaged:

African Americans/Black Americans -- Persons having origins in any of the Black racial groups of Africa, and who are regarded as such by the community of which the persons claim to be a part;

Hispanic Americans .- Persons of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese, or other Spanish culture or origin, regardless of race, and who are regarded as such by the community of which the persons claim to be a part;

Native Americans -- American Indians, Eskimos, Aluets, or Native Hawaiians, and who are regarded as such by the community of which the persons claim to be a part;

Asian-Pacific Americans -- Persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, or the Northern Marianas, and who are regarded as such by the community of which the persons claim to be a part; and

Asian-Indian Americans -- Persons whose origins are from India, Pakistan, or Bangladesh, and who are regarded as such by the community of which the persons claim to be a part.

Women -- Women shall include all women, regardless of race or ethnicity.

NONCOMPLIANCE - - Means that a recipient has not correctly implemented the requirements of the part(s) of the subject guidance.

OPERATIONAL CONTROL - - The disadvantaged or minority owner (s) must possess knowledge necessary to evaluate technical aspects of the business entity. The primary consideration in determining operational control and the extent to which the disadvantaged or minority owner (s) actually operates a business will rest upon the specialties of the industry of which the business is a part. The minority owner should have a working knowledge of the technical requirements needed to operate in his/her industry. Specifically, in the construction industry and especially among small (one to five person firms) contractors, it is reasonable to expect the disadvantaged or minority owner(s) to be knowledgeable of all aspects of the business. Accordingly, in order to clarify the level of operational involvement which a minority owner must have in a business for it to be considered eligible, the following examples are put forth, but are not intended to be all inclusive:

- A. The minority owner should have experience in the industry for which certification is being sought;
- B. The minority owner should demonstrate that basic decisions pertaining to the daily operations of the business are independently made. This does not necessarily preclude the disadvantaged or minority owner(s) from seeking paid or unpaid advice and assistance. It does mean that the minority owner currently must possess the knowledge to weigh all advice given and to make an independent determination.

OPERATIONS HELP - - The RTA will attempt to arrange support for certified DBEs in need of advice and/or business practices technical assistance. Efforts will be made through the auspices of the State Diversity Office (SDO) to secure the services of a business consultant who may respond to the needs of the DBE.

Examples of the types of assistance that may be provided includes, but is not limited to, the following topic areas:

- a. Office practices and procedures
- b. Maintaining records
- c. Bidding techniques

- d. Estimating techniques
- e. Work scheduling
- f. Any technical problem
- g. Practical ways of getting a job done
- h. Bonding
- i. Insurance

OWNERSHIP - -

1. The minority owners of the firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the owner (s). There shall be no restrictions through, for example, charter requirements, by-law provisions, partnership agreements, franchise or distributor agreements, or any other agreements that prevent the minority owner(s), without the cooperation or vote of any non-minority, from making a business decision of the firm.
1. This means that the disadvantaged or minority persons, in order to acquire their ownership interests in the firm, have made real and substantial contributions of capital, expertise, or other tangible personal assets derived from independently-owned holdings without benefit of a transfer of assets, gift or inheritance from non-minority persons. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not minority persons, or the mere participation as an employee rather than as a manager. If the ownership interest held by a disadvantaged or minority person is subject to formal or informal restrictions, such as options, security interests, agreements, etc., held by a non-minority person, or business entity, the options, security interests, agreements, etc., held by the non-minority person or business entity must not significantly impair the disadvantaged or minority person's ownership interest.

PARTNERSHIP -- An unincorporated association of two or more persons to carry on as co-owners a business for profit. For partnership to be deemed eligible for certification under the DBE Program, the disadvantaged or minority person's interest must be at least 51 percent of the partnership capital.

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 four digit Standard Industrial Classification (SIC) Code designation which best describes the primary business of a firm. The Sic code designations are described in the Standard Industrial Classification manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICs Manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes material

and information available through its web site (WWW.ntis.gov/naics).

PRIMARY RECIPIENT -- Means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

PROGRAM ABUSE -- Any violation of the provisions of the DBE Program.

PROJECT MANAGER -- The RTA employee who is responsible for daily surveillance of RTA projects and maintains any daily reports or construction logs to assure compliance with the specifications of the contract. It is also the Project Manager's responsibility to keep records of the DBE activity at the project or work site and to share this information with the DBE Liaison and Department representative in the performance of DBE compliance renewals.

REDUCED CANDIDATES LIST -- A list of businesses established by the RTAs screening or selection committee through the review and evaluation of candidate businesses pursuant to federal contractor selection guidelines, from which technical and price proposals are requested.

REGULAR DEALER -- A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A Regular Dealer in such bulk items as steel, cement, gravel, stone, and petroleum need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

A Regular Dealer must be engaged in selling the product in question to the public. This is important in distinguishing a Regular Dealer, which has a regular trade with a variety of customers, from a firm which performs supply-like functions on an ad hoc basis or for only one or two contractors with whom it has a special relationship.

A business that simply transfers title of a product from manufacturer to ultimate purchaser (e.g. broker or sales representative who re-invoices a steel product from the steel company to the recipient or contractor) or a firm that puts a product in a container for delivery would not be considered a Regular Dealer. The Prime contractor may compute 60% of the purchase of supplies from regular dealers toward the contract goal. Supplies may not exceed 60% of the entire contract goal. One hundred per cent of supplies can be counted if provided by a disadvantaged or minority manufacturer.

A supplier of bulk goods may qualify as a regular dealer if it either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (e.g. a fleet of trucks), the term "operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its entire business. It is not intended to cover a situation in which the firm simply provides drivers for trucks owned or leased by another party, (e.g., a prime contractor) or leases such a party's trucks on an ad hoc basis for a specific job.

SECRETARY -- The Commonwealth of Massachusetts Secretary of Transportation, or his

designated representative.

SIZE ELIGIBILITY PROVISIONS AND STANDARDS - - For the purpose of determining size eligibility of a business concern to participate as a DBE for Federally Aided projects the Massachusetts Department of Transportation is incorporating into this plan by reference 13 CFR, Part 121 Subpart A Size Eligibility provisions and standards.

SMALL BUSINESS CONCERN -- For a federally aided project, a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The criteria shall follow those published and promulgated by the U.S. Small Business Administration. standards for small business size are incorporated in this manual by reference.

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL PURSUANT TO 49 CFR, PART 26.67 (SUBPART D) -- Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans/African Americans, Hispanic Americans, Native Americans, Asian-Indian Americans, Asian-Pacific Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. The RTA shall make a rebuttable presumption that individuals in the groups listed below are socially and economically disadvantaged and may also determine and identify, on a case-by-case basis, those individuals who are not members of the following groups but who are socially and economically disadvantaged:

1. African Americans/Black Americans -- Persons having origins in any of the Black racial groups of Africa, and who are regarded as such by the community of which the persons claim to be a part;
2. Hispanic Americans -- Persons of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese, or other Spanish culture or origin, regardless of race, and who are regarded as such by the community of which the persons claim to be a part;
3. Native Americans -- American Indians, Eskimos, Aluets, or Native Hawaiians, and who are regarded as such by the community of which the persons claim to be a part;
4. Asian-Pacific Americans -- Persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, or the Northern Marianas, and who are regarded as such by the community of which the persons claim to be a part; and
2. Asian-Indian Americans -- Persons whose origins are from India, Pakistan, or Bangladesh, and who are regarded as such by the community of which the persons claim to be a part.
5. Women - Women shall include all women, regardless of race or ethnicity.

SOCIALLY AND ECONOMICALLY DISADVANTAGED STATUS - - For the determination of socially and economically disadvantaged status for certification under Federal guidelines of eligibility, the following process shall be observed, with the understanding that the burden of proof is placed on the applicant.

The social disadvantaged status must be established first. This is accomplished by demonstrating with documentation, discrimination in a number of ways, as discussed below, but should not be limited to:

1. Education
 1. Access to a publicly available educational system or acceptable standards.
 2. Education in a non-discriminatory setting.
2. Work Environment
 1. Access to employment and employment training.
 2. Non-discriminating employment environment and employment training environment.
 3. Access to licenses and registrations necessary to, or supportive of, conducting work.
 4. Access to unions and union programs and activities which are applicable.
3. Living Environment
 1. Access to housing.
 2. Access to social institutions such as transportation, shopping facilities, places of worship and medical care.

Once the social disadvantage is established, economic disadvantaged status must be demonstrated and documented. This shall include but not be limited to:

- 1 Access to financial resources including credit and financing.
2. Access to bonding.
3. Access to business opportunities and contracting including appropriate business organizations.

Data to be considered may include tax records, financial statements, business or contracting opportunities compared to non-disadvantaged firms in the same line of work (i.e. competitiveness) credit availability and bonding availability.

The above socially and economically disadvantaged criteria are not applicable to those groups under Federal certification criteria, which are presumed to be socially and economically disadvantaged. Evidence needs to be evaluated with specific instances of discrimination related to the disadvantaged status of the owner. The evidence must demonstrate that the discrimination

impeded or negatively affected the individual's entry and/or advancement in the business world. In all instances, the totality of circumstances should be considered in arriving at a final decision of social disadvantage status. In the separate test of economic disadvantage the determination should reflect that the applicant firm and its owner are in a more difficult economic situation than most firms (including established firms) and owners who are not socially disadvantaged.

Evidence submitted must clearly demonstrate that the economic disadvantage stems from the social disadvantage. The social and economic disadvantage based on a handicap or disability which the individual has personally suffered must be shown to be chronic, longstanding and substantial. This must be done on a stringent case by case review.

Once an individual is determined to be a member of one of the specified disadvantaged classifications, after certain tests for membership are applied, that individual's status as socially and economically disadvantaged is established as a fact until the presumption is effectively rebutted. Because of the presumption, the individual applying for certification cannot be required to prove his/her disadvantaged status unless reasonable evidence to rebut the presumption is otherwise available to the certifying agency.

SOLE PROPRIETORSHIP -- A for profit business owned and operated by a disadvantaged or minority person in his or her individual capacity. For a sole proprietorship to be deemed eligible for certification under the DBE Program, the disadvantaged or minority person must be the sole proprietor.

SUBCONTRACTOR -- One who has contracted with a prime contractor for the performance of all or part of the work or services which the prime contractor has contracted to perform.

SUPPLIER -- A regular dealer, who owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are placed, kept in stock, and regularly sold to the public in the usual course of business. The supplier must perform a commercially useful function consistent with normal industry practices. To be a Regular Dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A supplier of bulk goods (e.g. steel, cement, gravel, stone, and petroleum products) may qualify as a Regular Dealer if it either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (e.g. a fleet of trucks), the term "operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its entire business. It is not intended to cover a situation in which the firm simply provides drivers for trucks owned or leased by another party (e.g., a prime contractor) or leases such a party's trucks on an ad hoc basis for a specific job.

TECHNICAL ASSISTANT -- RTA, Agency or SDO employees who are qualified in the construction field or in a field in which a disadvantaged or minority owner(s) is seeking certification, who may assist the DBE Analyst to determine the level of competence in those areas of skill, service or product within which the applicant(s) is seeking DBE Certification, recertification or a work area within which a certified business is performing.

THIRD TIER CONTRACTING -- The process in which a prime contractor subcontracts a portion of an original contract to a subcontractor who in turn subcontracts a portion of a

subcontract to a third party. This latter action is termed entering into a third tier contract. The RTA realizes that third tier contracting is not the usual way for a prime contractor to achieve a DBE goal. However, the Department also realizes that there may be rare occasions when third tier contracting would be acceptable. Two conditions must be met before the RTA may approve a third tier contracting arrangement which may be entered into to meet a DBE goal:

1. The RTA must be satisfied that there is no way except by third tier contracting that a DBE goal can be achieved;
2. The prime contractor must request of the RTA, in writing, prior to the awarding of a contract, that approval be granted for each third tier contract arrangement. The request must contain the specifics as to why a third tier contracting arrangement is being requested.

Any RTA approved third tier contract will be documented in writing, setting forth the parameters of the third tier contract. Third Tier Contracting is to be considered the exception and not the rule. If the third tier results from a DBE subcontracting to a non-DBE third tier contractor, this participation shall not be counted as DBE participation towards goal attainment.

TIME -- In computing any period of time prescribed by the DBE Program or by the Chair/MBEAC, the day on which the act or event begins is not computed, but the last day of the period is computed. Saturdays, Sundays, and state and federal holidays are not computed.

U.S. DOT -- U.S. Department of Transportation.

Exhibit 1
Organizational Chart

**Nantucket Regional Transit Authority
Organization Chart--2015**

NRTA Advisory Board
Rick Atherton, Chairman
Bob DeCosta, Vice Chairman
Bruce Miller
Matt Fee
Tobias Glidden
Karenlynn Williams

Paula Leary
Administrator

Paula Leary
DBE Liaison Officer

Lois Craine*
VTA Assistant Administrator
Reconsideration Official

*for the purpose of the NRTA's DBE Program only.

Attachment A – Goal Setting Methodology

I. Introduction

Provisions of 49 CFR Part 26.45 outline a DBE goal setting methodology that involves a two-step process. The process consists of: a) establishment of base figure for determining the relative availability of qualified DBEs and b) making adjustments, if any, in the DBE base figure to account for demonstrable evidence of underutilization or overutilization. This section of the DBE program Plan describes the procedures the NRTA followed in establishing the over DBE goal in FY2012.

II. Definition of Terms

To facilitate the clear understanding of the methodology adopted by the NRTA in establishing the overall DBE goal, the following terms are accordingly defined.

DBE – A business that meets the size, ownership, control and definitional requirements of 49 CFR Part 26.5.

READY, WILLING AND ABLE BUSINESSES/ENTERPRISES – Comprises the current universe of SDO certified businesses that perform work, are interested in, and capable of performing such work on NRTA DOT-assisted contracts.

RELEVANT MARKET AREA – The jurisdiction or geographic area in which:

- 1) 85% or more of the listed vendors are located; or
- 2) 85% or more of the awardees are located, or
- 3) 85% or more of the bidders are located.

III. Listing of Available Relevant Evidence

In developing this report, a wide range of reports, studies, procurement records, directories, business firm data, inventories and other reference materials were examined for pertinent statistics, data collection and information verification purposes. Some of the documents and other reference sources used are herewith cited:

1. NRTA contractors, subcontractors and bidders lists, and procurement records,
2. Massachusetts Supplier Diversity Office (SDO) DBE Directory.
3. Commonwealth of Massachusetts, *Executive Office of Transportation and Construction Disparity Study*, March 1994
4. The Sable Group, Inc. *Massachusetts Regional Transit Authority's Minority/Women Owned/Disadvantaged Business Enterprise Disparity Study*, Weston, CT, 1998
5. U.S. Bureau of the Census. 1997. *County Business Patterns: Massachusetts*,

- Washington, D.C.: US Government Planning office
6. U. S. Department of Labor. Standard Industrial Classification (SIC) Codes
 7. Nantucket Island Chamber of Commerce
 8. Nantucket Planning and Economic Development Commission

PROTEST PROCEDURES

- A. Protests will only be accepted by NRTA from prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or refusal to award a contract. NRTA will consider all such protests, whether submitted before or after the award of the contract. All protests must be in writing and conform to the following requirements:
1. Be concise and legally arranged.
 2. Provide name, address and telephone number of protestor.
 3. Identification of the solicitation or contract number.
 4. Provide a clear and detailed statement of the legal and factual grounds of the Protest including copies of all relevant documents.
 5. A statement as to what relief is requested.
- B. A protest before the Bid/RFP opening addressing the adequacy of the Invitation to Bid, RFP's including the pre-award procedure, the Instruction to Bidders, general terms and conditions, specifications and scope of work must be filed with NRTA not less than seven (7) full working days before bid opening. Thereafter, all issues and appeals are deemed waived by all interested parties. Upon receipt of the written protest NRTA will determine if the bid opening should be postponed. If the bid opening is postponed, NRTA will immediately contact prime contractors and subcontractors who have been furnished a copy of the specifications that a protest has been filed and the bid opening is postponed until a final decision is issued. Any appropriate addenda will be issued regarding a rescheduling of the bid opening. Any protest may be withdrawn at any time before NRTA has issued its decision.
- C. A protest of a decision of NRTA to award a contract to a prime contractor or a subcontractor must be received by NRTA within ten (10) full working days of its decision. This protest shall conform to the requirements of letter A above. Thereafter, such issues are deemed waived by all interested parties.

When a written protest against making of an award is received the award shall not be made until five (5) days after the matter is resolved. NRTA may, however, proceed to make an award if it determined that:

1. The items to be produced are urgently requested or;
2. Delivery or performance will be unduly delayed by failure to make the award promptly or;
3. Failure to make a prompt award may otherwise cause harm to NRTA, the Commonwealth of Massachusetts, or the Federal Government.

Complete Protest Procedures may be obtained from NRTA, 3 East Chestnut Street, Nantucket, MA 02554; 508-325-9571; nrtan@nantucket-ma.gov