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**Greater Richmond Transit Company  
DBE Program**

**Policy Statement**

**Objectives /Policy Statement (§26.1, §26.23)**

The Greater Richmond Transit Company (GRTC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. GRTC receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, GRTC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of GRTC to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also GRTC's 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; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Antionette Haynes, Procurement Specialist has been delegated as the DBE Liaison Officer. In that capacity, Antionette Haynes, Procurement Specialist, 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 GRTC in its financial assistance agreements with the Department of Transportation.

GRTC has disseminated this policy statement to the GRTC Board of Directors and all the components of its organization. GRTC has distributed this statement to DBE and non-DBE business communities that perform work for GRTC on DOT-assisted contracts via press releases to all electronic and print media and by mail to the local disadvantaged business development organizations and local disadvantaged vendors.

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Sheryl Adams

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Date

## Subpart A- General Requirements

### Applicability (§26.3)

The DBE Program shall apply to contracts awarded subject to USDOT DBE regulations 49 CFR Part 26.

### Nondiscrimination Requirements (§26.7)

GRTC 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, GRTC 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.

### Definitions of Terms (§26.5)

GRTC has adopted the definitions contained in 49 CFR Section 26.5 for this program. These definitions are as follows:

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

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

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

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

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

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

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

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

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

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

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

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

**DOT/SBA Memorandum of Understanding or MOU** refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

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

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

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

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

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

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

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

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

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

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

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

**Primary industry classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

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

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

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

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

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

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

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

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

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

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

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

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

**Black Americans**, which includes persons having origins in any of the Black racial groups of Africa;

**Hispanic Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

**Native Americans**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

**Asian-Pacific Americans**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

***Subcontinent Asian Americans*** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

**You** refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

### **Record Keeping Requirements (§26.11)**

GRTC will report DBE participation on a semi-annual basis, using the Uniform Report of Awards or Commitments and Payments (Attachment A) to the Federal Transit Administration (FTA). These reports will reflect payments actually made to DBEs on USDOT- assisted contracts.

#### Bidders List

GRTC 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 for calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

GRTC will collect this data through VDOT’s pre-qualification and certification processes in addition to requesting information from the prime contractor at time of bid.

## **Assurances (§26.13)**

### Federal Financial Assistance Agreement Assurance

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

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

### Contract Assurance

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

The contractor 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.

## Subpart B- Administrative Requirements

### DBE Program Updates (§26.21)

GRTC will continue to carry out this program until all funds from DOT financial assistance have been expended. GRTC will provide to DOT updates representing significant changes in the program.

### DBE Liaison Officer (DBELO) (§26.45)

GRTC has designated the following individual as our DBE Liaison Officer:

Antionette Haynes, Procurement Specialist  
GRTC Transit System  
301 East Belt Boulevard  
Richmond, VA 23224  
ahaynes@ridegrtc.com

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that GRTC complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer (CEO) concerning DBE program matters. Additionally, the DBELO has access to all Virginia Department Small Business and Supplier Diversity (SBSD) staff and resources affiliated with implementing all aspects of the DBE program. 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. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Ensures that third party contracts and purchase requisitions are in compliance with this program.
3. Works with all departments to set an annual overall system goal.
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 race-conscious goals) and monitors results.
6. Analyzes GRTC's progress toward goal 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. Chairs the DBE Advisory Committee.
10. Works with project directors to determine contractor compliance with good faith efforts.
11. Plans and participates in DBE training seminars.
12. Provides information on the DBE certification process and requirements and works with interested firms to facilitate their VDOT Certification.
13. Acts as liaison to the Uniform Certification Process in Virginia.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.

15. Ensures that copies of the SBSB Directory are available to GRTC staff.

### **DBE Financial Institutions (§26.27)**

It is the policy of GRTC 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 contracts to make use of these institutions.

In an effort to identify and use such institutions GRTC has researched the availability of DBE owned financial institutions at: <http://www.federalreserve.gov/releases/mob/>. GRTC will review the list every three years when setting our DBE goal to identify minority owned banks to participate in GRTC's DBE Program.

Effective March 31, 2023, there are no DBE financial institutions in the state of Virginia. institutions:

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

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

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

Additionally, GRTC will include the following information for noncompliance to the prompt payment clause:

1. If the prime contractor fails to pay the subcontractor within 10 days, the prime contractor must notify GRTC and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
2. The contractor is obligated to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after 10 days following receipt by the contractor of payment from GRTC for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision (1.) of this section. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month, except for the amounts withheld. Notification of failure by the contractor to make prompt payment to the subcontractor as hereinbefore provided will result in notification to the contractor bonding company by GRTC.

3. Should either the prime contractor or subcontractor advise GRTC of a payment issue involving a DBE contractor, the DBELO officer shall be notified so as to investigate, as appropriate.

### **Directory (§26.25)**

Per revision to the Unified Certification Program (UCP) agreement for the Commonwealth of Virginia executed in 2004, the Virginia Department of Small Business and Supplier Diversity (SBSD) will process DBE certifications. SBSBD maintains a statewide directory of DBEs. The directory is available on its website and lists the firm's name, address, telephone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is updated daily. The directory is available by contacting GRTC's DBELO or by contacting SBSBD at the following addresses:

GRTC Procurement Specialist /Antionette Haynes

DBE Liaison Officer  
301 East Belt Boulevard  
Richmond, Virginia 23224  
804-358-3871

Virginia Department of Small Business and Supplier Diversity  
101 N. 14<sup>th</sup> Street, 11<sup>th</sup> Floor  
Richmond, VA 23219  
Phone: (804) 786-6585  
<http://sbsd.virginia.gov>

### **Overconcentration (§26.33)**

GRTC has not identified an overconcentration in any type of work. GRTC will review DBE participation reports and statistical reports on an annual basis to determine if overconcentration of DBE's have become a problem. If GRTC determines that DBE firms are overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, GRTC will devise appropriate measures to address this overconcentration and obtain the approval of the USDOT administration.

### **Business Development Programs (§26.35)**

GRTC does not have a business development or mentor-protégé program. However, information regarding these programs can be obtained by contacting:

VDOT Business Opportunity and Workforce Development Center (BOWD) Center  
804-662-9555  
804-662-9570 fax  
BOWDCenter@vdot.virginia.gov

### **Monitoring and Enforcement Mechanisms (§26.37)**

1. GRTC 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. GRTC also will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
3. GRTC will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.
4. GRTC may 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 report of proposed DBE participation.

**Attachment 3** lists the regulations, provisions, and contract remedies available to GRTC in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

## **Fostering Small Business Participation (CFR §26.39):**

GRTC's policy is to promote equal opportunity and nondiscrimination in all of its procurement matters in accordance with State and federal laws. GRTC's Small Business Participation Program was created to increase opportunities for small businesses to participate in contracting and procurement at GRTC. By formalizing existing practices and implementing new procedures, the program will allow GRTC to target more effectively small business participation opportunities in GRTC contracting and procurement.

### **The goals of GRTC's Small Business Participation Program are:**

1. Identify and eliminate all obstacles to the successful participation of DBEs and other small businesses in the GRTC federal-aid program, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
2. GRTC will employ outreach mechanisms on an on-going basis to encourage the small business community to take part in GRTC contracting opportunities.
3. Develop and maintain a system for implementing, documenting, monitoring, evaluating, and reporting the program's effectiveness, its strengths and weaknesses, and other outcomes, including all performance goals and measures.

### **Strategies to promote small business participation:**

#### **I. Unbundling Contracts**

In order to foster small business participation in DOT assisted contracts, GRTC will do the following:

- On all prime contracts valued at \$50,000 or more and not having DBE contract goals, GRTC will make every effort towards unbundling the contracts to allow certified small businesses to compete for smaller, more manageable contracts. GRTC will evaluate each contract separately and decide, based on the scope of work and availability of small businesses to perform work activities, whether small business participation should be a required element of the contract.
- If small business participation is expected for a project, the Request for Proposals (RFP) will require bidders to explain how they propose to meet the small business requirement. Bidders must show a good faith effort in achieving small business involvement and include documentation of efforts if they are unable to achieve satisfactory small business participation. The RFP will clearly state that small business participation is race/gender neutral.
- GRTC will send solicitations directly to small businesses where applicable.

#### **II. Small Business Procurement Oversight**

GRTC will actively encourage and assist internal agency project managers to utilize certified DBE's and small businesses in GRTC procurement actions through the involvement of the DBE Program Coordinator. The DBE Program Coordinator is

appointed by the Chief Executive Officer and reports directly to the Chief Executive Officer on all matters pertaining to the DBE Program. The Program Coordinator is responsible for DBE and small business program coordination and enforcement and works closely with the Purchasing Department in day-to-day implementation of the program.

- All GRTC purchase orders will be reviewed by the Procurement Department and project manager to ensure that minimum acceptable specifications for those goods and/or services are met. When making purchases, the requestor who is responsible for purchase decisions shall consult the GRTC DBE Program Officer who will work with the Virginia Department of Small Business and Supplier Diversity list of DBE approved vendors. If such a vendor is identified, the potential contractor will be notified by the Officer that GRTC is considering an expenditure that the DBE firm may be in a position to satisfy. All requestors shall employ all reasonable means of identifying DBE and small business vendors. If no DBE and or small business can be found, the requestor should document the steps taken on the purchase requisition form.

### III. Outreach

- GRTC will compile an ongoing comprehensive list of DBEs and small businesses ready, willing and able to bid on our contracts. Every effort will be made to identify small businesses in the community and assist them in the DBE certification process to ensure as many as possible eligible DBEs are participating. As contracting opportunities become available GRTC will inform DBEs and small businesses and offer whatever assistance is needed including meeting with professional trade groups such as the Association of General Contractors (AGC), hosting pre-bid conferences, project scope of work pre-bid inspections and post –bid conferences.
- GRTC will implement an outreach program directed to the small business community through Public Notice in the Richmond Times Dispatch, Richmond Free Press and Business Trade Magazines along with collaboration with organizations such as the Virginia Minority Supplier Development Council, Metropolitan Business League and the Virginia Hispanic Chamber of Commerce. GRTC will host periodic pre-bid conferences, seminars, workshops and business fairs to inform and encourage participation.

### IV. Eligibility

- Small Business Firms wishing to participate in the GRTC Small Business Program may apply by submitting a notarized affidavit on a form provided by GRTC, attesting to meeting the USDOT/SBA definition of a small business. Refer to **Attachment 7** in the Appendix for the Small Business Verification Form. Upon receipt of the notarized affidavit, GRTC’s DBE Program Officer will review and verify the application for thoroughness and accuracy. Once verified, the firm will be notified and will be added to the GRTC Small Business Program Directory, and will immediately become eligible to participate in GRTC contracting and procurement opportunities. To maintain eligibility, all participants are required to provide a notarized “No Change Affidavit,” on a form provided by GRTC, attesting to the firm continuing to meet the USDOT/SBA

definition of a small business, and providing updated information on annual gross revenues and any change in ownership, legal structure, principal activity, etc.

- DBE's must provide written documentation from the Virginia Department of Small Business and Supplier Diversity that verifies their certification is current.
- Participation Criteria and SBA Size Standards: To be eligible to participate in the GRTC's Small Business Program, a firm must meet the small business definition set forth at 49 CFR Part 26.65. The USDOT definition currently limits the size standard to \$22.41 million in gross revenues, averaged over the past three years. If average gross receipts are under the SBA size standard for the primary type of work the firm performs and under \$22.41 million annually, the firm would be considered a small business, eligible to apply for participation in the GRTC's Small Business Program.

V. Timeline: GRTC proposes the following implementation timeline for the Small Business Program new initiatives in the months following final USDOT program approval. All small business initiatives will continue on an ongoing basis.

- Unbundling Contracts:

DBE coordinator will work with GRTC managers to identify ways of unbundling contracts and incorporate strategies into project development process by July 1, 2013. This effort will also involve the annual identification of projected contracts that have good potential for small business involvement. These decisions will involve all GRTC department heads. Meetings will be held in the spring with each department director before the start of the next fiscal year.

- Project Oversight:

Efforts already implemented in spring 2012.

- Outreach:

Efforts already implemented in spring 2012.

## **Subpart C- Goals, Good Faith Efforts, and Counting**

### **Quotas (§26.43)**

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

### **Overall Goals (§26.45)**

#### Amount of goal

GRTC will establish overall goals every three years as required by DBE regulations. This goal excludes FTA funds to be used for the purchase of transit vehicles.

#### Method

The following is a summary of the method GRTC used to calculate this goal:

The method used to calculate the relative availability of DBEs “base figure” for Step 1 of the process was taken from Example 4 of §26.45, which suggests the use of the overall goal set by other DOT recipients in a similar or substantially similar market. GRTC chose to use VDOT’s overall goal as the “base figure” for Step 1 of the overall goal setting process. VDOT’s overall goal was set in compliance with 49 CFR Part 26.

Step 2 of the overall goal setting process is intended to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation GRTC expects in the absence of discrimination. GRTC’s DBE participation rate over the last three (3) years is used to adjust this base figure.

In order for GRTC to adjust the base figure for differences in its local market and contracting program, GRTC averaged VDOT’s goal and GRTC’s three-year participation rate. GRTC also reduces this figure with the anticipation that some applicants will not certify under the new certification process.

### **Goal Setting and Accountability (26.47)**

If awards and commitments shown on GRTC’s Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, GRTC will analyze in detail the reason for the difference between the overall goal and the actual awards/commitments and establish specific steps and milestones to correct the problems identified in the analysis then submit the plan to FTA within 90 days of the end of the affected fiscal year.

## Process

GRTC submits its overall goal to DOT on August 1, every three years as determined by the FTA.

Before establishing the overall triennial goal, GRTC will consult with Virginia's Department of Small Business and Supplier Diversity, the Metropolitan Business League of Richmond, the Business Resource Center of the Richmond Metropolitan Chamber of Commerce, the National Disadvantaged Purchasing Council Guide, trade associations, local business development organizations, community organizations and other transit agencies to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination in opportunities for DBEs, and GRTC's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, GRTC will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice, and informing the public that GRTC and DOT will accept comments on the goals for 45 days from the date of the notice.

GRTC publishes the overall goal of the DBE program on our website and in the following newspapers:

Richmond Times-Dispatch  
333 East Grace Street  
Richmond, Virginia 23219

Richmond Free Press (Minority Owned Entity)  
422 East Franklin Street  
Richmond, Virginia 23219

Normally, GRTC will issue this notice by June 1, of a three-year period. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

GRTC will begin using its overall goal on October 1, of the triennial cycle, unless it has received other instructions from DOT.

### **Transit Vehicle Manufacturers Goals (TVM) (§26.49)**

GRTC 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, GRTC may, at its discretion and with FTA approval,

establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small businesses participation;
2. Providing technical assistance and other services.
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities.
4. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping and financial and accounting capability for DBEs and other small businesses through SBSB.
5. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
6. Ensuring distribution of GRTC's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
7. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

Over a three-year period, GRTC estimates that, in meeting its overall goal, it will obtain a percentage from race-neutral participation and a percentage through race-conscious measures.

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

The estimate for determining race-neutral and race-conscious participation was based on GRTC's past DBE participation rates where we have previously met DBE goals with the use of contract goals. In the past, approximately 50% of our DBE participation has been through race-neutral measures and 50% from race-conscious measures.

GRTC will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and 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 obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a 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.

## **Contract Goals (§26.51)**

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

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

GRTC will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

## **Good Faith Efforts (§26.53)**

### Information to be submitted

GRTC treats bidders/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/offers to submit the following information within 30 days after opening of the bids:

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 and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

### Demonstration of good faith efforts

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

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

Antionette Haynes/ Procurement Specialist  
DBE Liaison Officer  
GRTC Transit System  
301 East Belt Boulevard  
Richmond, Virginia 23224  
804-358-3871

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

#### Administrative reconsideration

Within 7 days of being informed by GRTC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the following reconsideration official:

Chief Executive Officer  
GRTC Transit System  
301 East Belt Boulevard  
Richmond, Virginia 23224  
804-358-3871

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

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

GRTC 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 and the intent practicable. GRTC 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, GRTC will require the prime contractor to obtain its 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, GRTC's

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.

### **Counting DBE Participation (§26.55)**

GRTC will count DBE participation toward overall and contract goals in accordance with 49 CFR 26.55 as noted below:

**A.** When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.

(1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.

**B.** When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.

**C.** Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable)

and paying for the material itself. To determine whether a DBE is performing a commercially useful function, GRTC will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

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

**D.** The following factors will be used by GRTC in determining whether a DBE trucking company is performing a commercial useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.

(2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers, it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(6) The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

**E.** The following factors will be used to count expenditures with DBEs for materials or supplies towards the DBE goal:

(1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.

(2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.

**F.** All DBE firms must be pre-certified. Participation by a firm that is not currently certified as a DBE by GRTC at the time of the due date for bids or offers on a contract, does not count towards the DBE goal. All DBE firms must be in compliance with 49 CFR, Part 26.

**G.** The dollar value of work performed under the contract by a firm who has been decertified as a DBE by the Department of Small Business and Supplier Diversity (SBSD) does not count towards the DBE goal.

**H.** The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

## Subparts D & E- Certification

### **Certification** (§§26.61 – 26.91)

Per revision to the Unified Certification Program (UCP) agreement for the Commonwealth of Virginia executed in 2004, the Virginia Department of Small Business and Supplier Diversity (SBSD) will process DBE certifications. SBSBD will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

### Process

SBSD's certification application form and documentation requirements are found in Appendix D to this program.

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

Procurement Specialist, Antionette Haynes  
DBE Liaison Officer  
GRTC Transit System  
301 East Belt Boulevard  
Richmond, Virginia 23224  
804-358-3871

Virginia Department of Small Business and Supplier Diversity  
101 N. 14<sup>th</sup> Street, 11<sup>th</sup> Floor  
Richmond, VA 23219  
804-786-6585

In the event SBSBD proposes to remove a DBE's certification, it will follow procedures consistent with §26.87. **Attachment 6** to this program sets forth these procedures in detail. To ensure separation of functions in a decertification, SBSBD has determined that the Commissioner's DBE Panel will serve as the decision maker in decertification proceedings. SBSBD has established an administrative "firewall" to ensure that no member of the Panel will have participated in any way in the decertification activity prior to the hearing and that no member of the EO Division will participate in the hearing decision. If SBSBD denies a firm's application or decertifies it, the firm may not reapply until twelve months have passed from the date of its action.

### **Unified Certification Program**

GRTC is a member of the Virginia Unified Certification Program (UCP), which is administered by the Virginia Department of Small Business and Supplier Diversity.

### **Certification Appeals**

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

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave. SE  
West Building, 7<sup>th</sup> Floor  
Washington, DC 20590

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

#### "Recertification's"

SBSD will review the eligibility of DBEs that GRTC certified under former part 23, to make sure that they meet the standards of Subpart D of Part 26. SBSD will complete this review no later than three years from the most recent certification date of each firm. SBSD will review all firms previously certified by GRTC by December 31, 1999.

For firms that SBSD has certified or reviewed and found eligible under Part 26, SBSD will review firms in chronological order based on the submittal of the required recertification information. These reviews will consist of the completion of SBSD's Prequalification/Certification Renewal Application.

#### "No Change" Affidavits and Notices of Change

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

SBSD also requires all owners of all DBEs who have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). A copy of the renewal application is included with the certification information, Appendix D.

SBSD requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts. SBSD will notify all currently certified DBE firms of these obligations by letter sixty days in advance of the due date of the recertification information. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

### Personal Net Worth

SBSD will require all disadvantaged owners of applicants and of currently certified DBEs whose eligibility under Part 26 it reviews, to submit a statement of personal net worth along with the SBSD Certification Application. (see Appendix D)

## **Subpart F- compliance and Enforcement**

### **Information Collection and Reporting (26.11)**

#### Confidentiality

GRTC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

#### Monitoring Payments to DBEs

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

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

GRTC 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.

#### Reporting to DOT

Per DOT's DBE Program Final Rule (June 16, 2003) GRTC will report DBE participation on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments Form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### Contract Updates

GRTC will update our A&E and Construction contracts to include new language stating that:

1. Prime contractors may not terminate DBE subcontractors from projects without "good cause" and approval from project supervisor/recipient.
2. Recipients must monitor and provide written certification for every contract/project which DBEs are participating in, ensuring the DBE(s) are in fact performing the work.