

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
(49 CFR PART 26)  
FOR FREDERICKSBURG REGIONAL TRANSIT**

**POLICY STATEMENT**

**Section 26.1, 26.23**

**Objectives/Policy Statement**

FREDericksburg Regional Transit (FRED), a department of the City of Fredericksburg has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. FRED has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, FRED has signed an assurance that it will comply with 49 CFR Part 26.

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

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

Sharon L. Sullivan, Administrative Assistant to the Director of Public Transit, serves as the DBE Liaison Officer. In that capacity, she is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by FRED in its financial assistance agreements with the Department of Transportation.

FRED has disseminated this policy statement to the City Council of the City of Fredericksburg, the Public Transit Advisory Board and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. To reach these parties, FRED has posted its policy and a link to the entire program on its website ([rideFRED.com](http://rideFRED.com)), on the City's website, and in the region's general circulation newspaper ([The Free Lance-Star](#)).

\_\_\_\_\_  
Timothy J. Barody, City Manager

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

FRED is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

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

### **Section 26.7 Non-discrimination Requirements**

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

In administering its DBE program, FRED will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11(b)

FRED will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### Bidders List: 26.11(c)

FRED will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information by including a contract clause requiring prime bidders to report the names/addresses and other information of all firms who quote to them on subcontracts; a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.

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

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

#### Assurance: 26.13(a)

FRED 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. FRED 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 FRED of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 26.13b

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

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

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsive.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since FRED has received and expects to continue to receive grants of \$250,000 or more in FTA planning capital, and or operating assistance in current and upcoming federal fiscal years, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

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

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

We have designated the following individual as our DBE Liaison Officer:

Sharon L. Sullivan, Administrative Assistant to the Director of Public Transit,  
FREDericksburg Regional Transit, 1400 Jefferson Davis Highway,  
Fredericksburg, VA 22401; Telephone: 540.372.1222 x705; email:  
slsullivan@fredericksburgva.gov.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that FRED complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager of the City of Fredericksburg concerning DBE program

matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has the ability to call on other members of the FRED management and administrative team to assist in the administration of the program. The duties and responsibilities include the following:

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

Those assisting the DBELO in her duties will include:

Rodney White, Assistant Director, FREDericksburg Regional Transit  
 Craig Reed, Manager for Policy, FREDericksburg Regional Transit  
 Jonathan Irwin, Planner, FREDericksburg Regional Transit

These individuals will assist the DBELO in researching available DBE companies in the area, outreach to those companies, gathering and entering data, completing required forms, and preparing and monitoring procurement contracts.

#### **Section 26.27 DBE Financial Institutions**

It is the policy of FRED to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have searched the VDOT DBE directory for qualified companies offering financial and related services. That search found no DBE-certified financial services companies operating in the Fredericksburg region (defined as the City of Fredericksburg and the counties of Stafford, Spotsylvania, Caroline and King George).

#### **Section 26.29 Prompt Payment Mechanisms**

1. FRED will include the following clauses in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt

of each payment the prime contract receives from FRED. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by FRED. This clause applies to both DBE and non-DBE subcontracts.

Failure of the prime contractor to meet the prompt payment conditions described above shall result in a 10 percent penalty being assessed during the first 15 days during which a payment is late and a twenty percent penalty being assessed during the next 15 days during which a payment is late, such amount being paid to the affected subcontractor.

Any delay or postponement of payment between the prime contractor and subcontractors may take place only for good cause, and only with the prior written approval by FRED.

### **Section 26.31 Directory**

FRED uses a directory developed and maintained by the Virginia Department of Transportation (VDOT) to identify all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory available on line on the VDOT website at [http://www.dmb.e.virginia.gov/swam\\_reports/dbe\\_listing.htm.gz](http://www.dmb.e.virginia.gov/swam_reports/dbe_listing.htm.gz).

### **Section 26.33 Overconcentration**

FRED will periodically assess whether there is an overconcentration in the types of work that DBEs perform. FRED will coordinate this assessment with the Virginia Department of Transportation and Department of Rail and Public Transportation.

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

As a small transit agency, FRED has not established a business development program.

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

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by requiring prime contractors to report on actual work assigned to DBEs and through periodic site visits.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

In implementing this element of 49 CFR 26, FRED will use the definition of small business as a defined in 13 CFR 121 Small Business Size Regulations, except that such concerns do not also exceed the cap on the three-year average annual gross receipts specified in 49 CFR 26.65(b), currently set at \$22.41 million.

As appropriate to each contracting opportunity, FRED will employ but not limit itself to the following strategies for facilitating the participation of small business concerns in its contracts:

1. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts;
2. Making a reasonable number of prime contracts of a size that small businesses, including DBEs, can reasonably perform; and
3. Unbundling larger contracts into smaller contracts that small businesses, including DBEs, can reasonably perform.

Businesses seeking to participate in FRED contracts that may involve set-asides or other strategies designed to facilitate the participation of small businesses, will be required to verify their eligibility by submitting to FRED such documentation as may be required. That documentation will include but not be limited to:

1. Business name and mailing and physical address(es)
2. Federal Tax ID number
3. Contact information
4. Types of services and/or products provided
5. Geographic market area served
6. Gross receipts for the most recent past three fiscal years (from audits or tax forms).

To meet this requirement, firms may submit to FRED the forms used when applying for certification as a small business under the Small, Women and Minority-Owned Program administered by the Virginia Department of Minority Business Enterprise. Failure of a business to meet the definition of a small business concern as defined in this program or failure to submit the required documentation will disqualify the affected business from benefiting from FRED strategies designed to facilitate the participation of small businesses in FRED contracts.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

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

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

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this program. This section of the program will be updated annually whenever FRED expects to meet the threshold of \$250,000 in contracting opportunities.

In accordance with Section 26.45(f) FRED will submit its overall goal to the FTA on August 1 of each year. Before establishing the overall goal each year, FRED will consult with the Fredericksburg Regional Alliance, community chambers of commerce, the Public Transit Advisory Board, local governments and institutions, and other interested groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and FRED efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Lawrence A. Davies Transportation Center (referred to as FRED Central) for 30 days following the date of the notice and on-line as well at [www.rideFRED.com](http://www.rideFRED.com). FRED and the FTA will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

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

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

FRED will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, FRED 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 transit vehicle manufacturer complying with this element of the program.

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

FRED's DBE Program is designed to be race-neutral and its overall DBE participation goal is similarly race-neutral. If an annual review of FRED's record of DBE participation in its contracts indicates a need to consider race-conscious goals, FRED will amend this section accordingly.

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

FRED will use contract goals to meet any portion of the overall goal FRED does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

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

#### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts with respect to DBE participation. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive:

Wendy I. Kimball, Director of Public Transit  
Rodney J. White, Assistant Director of Public Transit  
Sharon L. Sullivan, DBELO.

We will ensure that all information is complete and accurate and adequately documents the bidder/offerer's good faith efforts before we commit to the performance of the contract by the bidder/offerer.

Information to be submitted (26.53(b))

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

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

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

Administrative reconsideration (26.53(d))

Within 15 days of being informed by FRED that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Mark Whitley, Assistant City Manager, City of Fredericksburg, 715 Princess Anne Street, Fredericksburg, VA 22401, 540.372.1010, [mwhitley@fredericksburgva.gov](mailto:mwhitley@fredericksburgva.gov). The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

FRED will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.



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

When FRED specifies a contract goal versus a general goal, we will insert into affected contracts language similar to that set out below:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the FRED to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of X percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

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

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

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

FRED will rely on the list of DBE-certified companies maintained by the Virginia Department of Transportation to determine those firms eligible to participate as DBEs. Firms desiring to establish DBE certification can do so by completing forms that can be found on the VDOT DBE website (<http://www.dmb.e.virginia.gov/dbecert.html>).

## **SUBPART E – CERTIFICATION PROCEDURES**

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

FRED is a member of a Unified Certification Program (UCP) administered by the Virginia Department of Transportation. The VDOT UPC meets all of the requirements of this section.

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

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

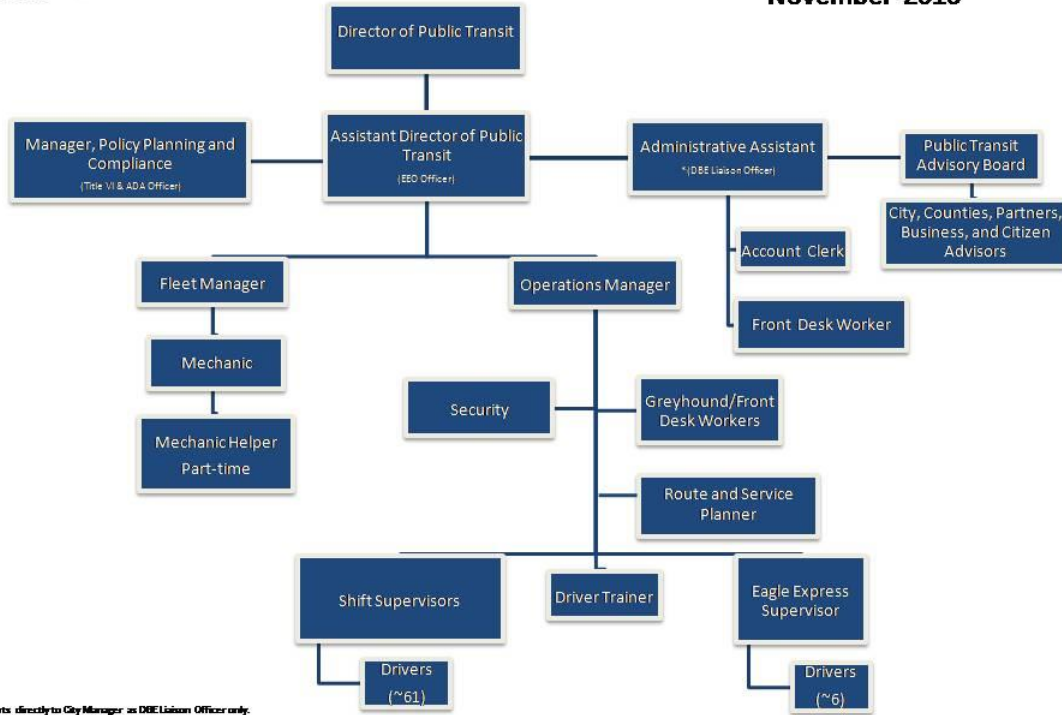
We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The City of



### Attachment 1 FRED Organization Chart



### Organization Chart November 2016



**Attachment 2**

**VDOT DBE Directory**

The complete list of DBE-certified firms registered with the Virginia Department of Transportation can be viewed on-line at [http://www.dmbv.virginia.gov/swam\\_reports/dbe\\_listing.htm.gz](http://www.dmbv.virginia.gov/swam_reports/dbe_listing.htm.gz).

**Attachment 3****Monitoring and Enforcement Mechanisms**

FRED will monitor and enforce the DBE requirements through the terms of any and all contracts subject to the requirements.

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

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

## Attachment 4

### Section 26.45: Overall Goal Calculation

#### Amount of Goal

1. FRED's overall goal for FY 2012 is 5% of the Federal Financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds used to purchase transit vehicles.

#### Methodology used to Calculate Overall Goal

##### **SUMMARY**

Fredericksburg Regional Transit (FRED) has established an overall goal for Disadvantaged Business Enterprise (DBE) participation in the agency's federally funded contracts in accordance with regulations of the United States Department of Transportation (DOT), 49 CFR Part 26. This regulation requires recipients of Federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to set a participation goal the recipient would expect DBEs to achieve in the absence of discrimination. FRED expects to spend more than the DBE goal-triggering threshold amount of \$250,000 in FY2012 in connection with the design and construction (adaptive re-use) of a fleet maintenance and training facility.

##### **PROPOSED GOAL FOR FY 2012 AND FY 2013**

FRED has established an overall goal of **five (5) percent** DBE participation for FY 2012 on U.S. Department of Transportation (DOT)-assisted contracts.

##### **METHODOLOGY**

Census data for all industries in the Fredericksburg local market area (portions of Northern and Central Virginia) and a list of DBE-certified businesses maintained by the Virginia Department of Transportation (VDOT) were used to establish FRED's DBE participation goal. The data used related specifically to the provision of architectural and engineering services and non-residential construction services, since the principal project being undertaken in FY2012 is the design and construction of a maintenance and training facility. In FRED's judgment, these types of services are the ones most likely to be used over the course of the two years as FRED works on the maintenance and training facility. The North American Industry Classification System (NAICS) Codes used in FRED's analysis include:

<u>NAICS Code</u>	<u>Description</u>
2362	Construction of non-residential buildings
5413	Architectural and engineering services

#### Local Market Area

The Local Market Area is the area where the substantial majority of the contractors and subcontractors are located and the area in which FRED spends the substantial majority of its contracting dollars. For purposes of this methodology, FRED considers the relevant market area to be the City of Fredericksburg, the City of Richmond, the City of Alexandria and the Counties of Caroline, Culpepper, Fairfax, Hanover, Henrico, King George, Orange, Prince William, Richmond, Spotsylvania and Stafford. Five of these local jurisdictions are in FRED's service area and the remaining areas either abut these jurisdictions or are nearby economic activity centers that frequently supply A&E and construction services to the Fredericksburg region.

Census Data: North American Industry Classification Systems (NAICS)

The total number of all enterprises located in FRED’s Local Market Area that would be available for USDOT–assisted projects was extracted from the NAICS database hosted by the U.S. Census Bureau. For the two NAICS codes cited above, the total available firms in each jurisdiction Local Market Area jurisdiction is shown below.

<b>Local Area Market</b>	<b>Total Number of Relevant Firms</b>
Fredericksburg City	33
Alexandria City	153
Richmond City	135
Arlington	231
Caroline	7
Culpeper	26
Fairfax	919
Hanover	79
Henrico	158
King George	22
Orange	18
Prince William	177
Richmond	2
Spotsylvania	59
Stafford	65
Grand Total	2,073

Ready, Willing and Able DBE Firms

To estimate the number of ready, willing and able DBE firms available to work in the NAICS code sectors cited above, we analyzed the Commonwealth of Virginia’s DBE vendor database. That analysis yielded 99 firms available to perform work in the two NAICS code sectors of relevance. This is a relatively expansive number in that we counted all DBE firms listed in the Commonwealth’s database and not just those located in the Local Market Area or even within the Commonwealth (more than one-half of the DBE firms on the VDOT list are located outside the Commonwealth).

Our inclusion of all relevant DBE firms in the Commonwealth’s database – regardless of where they are located -- yields, we believe, a reasonable (and somewhat generous) estimate of the total number of ready, willing and able DBE firms performing work in relevant NAICS code categories.

Determining FRED’s DBE Contracting Goal

The Regulations suggest the following formula for determining the base figure percentage of ready, willing and able DBE firms for DOT-assisted projects:

$$\frac{\text{Numerator: Ready, Willing and Able DBE Firms (by category)}}{\text{Denominator: All Ready, Willing and Able Firms (by same numerator category)}}$$

Using the values cited above, dividing 99 by 2,073 results in a prospective DBE goal for FRED of 4.7 percent. We propose to round the goal upward to five (5) percent.

**PROCESS**

FRED posts a notice of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for public inspection during normal business hours at FRED offices for public inspection for a period of 30 days and public comment for 45 days from the date the notice. FRED publishes its overall goal with the area's leading newspaper, The Free Lance-Star. The goal is also posted on FRED's website and in employee areas at headquarters.

If public comments merit reconsideration or possible modification of the goal, FRED will consider adjusting the five (5) percent goal. If no comments warranting any revision of the proposed goal are received, FRED will adopt the goal and incorporate it into all DOT-assisted contracting opportunities during FY2012.



**Attachment 5****Section 26.51: Breakout of Estimated  
Race-Neutral & Race Conscious Participation**

FRED will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation and will employ all appropriate means described in section 26.51(b) to encourage DBE participation.

We estimate that, in meeting our overall goal of 5%, we will obtain all participation employing race-neutral means.

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

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

**Attachment 6**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

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

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

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

.....

.....

.....

.....

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

**Affirmation**

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

By \_\_\_\_\_  
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

**Attachment 7****Certification Application Forms**

Firms desiring to acquire DBE certification in the Commonwealth of Virginia can apply on-line on the Virginia Department of Transportation DBE website:  
<http://www.dmb.e.virginia.gov/dbecert.html>.

**Attachment 8****Procedures for Removal of DBE's Eligibility**

Section 26.87 of 49 CFR 26 (see below) sets out the procedures by which a firm's DBE eligibility may be challenged. The Virginia Department of Transportation handles any such challenges under the Unified Certification Program. Complaints filed with FRED regarding a DBE's eligibility will be referred to VDOT for resolution under terms specified in section 26.87.

**Attachment 9****Regulations: 49 CFR Part 26**

Federal regulations setting out the Department of Transportation's DBE requirements in their entirety can be viewed on-line at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=74b932988cab9ff3f1e3084724ebe26d&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>.