

WASHINGTON METRORAIL SAFETY COMMISSION
777 North Capitol Street, N.E.
Washington, D.C. 20002

RESOLUTION APPROVING THE ADOPTION OF A DISADVANTAGED
BUSINESS ENTERPRISE GOAL AND PROGRAM

WHEREAS, the Washington Metrorail Safety Commission (“WMSC”), as the recipient of federal awards of financial assistance, seeks to ensure that Disadvantaged Business Enterprises (“DBEs”) are afforded an equal opportunity to receive and participate in awards it receives from the U.S. Department of Transportation; and

WHEREAS, the WMSC has prepared a Disadvantaged Business Enterprise Goal that describes the WMSC’s desire that DBEs are afforded an equal opportunity to receive and participate in awards it receives from the U.S. Department of Transportation.

WHEREAS, the WMSC has prepared a Disadvantaged Business Enterprise Program that describes the program the WMSC shall implement to ensure DBEs are afforded an equal opportunity to receive and participate in awards it receives from the U.S. Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED THAT THE WASHINGTON METRORAIL SAFETY COMMISSION:

Approves the attached Disadvantaged Business Enterprise Goal.

Approves the attached Disadvantaged Business Enterprise Program.

Adopted by the Metrorail Safety Commission at its meeting on May 14, 2019.



www.wmsc.gov

FFY 2020-2022 Disadvantaged Business Enterprise (DBE) Goal



FFY 2020-2022 DBE Goal

Introduction

The Washington Metrorail Safety Commission (WMSC) is the designated State Safety Oversight Agency (SSOA) for the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system. The WMSC is legally and financially independent of WMATA and it serves as the safety regulatory authority for the WMATA Metrorail system.

This document details the methodology used by the WMSC to establish its Disadvantaged Business Enterprise (DBE) overall goal for Federal Transit Administration (FTA) assisted contracts. The WMSC is required to establish such a goal because the WMSC receives federal funds from the FTA.

The WMSC established its goal in accordance with Title 49 Code of Federal Regulations (CFR) Part 26. As described below, the WMSC evaluated the anticipated contracting opportunities to be offered using FTA funds, the ready, willing and able DBEs to participate in such opportunities, and other relevant evidence to determine its overall goal.

The WMSC proposes a DBE goal of 4.3 percent for the three year Federal Fiscal Year (FFY) period, from October 1, 2019 through September 30, 2022. The WMSC expects to meet this goal using race-neutral measures exclusively.

Goal Methodology

The WMSC created a forecast of the types, value, and North American Industry Classification System (NAICS) codes for the FTA-assisted contracts that are likely to be awarded during the upcoming triennial period. This forecast appears in Table 1 on Page 6. This procurement forecast informed the goal-setting process.

The WMSC calculated the percentage of each anticipated contracting opportunity by

NAICS Code relative to the total estimated value of the forecasted contracting opportunities. This percentage is known as the Relative Weight, and it also appears in Table 1.

The process used by the WMSC to establish its overall DBE goals is a two-step process. The first step is to determine a base figure for the relative availability of DBEs to perform the forecasted work, and the second step is to adjust the base figure as described below.

Step 1: Determine Base Figure

To determine the base figure, the WMSC consulted the following Unified Certification Program (UCP) directories to determine the number and availability of certified DBEs for the forecasted contracts listed in Table 1:

- District of Columbia DOT [Metropolitan Washington Unified Certification Program \(MWUCP\) directory](#),
- Maryland DOT [Office of Minority Business Enterprise](#), and
- Virginia Department of [Small Business and Supplier Diversity](#).

As defined by the Department of Transportation's (DOT) goal setting tips, the local market area is the area in which the substantial majority of the contractors and subcontractors with which the WMSC do business and the area in which the WMSC spend the substantial majority of its contracting dollars. The WMSC determined the its local market area comprises the District of Columbia, the State of Maryland, and the Commonwealth of Virginia; consequently, the above-referenced UCP directories cover the WMSC's entire local market area.

The total number of firms from the local market area within each NAICS code was determined by querying the ReferenceUSA



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U.S. Businesses database. ReferenceUSA databases are provided by Infogroup, Inc.

The WMSC used the approach suggested in Title 49 CFR 26.45(c)(1) to calculate the relative availability of DBEs by dividing the number of DBE firms by the total number of firms.

For example, there are 1,475 DBE firms in the local market area that provide information technology services (NAICS Code 541512), and there are 5,094 total such firms in the local market area. This corresponds to a relative availability of 28.96 percent.

Table 2 on Page 7 lists the number of DBE firms, total number of firms, and the relative availability of DBEs for each NAICS Code.

Finally, the WMSC calculated the Weighted Availability of DBE firms for each NAICS Code by multiplying the Relative Weight by the Relative Availability.

For example, for information technology services (NAICS Code 541512), multiplying the Relative Weight of 12.07 percent by the Relative Availability of 28.96 percent gives a Weighted Availability of 3.49 percent.

The Weighted Availabilities for each NAICS code are also listed in Table 2. The Total Weighted Availability (Base Figure) is the total of the Weighted Availabilities. The Total Weighted Availability (Base Figure) = 8.01 percent.

Step 2: Adjust Base Figure

In the future, the WMSC will adjust its base figure based on factors such as actual DBE attainment from prior years and the capacity of DBEs to perform the forecasted work.

As a new organization, the WMSC has no actual DBE attainment experience draw upon for adjusting the base figure. The Metropolitan Washington Council of Governments (MWCOC)

has awarded some contracts in support of the WMSC, but the DBE provisions of those contracts have been under the management of the MWCOC.

It should be noted that there are restrictions that apply to work that is outsourced by an SSOA. Specifically, The conflict of interest provision found at Title 49 CFR 674.41(c) states that a contractor may not provide services to both an SSOA and a rail fixed guideway public transportation system under the oversight of that SSOA. The WMSC is the SSOA that oversees WMATA. Consequently, vendors performing work for WMATA would not be eligible to perform work for the WMSC. The WMSC will factor in future experience with this prohibition when adjusting the future base figures; however, it currently provides no basis for adjusting the base figure.

Finally, as the tables reflect, the WMSC anticipates awarding business in NAICS Code 541690. Specifically, the WMSC anticipates a recurring need for SSOA staffing support from consultants who have both rail transit and safety oversight expertise and experience. This is a highly specialized domain, and is, of course, subject to the conflict of interest restriction discussed above. The WMSC is aware of only three firms currently providing this service to SSOAs and another firm is working to begin providing SSOA support. Only one of these firms submitted a proposal in response to a Request for Proposals that was issued by the MWCOC for WMSC support. Because there are a limited number of firms providing the specialized type of support that SSOAs require, and because only one of them submitted a proposal during a prior competitive procurement, and because none of the firms known to be capable of providing SSOA support services are certified as DBEs by the USPs in the WMSC local market area, the WMSC believes that the Weighted Availability listed in Table 2 for NAICS Code 541690 is unrealistic. Accordingly, the WMSC has adjusted the 17.17 percent relative availability for this NAICS Code to zero. This results in an adjustment to the Base



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Figure and new goal of 4.28 percent. Table 3 on Page 7 reflects this adjustment, but is otherwise identical to Table 2.

As a result of the two-step process described above, the WMSC is proposing a rounded, triennial DBE goal of 4.3 percent.

Race-Neutral vs. Race-Conscious Participation

The WMSC intends to meet its overall goal of 4.3 percent entirely through race-neutral participation. The WMSC does not anticipate utilizing any race-conscious measures.

Consultation and Outreach

Title 49 CFR Part 45(g)(1) requires consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the WMSC's efforts to establish a level playing field for the participation of DBEs.

The consultation must include a documented, scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process.

Outreach to the Agencies in the Local Market Area

The WMSC meets this requirement through the services of the following agencies:

- District of Columbia DOT [Metropolitan Washington Unified Certification Program \(MWUCP\) directory](#),

- Maryland DOT [Office of Minority Business Enterprise](#), and
- Virginia Department of [Small Business and Supplier Diversity](#).

These agencies work to enhance growth opportunities for small and disadvantaged businesses through increased business opportunities and job creation. They work to promote contracting opportunities that increase fairness in the procurement process while advancing DBE and related initiatives.

These organizations provide information and assistance to companies that wish to become a certified DBE firm and they disseminate information about contracting opportunities.

Each of these agencies maintains a list of firms that they have been certified as DBEs.

On May 29, 2019, the WMSC's DBELO and CEO met with the Virginia Department of SBSD's Director of Certification and Transportation Business Development, to advise of the anticipated availability of FTA-assisted contracts and to share the WMSC's proposed DBE participation goal of 4.3 percent for FFYs 2020-2022. On May 29, 2019, the WMSC's DBELO and CEO held a similar meeting with the Director of the Office of Small and Minority Business Policy of the Maryland DOT Office of Minority Business Enterprise. And, on May 29, 2019, the WMSC's DBELO and CEO held a similar meeting with the SBE Program Manager of the District of Columbia DOT's MWUCP program.

Additionally, on May 22, 2019, the DBELO wrote to the following organizations to share with them our proposed DBE participation goal of 4.3 percent for FFY 2020-2022 and to advise them of the availability of FTA-assisted contracts with the WMSC:

- District of Columbia Chambers of Commerce
1133 21st Street, NW, Suite M200
Washington, DC 20036



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- Maryland Chambers of Commerce, 60 West Street #100, Annapolis, MD 21401
- Northern Virginia Chamber of Commerce 7900 Westpark Drive A550, Tysons, VA 22102
- Arlington Chamber of Commerce, 2009 14th Street North, Suite 100, Arlington, VA 22201
- Asian American Chamber of Commerce, 8300 Boone Boulevard Suite 450, Tysons Corner, VA 22182
- Central Virginia African American Chamber of Commerce, 6802 Paragon Place, Richmond, VA 23230
- Northern Virginia Black Chamber of Commerce, 8300 Boone Road, Suite 450, Tysons Corner, VA 22182
- Virginia Hispanic Chamber of Commerce, 10700 Midlothian Turnpike #200, Richmond, VA 23235
- Maryland Hispanic Chamber of Commerce, 11 West Mount Vernon Place Suite 304, Baltimore, MD 21201

The letter to each of the above organizations introduced the WMSC as a new organization, described the nature of federally-assisted contracts that the WMSC anticipates awarding, advised them of our goal of 4.3 percent, invited them to read our DBE Plan and DBE Goal documents on our website, and invited their comments and input on our goal and these documents. See Page 8 for a sample of one of these letters.

Title 49 CFR Part 45(g)(2) requires a posting a notice announcing the proposed overall goal on the WMSC's official website. The WMSC published a notice of its proposed goal prominently on its public website (www.WMSC.gov) on DATE. The WMSC CEO invited comments on the proposed goal during a public meeting of the Commissioners noticed and held in accordance with the Government in the Sunshine Act (5 U.S.C. § 552b) on May 14, 2019. The information on the WMSC's public website provided full instructions for the public to submit comments.

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Table 1: Anticipated federally-assisted contracts for WMSC Fiscal Years 2020-2022

NAICS Code	Description of Work	Expected Value	Relative Weight
531120	Office lease	\$286,131	7.67%
541110	Legal services	1,275,000	34.19%
541211	Accounting, audit, and procurement services	372,707	9.99%
541512	Information technology services	450,000	12.07%
541612	Human resource services	535,591	14.36%
541690	Technical rail SSOA staffing services	810,000	21.72%
Total:		\$3,729,429	100.00%

Note: The WMSC fiscal year begins on July 1.



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Table 2: Number of DBE firms and total number of firms in local market area, relative availability of DBEs, relative weight of forecasted contract opportunities, and weighted availability of DBEs, for each NAICS Code

NAICS Code	Description of work	No. of DBE firms	No. of all firms	Relative Availability	Relative Weight	Weighted Availability
531120	Office lease	17	3751	0.45%	7.67%	0.03%
541110	Legal services	123	49506	0.25%	34.19%	0.08%
541211	Accounting, audit, and procurement services	126	9012	1.40%	9.99%	0.14%
541512	Information technology services	1475	5094	28.96%	12.07%	3.49%
541612	Human resource services	334	9046	3.69%	14.36%	0.53%
541690	Technical rail SSOA staffing services	656	3821	17.17%	21.72%	3.73%
Totals and Overall Figures:		2731	80230	3.40%	100.00%	8.01%

Table 3: No. of DBE firms and total no. of firms in local market area, adjusted relative availability of DBEs, relative weight of forecasted contract opportunity, and adjusted weighted availability of DBEs, for each NAICS Code.

NAICS Code	Description of work	No. of DBE firms	No. of all firms	Relative Availability	Relative Weight	Weighted Availability
531120	Office lease	17	3751	0.45%	7.67%	0.03%
541110	Legal services	123	49506	0.25%	34.19%	0.08%
541211	Accounting, audit, and procurement services	126	9012	1.40%	9.99%	0.14%
541512	Information technology services	1475	5094	28.96%	12.07%	3.49%
541612	Human resource services	334	9046	3.69%	14.36%	0.53%
541690	Technical rail SSOA staffing services	656	3821	0.00%	21.72%	0.00%
Totals and Overall Figures:		2731	80230	3.40%	100.00%	4.28%



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May 22, 2019

District of Columbia Chamber of Commerce
1133 21st Street, NW
Suite M200
Washington, DC 20036
Attn: Margaret Singleton

Via Email

Dear Ms. Singleton:

The Washington Metrorail Safety Commission (WMSC) is the designated State Safety Oversight Agency (SSOA) for the Washington Metropolitan Area Transit Authority (WMATA) Metrorail System. The WMSC is a small agency that serves as the safety regulatory authority for the WMATA Metrorail system, and is legally and financially independent of WMATA.

As a recipient of federal funding, we are establishing our first triennial Disadvantaged Business Enterprise (DBE) goal for the three-year period from October 1, 2019 through September 2023. We are proposing a goal of 4.3 percent and the attached goal document provides the detailed methodology that we used to calculate this goal. Our DBE goal of 4.3 percent means that the WMSC expects certified DBE firms to participate in at least 4.3 percent of the value of our federally-assisted contract awards.

As explained in the attached goal document, the WMSC expects to award much of its federally-assisted contracts on professional services. These services will likely include, but are not limited to, accounting, auditing, IT support, and staffing services.

We invite your participation in our DBE outreach. We are genuinely interested in your feedback and our goal is to provide a level playing field for all DBE firms.

To inquire about possible DBE contracting opportunities with the WMSC, or to submit comments, please contact Andrea Hogan, our Disadvantaged Business Enterprise Liaison Officer, at 202-384-1520, by email at Ahogan@wmisc.gov, or by mail at 777 North Capitol Street, NE, Suite 402, Washington, DC 20002. For more information regarding the WMSC's DBE program, please visit our website at <http://www.wmisc.gov>.

We respectfully request receiving any comments you may have on our goal or methodology within 30 days of the date of this letter. Also, please feel free to offer any suggestions as to how best we can best provide outreach concerning our DBE program and opportunities in the future.

Sincerely,

Andrea Hogan
Disadvantaged Business Enterprise Liaison Officer
Washington Metrorail Safety Commission



www.wmsc.gov

Disadvantaged Business Enterprise Program

Disadvantaged Business Enterprise Program



DBE Policy

Section 26.1, 26.23 Objectives/Policy Statement

The Washington Metrorail Safety Commission (WMSC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), Title 49 Code of Federal Regulations (CFR) Part 26. The WMSC has received federal financial assistance from the DOT, and as a condition of receiving this assistance, the WMSC has signed an assurance that it will comply with these regulations.

It is the policy of the WMSC to ensure that DBEs, 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 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 Title 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 marketplace outside the DBE Program.

Ms. Andrea Hogan, serves as our DBE Liaison Officer. She may be reached at 777 North Capitol Street, N.E., Suite 402, Washington, DC 20002; or by email on ahogan@wmsc.org.

Ms. Hogan is responsible for implementing all aspects of our DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations of the WMSC in its financial assistance agreements with the Department of Transportation.

The WMSC has disseminated this policy statement to its Commissioners and all its staff members. This statement has been distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts, and it is displayed prominently on our public website.

A handwritten signature in blue ink, appearing to read "A. Hogan", is written over a horizontal line.

Chief Executive Officer
May 14, 2019



Disadvantaged Business Enterprise Program

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Disadvantaged Business Enterprise Program

Introduction

The Washington Metrorail Safety Commission (WMSC) is the designated State Safety Oversight Agency (SSOA) for the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system. As such, the WMSC is legally and financially independent of WMATA.

The WMSC serves as the safety regulatory authority for the WMATA Metrorail system, and works in cooperation with the Federal Transit Administration (FTA) and WMATA to enhance public safety. The WMSC's State Safety Oversight (SSO) program was certified by the Federal Transit Administration in accordance with the requirements of Title 49 United States Code (U.S.C.) § 5329(e), and the FTA's SSO regulation Title 49 Code of Federal Regulations (CFR) Part 674, on March 18, 2019. The WMSC's rail transit experts implement the WMSC's program and focus on verification of compliance with WMATA's safety plans to ensure that these WMATA provides a safe environment and transportation service.

The WMSC oversees the safety of WMATA Metrorail through six core functions: its triennial audit program, onsite inspections, safety event investigation, emergency management activities, safety certification, and oversight of WMATA's corrective action plans (CAPs).

The WMSC's will receive its only federal funding from the U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA), as a recipient pursuant to Title 49 U.S.C. § 5329.

The WMSC does not provide any services or benefits directly to members of the public, and the activities of the WMSC do not confer any obligations or requirements on members of the general public. That said, the WMSC is required

to comply with the Freedom of Information Act (5 U.S.C. § 552(a)–(d)) and the Government in the Sunshine Act (5 U.S.C. § 552b).

The WMSC is comprised of Commissioners and Alternates appointed by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. Each jurisdiction permitted to appoint two Commissioners and one Alternate, none of whom is a salaried employee of the WMSC. The day-to-day work of the Metrorail Safety Commission is undertaken by a full-time staff of about 11 individuals.

The legal authority for the WMSC is derived from an Interstate Compact, which was authorized by identical legislation enacted by each of the jurisdictions served by Metrorail: D.C. Act 21-666, which became law on February 10, 2017; Maryland H.B. 119, which became law on March 30, 2017; and Virginia H.B. 2136, which became law on March 24, 2017. The U.S. Congress granted its consent and approval of the WMSC Compact via H.J.Res.76, which became P.L. 115-54 on August 22, 2017. This legislation is collectively referred to as the "WMSC Compact."

Subpart A: General Requirements

Section 26.1, 26.23 Objectives¹

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

Section 26.3 Applicability

This program is required because the WMSC is the recipient of federal transit funds authorized by Title 49 U.S.C. § 5329.

¹ In this document, all section numbers referenced in headers refer to sections of Title 49

CFR Part 26. For example, "Section 26.1" refers to Title 49 CFR Section 26.1.



Disadvantaged Business Enterprise Program

Section 26.5 Definitions

The terms used by the WMSC in this program have the same meanings as defined Title 49 CFR Part 26.5

Section 26.7 Non-discrimination Requirements

The WMSC 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 Title 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements and Reporting Requirements

Uniform Report of DBE Awards or Commitments and Payments: 26.11 (a)

The WMSC will report DBE participation to the FTA using the Uniform Report of DBE Awards or Commitments and Payments, according to Appendix B of the DBE regulation on a semiannual basis. This report is due each June 1 and December 1.

Bidders List: 26.11 (c)

The WMSC 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 bidders' list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms. The WMSC will collect this information from all actual vendors who either perform work for the WMSC, or who seek to do business with the WMSC. Vendors, (successful and unsuccessful) who attend pre-bid and/or pre-proposal meetings will be asked to provide this information. Prime contractors will be asked to provide the same information for all of their sub-contractors.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

The WMSC 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 Title 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under Title 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by Title 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Federal Transportation Administration 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 Title 18 U.S.C. § 1001 and/or the Program Fraud Civil



Disadvantaged Business Enterprise Program

Remedies Act of 1986 (Title 31 U.S.C. § 3801, et seq.).

The language above will appear in any financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

The WMSC 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 award or performance of this contract. The contractor shall take all necessary and reasonable steps to ensure non-discrimination as required of Title 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 remedies to include but not limited to: withholding monthly progress payments; assessing sanctions; liquidated damages; deeming the vendor non-responsible for future bidding and/or the termination of this contract or such other remedy as the recipient deems appropriate.

Subpart B Administrative Requirements

Section 26.21 DBE Program Updates

Because the WMSC has received a grant of \$250,000 or more in FTA operating assistance in a federal fiscal year, the WMSC will continue to carry out this program until all DOT financial assistance funds have been expended. The WMSC will provide updates to the FTA updates representing any significant changes to this program.

Section 26.25 DBE Liaison Officer (DBELO)

The WMSC's DBELO is: Ms. Andrea Hogan, 777 N Capitol St, N.E., Suite 402, Washington, D.C. 20002. Ms. Hogan may be reached on 202-384-1520, or by email at ahogan@wmisc.gov.

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that the WMSC complies with all provision of Title 49 CFR Part 26. The DBELO reports directly to the Chief Executive Officer is a direct report has direct, independent access to the CEO concerning DBE program matters. An organization chart depicting the DBELO's position in the organization may be found here.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO is supported WMSC technical staff and procurement and legal professional, as needed. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by the DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with staff to set overall triennial 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) and monitors results.
6. Analyzes the progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.



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8. Advises the CEO on DBE matters and achievement.
9. Acts as a liaison to the Uniform Certification Process.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of WMSC to annually investigate the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in the jurisdictions served by Metrorail. The WMSC will make reasonable efforts to use these institutions and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

The WMSC 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 thirty (30) days from the receipt of each payment the prime contract receives from the WMSC. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the WMSC. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The WMSC will not issue any contracts with retainage provisions.

Monitoring and Enforcement: 26.29(d)

This is not applicable because the WMSC will not issue any contracts with retainage provisions.

Section 26.31 Directory

The WMSC does not maintain its own directory of certified DBE firms. However, the WMSC utilizes DBE directories maintained by area Unified Certification Programs (UCPs). Specifically the WMSC uses directories maintained by the following organizations:

- District of Columbia DOT [Metropolitan Washington Unified Certification Program \(MWUCP\) directory](#),
- Maryland DOT [Office of Minority Business Enterprise](#), and
- Virginia Department of [Small Business and Supplier Diversity](#).

These directories identify firms eligible to participate as DBEs, listing 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.

Section 26.33 Overconcentration

The WMSC has not identified overconcentration in the types of work for which the WMSC expects to award contracts. The WMSC will reevaluate for overconcentration as part of its triennial goal-setting process (see Section 26.45).



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Section 26.35 Business Development Programs

The WMSC has not established a business development program. The WMSC will reevaluate the need for such a program as part of its triennial goal-setting process (see Section 26.45).

Section 26.37 Monitoring and Enforcement Mechanisms

The WMSC has several monitoring and enforcement mechanisms available to ensure compliance with Title 49 CFR Part 26.

The WMSC will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the 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 Title 49 CFR Part 26.109.

The WMSC consider action under its own legal authorities, including responsibility determinations in future contracts. Further the WMSC has several remedies available to enforce the DBE requirements contained in its contracts. These including, but are not limited to, withholding payment, and breach of contract action pursuant to the terms of the contract, which may include termination of the contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem including, but not limited to, suspension or debarment proceedings pursuant to Title 49 CFR Part 26, enforcement action pursuant to Title 49 CFR Part 31, and prosecution pursuant to Title 18 U.S.C. § 1001.

This WMSC 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 collecting the information and documentation specified by Title 49 CFR Part 53. Subsequently, along with any invoice seeking payment for work performed, the WMSC will require submission of the following by the contractor: (1) A certification as to whether any of the Part 53 information referenced above, has changed, and, if so, submission of updated information; (2) a certification of whether any DBE was removed or terminated from performance of work on the project, a written justification for the removal, and, if the DBE was replaced by a non-DBE, a justification for that replacement; (3) a list of all entities that performed any work pertaining to that invoice, and identification of their status as DBE or non-DBE and the total value of the invoiced amount attributable to each entity; (4) a spreadsheet for the invoice period, and also cumulatively, the amount of actual payments to DBEs compared with the dollar amounts committed to DBEs at the time of contract award (*i.e.*, a running tally of actual DBE attainments versus DBE commitments); and, (5) evidence of the date(s) and amount(s) of payments made to any subcontractors following receipt of the most recent payment from the WMSC to demonstrate compliance with prompt-payment provisions.

The WMSC will use the invoice information described above to keep a running tally of actual payments to DBEs for work committed to them at the time of contract award.

For each contract on which DBEs are participating, project managers may, from time to time, conduct scheduled or unannounced compliance reviews. Compliance reviews may include a check of the identity and DBE status of contractors, a review of other information and documentation deemed necessary for review. The findings of any compliance review will be documented in writing, and the written report will identify the sources of information and



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documentation reviewed and relied upon in making any specific findings.

Section 26.39 Fostering Small Business Participation

The WMSC is committed to maximizing the participation of small businesses (both DBE and non-DBE) on a non-discriminatory basis in its FTA-assisted contracts. The WMSC will accomplish this by, among other activities: establishing a race-neutral small business set-asides for prime contracts wherever feasible; encouraging contractors to provide subcontracting opportunities that small businesses, including DBEs, can reasonably perform; structuring procurements to facilitate the proposals from consortia or joint ventures consisting of small businesses, including DBEs;

As part of the good faith implementation of its DBE program, the WMSC will actively use these and other strategies to foster small business participation.

Subpart C – Goals, Good Faith Efforts, and Counting

Quotas

The WMSC does not use set-asides or quotas in any way in the administration of its DBE program.

Section 26.45 Overall Goals

The WMSC will submit its triennial overall DBE goal to the FTA on August 1 of the year specified by the FTA.

The WMSC will also request the use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals if directed by the FTA.

Prior to establishing DBE goals, the WMSC will create a forecast of the types, value, and NAICS codes for the FTA-assisted contracts that are likely to be awarded during the upcoming triennial period. This procurement forecast will inform the goal-setting process.

The process generally used by the WMSC to establish overall DBE goals is a two-step process. The first step is to determine a base figure for the relative availability of DBEs to perform the forecasted work, and the second step is to adjust the base figure as described below.

The WMSC determines the base figure using the UCP directories pertaining the regions in which WMSC bidders/proposers are based to determine the number and availability of certified DBEs for the forecasted contracts.

The WMSC will adjust this base figure based on factors such as the current capacity of DBEs to perform the forecasted work and in light of actual DBE attainment from prior years. Further, the Conflict of Interest provision found at Title 49 CFR Part 674.41(c) states that a contractor may not provide services to both an SSOA and a rail fixed guideway public transportation system under the oversight of that SSOA. The WMSC is the SSOA that oversees WMATA. Consequently, vendors performing work for WMATA would not be eligible to perform work for the WMSC. The WMSC will factor in this prohibition when adjusting the base figure to arrive at the proposed DBE goal to submit to the FTA

The WMSC will publish a notice of its proposed goal prominently on its public website. WMSC staff will invite comments on our proposed goal during a public meeting of the Commissioners held in accordance with the Government in the Sunshine Act (5 U.S.C. § 552b). The information on the WMSC's public website will provide full instructions for submitting public comments.

The WMSC's submission to the FTA will include: the goal (including the breakout of



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estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; and, a summary of any information and comments received and our responses.

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

The WMSC's goal-setting will always be based on demonstrable evidence of market conditions and designed to attain a goal that is rationally related to the relative availability of DBEs in the market.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on the WMSC'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, the WMSC will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish a corrective action plan (CAP) with specific steps and milestones to correct the problems identified in the analysis; and,
3. Retain the analysis and the CAP in its records for at least three years. This analysis will be made available to the FTA at any time upon request during that period.

Section 26.49 Transit Vehicle Manufacturers Goals

This section does not apply to the WMSC because the WMSC will not purchase any transit vehicles.

Section 26.51 Meeting Overall Goals/Contract Goals

The WMSC will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. To do so, the WMSC will look to DBE firms to serve as prime contractors.

The WMSC will use contract goals to meet any portion of the overall goal that the WMSC 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.

Contract-specific goals will be expressed as a percentage of total amounts of an FTA-assisted contract. Typically, this information will be included in the solicitation.

Section 26.53 Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

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



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that it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) and (c)

The WMSC General Counsel shall be responsible for determining whether a bidder/offeree who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

To determine whether good faith efforts have been made by a bidder, the General Counsel will evaluate whether the scope, intensity, and appropriateness of the bidders efforts could reasonably have been expected to meet the contract goal.

The WMSC will ensure that all information is complete and accurate and that it adequately documents the bidder/offeree's good faith efforts before committing to the performance of the contract by the bidder/offeree.

Information to be Submitted: 26.53(b)

The WMSC treats bidder/offerees' 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/offerees 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 fifteen (15) days of being informed by the WMSC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeree may request administrative reconsideration. Bidder/offerees should make this request in writing to the following reconsideration official: WMSC General Counsel, 777 North Capital Street NE, Suite 402, Washington, DC, 20002, or by electronic submission to correspondence@wmsc.gov. To the maximum extent practicable, the reconsideration official will not have played any role in the original determination of non-responsiveness.

As part of the reconsideration, the bidder/offeree will have an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeree will also have the opportunity to meet in person with the reconsideration official. The WMSC will send the bidder/offeree 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 DOT.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

The WMSC prohibits prime contractors from terminating a DBE subcontractor listed on a



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bid/contract with a DBE contract goal without the WMSC's prior written consent. Prior written consent will only be provided where there is good cause for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting its request to terminate to the WMSC, the prime contractor must give written notice to the DBE of its intent to do so. A copy of this notice must be provided to the WMSC with the request to terminate. The DBE will then have five (5) days to respond and advise the WMSC of the rationale for any objection to the proposed termination.

In those instances where good cause exists to terminate a DBE's contract, the WMSC requires the prime contractor make good faith efforts to replace a terminated DBE with another certified DBE, to the extent needed to meet the contract goal. The prime contractor is required to obtain prior WMSC approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The WMSC requires prime contractors to keep the DBELO fully apprised of termination and substitution and related activities, and to provide reasonable documentation, as requested.

If the contractor fails or refuses to comply in the time specified, the WMSC 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.

Sample Bid Specification:

The requirements of Title 49 CFR Part 26 apply to this contract. By policy, the WMSC will not discriminate based on race, color, sex, and 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 DBEs. A DBE contract goal of 3 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in [Appendix A of Title 49 CFR Part 26](#), 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

The WMSC will count DBE participation toward overall and contract goals as provided in Title 49 CFR Part 26.55.

Subparts D and E – Certification

Section 26.81 Unified Certification Programs

The WMSC will use and count for DBE credit only those DBE firms certified by a recognized UCP. For firms interested in becoming certified,



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the WMSC will refer them to the following regional UCPs:

- District of Columbia DOT [Metropolitan Washington Unified Certification Program \(MWUCP\) directory](#),
- Maryland DOT [Office of Minority Business Enterprise](#), and
- Virginia Department of [Small Business and Supplier Diversity](#).

Subpart F - Compliance and Enforcement

Section 26.109 Information, Confidentiality, Cooperation

The WMSC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with all applicable law.

The WMSC will not release personal financial information to a third party (other than DOT) without the written consent of the submitter, unless required by law.

Monitoring Payments to DBEs

The WMSC 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 the WMSC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The WMSC will perform interim audits of contract payments to DBEs. Such audits will review payments to DBE subcontractors to ensure that the actual amounts paid to DBE subcontractors equals or exceeds the dollar

amounts reported in the schedule of DBE participation.

For More Information

For more information, please consult the following sources:

- WMSC Organizational Chart can be found on the [WMSC website](#).
- DBE directories are maintained by the following regional organizations:
 - District of Columbia DOT [Metropolitan Washington Unified Certification Program \(MWUCP\) directory](#),
 - Maryland DOT [Office of Minority Business Enterprise](#), and
 - Virginia Department of [Small Business and Supplier Diversity](#).
- DBE Regulation, [49 CFR Part 26](#)