

# Valley Regional Transit Disadvantaged Business Enterprise (DBE) Program

## Federal Fiscal Years (FFYs) 2017, 2018 and 2019

### Policy Statement

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

It is the policy of VRT to ensure that DBE's as 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 FTA-assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for FTA-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 FTA assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Finance Director of Valley Regional Transit has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Finance Director is responsible for implementing all aspects of the VRT DBE Program. Implementation of the VRT DBE Program is accorded the same priority as compliance with all other legal obligations incurred by VRT in its financial assistance agreements with the Department of Transportation.

Those disadvantaged businesses interested in receiving additional information or inclusion in VRT's program, individuals, community organizations or agencies interested in giving or receiving program information are invited to contact the VRT Disadvantaged Business Enterprise Liaison Officer, Jim McMahon at the VRT Administrative Office, 700 NE 2<sup>nd</sup> St., Ste. 100, Meridian Idaho 83642.

Valley Regional Transit has disseminated this policy statement to the Valley Regional Transit Board of Directors, to all of the components of our organization and to outside third parties.

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[Signature of Recipients Chief Executive Officer] Date

## **I) Introduction**

Valley Regional Transit recognizes its responsibility to ensure that Disadvantaged Business Enterprises have equal opportunity to participate in the performance of Federal Transit Administration (FTA) assisted contracts and subcontracts administered by VRT. As part of this effort, VRT has prepared a DBE Program Plan to reflect the requirements and guidance contained in 49 CFR 26.

### **A. Purpose**

The purpose of VRT's DBE Program Plan is to provide guidance to VRT personnel and to the community in implementing 49 CFR Part 26. It further assures the FTA that VRT 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 the DBE program, VRT 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 program with respect to individuals of a particular race, color, sex, or national origin.

### **B. Scope**

This Program applies to all FTA-assisted transit and transportation related contracts administered by VRT.

### **C. Federal Financial Assistance Agreement Assurance: Contractors and Subrecipients**

Valley Regional Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. Contractors and subrecipients shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of FTA assisted contracts. The contractor's or subrecipient's DBE Program, as required by 49 CFR Part 26 and as approved by FTA, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the contractor or subrecipient of its failure to carry out its approved program, VRT 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.). This language will appear in financial assistance agreements with subrecipients and contractors.

We will ensure that the following clause is placed in every FTA 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 is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as a non-responsible entity"

## **D. Definitions**

Valley Regional Transit will adopt the definitions contained in Section 26.5 of part 26 for this Program.

## **II) ADMINISTRATION**

### **A. Objectives**

**VRT has established the following objectives for its DBE program**

1. To ensure nondiscrimination in the award and administration of FTA assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for FTA-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 FTA assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

In meeting these objectives, VRT will not use quotas in any way.

### **B. DBE Liaison Officer (DBELO)**

The Finance Director of VRT is designated as the DBELO and, as such, has responsibility to assure compliance with applicable Federal regulations and for implementation and administration of VRT's DBE Program.

The Finance Director reports directly to the Executive Director of VRT. In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that Valley Regional Transit complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director of Valley Regional Transit concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this Program.

The DBELO is responsible for developing, implementing and monitoring the DBE Program. VRT's Construction/Facilities Manager, Procurement Officer and Grant Administrator also assist in monitoring contract compliance for DBE requirements.

The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by FTA.
2. Reviews third party contracts and purchase requisitions for compliance with this Program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (for race-conscious contract specific goals attainment) and identifies ways to improve participations
6. Analyzes Valley Regional Transit's progress toward DBE goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Implements the race-conscious and small business elements
9. Advises the CEO/governing body on DBE matters and achievement.
10. Provides assistance to contractors in identifying DBE firms and utilizes the ITD DBE Directory when preparing bidders lists.

### **C. DBE Directory of Certified Firms**

VRT will utilize the Uniform Certification Program (UCP) administered by the Idaho Transportation Department (ITD) to identify, certify and administer qualified DBE firms. Interested persons can access the ITD DBE Directory at the following location (Ctrl + Click):

<https://itd.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=itd&XID=43>

In the course of fulfilling its responsibilities as the Regional Public Transportation Authority for Ada and Canyon Counties, VRT will encourage potential DBE firms to work with ITD to achieve DBE status. VRT will work closely with ITD to notify them of potential DBE firms. ITD revises the UCP Directory monthly. If, during the course of its regular business operations, VRT becomes aware of a potential DBE firm that is not qualified as a DBE firm with the ITD UCP program, VRT will encourage that firm to apply to the ITD Program. In addition, VRT will notify ITD of the potential DBE firm.

#### **D. Small Business Element**

Title 49 Code of Federal Regulations Part 26.39 requires that VRT include an element in its DBE Program to structure contracting requirements to facilitate small business on FTA-assisted contracts. The Program is based on 49 CFR part 26.39 Fostering Small Business Participation and Appendix C to Part 26 DBE Business Development Guidelines. VRT's Small Business Development Program was implemented on 9/30/2014. To qualify as a Small Business Element, a firm's gross revenues (as defined by 13 CFR 21.104) shall not exceed \$22.41 million. VRT will verify business size and eligibility of firms using the criteria and definitions contained within 49 CFR 26.5.

VRT will include reasonable steps to eliminate obstacles to small business participation utilizing the following activities in the promotion of this Program:

1. Unbundling contracts when possible in order to enable small businesses to bid as prime contractors.
2. Performing outreach to other small business programs in order to increase DBE participation including, but not limited to:
  - a. Small Business Administration 8(a) Small Business Development Program Certification
  - b. Historically Underutilized Business (HUB) Zone Certification
  - c. Woman-Owned Small Business (WOSB)
  - d. Veterans-Owned Small Business (VOSB)
  - e. Service-Disabled Veteran-Owned Small Business (SDVOSB) DBE Plan (State)
3. VRT does not presently allow for set-asides for small business.

#### **E. Business Development Program**

VRT has not implemented a business development program.

#### **F. Reporting to FTA**

VRT will report DBE participation to FTA on a semiannual basis, using the electronic forms maintained in TrAMS. These reports will reflect procurements and payments made to DBEs and non-DBEs on FTA assisted contracts.

#### **G. DBE Program Updates**

VRT will update this program and will submit the updated program to FTA for approval anytime there is a material change to the program such as material changes to procurement opportunities, changes to the DBE and VRT organization; decisions to alter its race-neutral or race conscious goals or changes to the implementation of its race-neutral plan small business element.

## **H. DBE Financial Institutions**

VRT will investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community by reviewing the ITD DBE Directory annually. VRT will make reasonable efforts to use these institutions; and will encourage prime contractors on FTA assisted contract to make use of these institutions. We have reviewed the ITD DBE Directory and have noted three (3) DBE financial firms.

## **I. Bidders List**

VRT will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms. VRT will collect this information by including a clause in its contracts requiring this information and/or including a notice in all solicitations of the requirement to obtain Bidders List information.

## **J. Prompt Payment Mechanisms**

VRT will include the following clause in each FTA 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 VRT. 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 VRT. This clause applies to both DBE and non-DBE subcontracts.”

## **K. Overconcentration**

Overconcentration may occur when prime firms subcontract work to DBEs and other small businesses in certain work types more frequently than others. This event would place a disproportionate burden on non-small businesses in those areas of work. Valley Regional Transit has not identified that overconcentration exists in the types of work that DBE's perform.

To address these concerns about overconcentration, VRT will focus on using non-DBE firms for areas where an overconcentration has been identified through a disparity study. Every three years during the DBE Goal Methodology process the VRT DBELO will review any local disparity studies to see if DBE overconcentration has been identified. In such cases, VRT will attempt to assist DBEs in performing work outside the field in which non-DBEs are unduly burdened.

## **L. Monitoring and Enforcement Mechanisms**

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

1. We will bring to the attention of ITD any false, fraudulent, or dishonest conduct in connection with the Program, so that ITD 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 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

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 Site visits and audits of invoices submitted for payment.
4. We will keep a running tally of actual payments to DBE firms for work performed by them. On an annual basis the total payment amounts will be compared to the original contract award in order to identify any discrepancies.
5. In our reports of DBE participation to FTA, we will show both commitments and attainments, as required by the FTA reporting form.

### **III) Goals, Good Faith Efforts, and Counting**

#### **A. Set-asides or Quotas**

Valley Regional Transit does not use quotas in any way in the administration of this DBE Program.

#### **B. 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 every three years.

In accordance with Section 26.45 (f), VRT will submit its DBE Goal Methodology on a three-year cycle by August 1<sup>st</sup>.

VRT will engage directly with community and contractor groups, women owned businesses, minority businesses and interested parties in the consultation for the goal development process. VRT will also utilize the expertise of ITD in qualifying DBEs, consulting with concerned groups and identifying potential DBE's in order to provide a level playing field for participation by all DBEs. In addition to its own efforts, VRT will also utilize ITD's effort in administering the certification, administration and outreach for their DBE Program. Working with ITD, VRT can access a more robust DBE Program methods and contact a greater number of DBE firms than if VRT solely operated its own program independently.

VRT will determine its proposed three year goal in accordance with the methodology outlined in Attachment 2. VRT will annually establish overall goals in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step will determine the relative availability of DBEs in the market area, or "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects. A narrative description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this Program.

After meeting and consulting with organizations, firms, and individuals representing the DBE and Small Business community in our defined market area, we will revise our goal as needed. VRT will then publish a notice of the proposed overall goals; informing the public that the proposed goal and associated rationale are available for inspection during normal business hours at 700 NE 2<sup>nd</sup> St., Suite 100, Meridian, Idaho, for 30 days following the date of the notice. Valley Regional Transit and the FTA will accept comments on the goals for 45 days from the date of the notice that will be posted on the website. Our overall goal submission to FTA will include a summary of information and comments received during this public participation process and our responses to those comments. We will begin using our overall goal on October 1 of each year, unless we have received other instructions from FTA. 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. The final goal will perpetually be available on our website.

### **C. Transit Vehicle Manufacturers Goals**

Valley Regional Transit 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, Valley Regional Transit 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. VRT is required to report all transit vehicle purchases to FTA within 30 days of award using their virtual application.

### **D. Contract Goals**

VRT does not, at this time, have a race conscious goal/use contract goals. If VRT did establish race conscious goal/use contract goal the organization would do the following:

1. Award contracts with a DBE contract goal.
2. Evaluate Good Faith efforts.
3. Obtain information from prime contractors that would assist in meeting race conscious goals/use contract goals.
4. Administrative reconsideration when a DBE is terminated or replaced on a contract with contract goals.

### **E. Counting DBE Participation**

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

### **F. Shortfall Analysis**

Pursuant to the DBE regulations, 49 CFR §26.47(c), if VRT's annual Federal Fiscal Year DBE participation, as evidenced in its Uniform Report of DBE Awards/Commitments and Payments (Uniform Report), falls short of its overall DBE goal in any given year, then VRT will perform a detailed analysis of the reasons for the shortfall that includes specific steps it has established to meet the goal for the upcoming fiscal year.

Each Shortfall Analysis will include:

1. The difference between the overall goal and DBE participation achieved;
2. The difference between the race-neutral projection and the race-neutral participation achieved, as indicated on the Uniform Report;
3. The difference between the race-conscious projection and the race-conscious participation achieved, as indicated on the Uniform Report;
4. Specific and credible reasons for the shortfall; and
5. Corrective measures tied to each specific reason for the shortfall.

VRT has identified the following corrective actions to implement should a shortfall occur: unbundling projects, performing additional outreach such as DBE Workforce Development workshops for large projects, mandatory subcontracting and pre-bid meetings.

## **G. Unified Certification Programs**

Valley Regional Transit utilizes the Unified Certification Program (UCP) administered by the Idaho Transportation Department (ITD). This UCP will meet all of the requirements of this section. Valley Regional Transit will use and count for DBE participation and credit, only those firms certified by ITD

## **H. Disclosure**

VRT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, State and local law. Records exempt from disclosure pursuant to Idaho Code include:

1. IC Section 9-348(1)(a) and (b), which prohibit VRT from disclosing a list of persons who use a mailing list or a telephone number list, and state that no non-governmental entity may use a list of persons as a mailing list or telephone list;
2. IC Section 9-340B(4)(b) which exempts from disclosure records of buildings, facilities, infrastructure or systems when the disclosure of such information would jeopardize the safety of the public or any person;
3. IC Section 9-340A(1), which exempts from disclosure under state law those records that are exempt from disclosure under federal law; or
4. IC Section 340D, which exempt from disclosure trade secrets and proprietary information.

Notwithstanding any contrary provisions of state or local law, VRT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than FTA) without the written consent of the submitter.

Link to Regulation 49 CFR Part 26 (Ctrl + Enter)

<http://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdcfc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5>

## **ATTACHMENTS**

Attachment 1 Organizational Chart  
Attachment 2 Overall Goal Methodology Calculation