

RTA's DBE Program seeks to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

## RTA DBE Program Handbook

In compliance with: Title 49 of the Code of Federal Regulations (49 CFR Part 26)



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## POLICY STATEMENT AND OBJECTIVES

The Regional Transportation Authority of Central Oklahoma (RTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. See Attachment 11 for link to regulations. RTA is initiating a New Recipient Process with the Federal Transit Administration (FTA) and anticipates receiving federal financial assistance from the DOT. As a condition of receiving this assistance, RTA will sign an assurance that it will comply with 49 CFR Part 26.

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

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

The RTA Executive Director 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 RTA in its financial assistance agreements with the DOT.

RTA has disseminated this policy statement to the RTA Board of Directors and all of the components of its organization. RTA will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts via email notification. RTA includes this statement in all bid and proposal documents and distributes copies to the bidders and proposers at all pre-bid/pre-proposal meetings for DOT-assisted contracts. RTA also posts this statement on bulletin boards at various RTA facilities and on the RTA website at [www.RTAok.org](http://www.RTAok.org).

See Attachment 1 for a signed and dated Policy Statement.

49 CFR §§ 26.1, 26.23.

## SUBPART A - GENERAL REQUIREMENTS

### Applicability

RTA is a Recipient of Federal Highway Administration (FHWA) and FTA funds and is therefore subject to the federal regulations under 49 CFR Part 26.

49 CFR § 26.3.

### Definitions

RTA adopts the definitions contained in 49 CFR § 26.5 for this program. Defined words are capitalized in this program.

### Non-Discrimination Requirements

RTA 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, RTA 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.

49 CFR § 26.7.

### Record Keeping Requirements

RTA will report DBE participation to the FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to 49 CFR Part 26, at the intervals stated on the form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

RTA has maintains a bidders list, consisting of DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the potential bidders list approach to calculating overall goals and to expand the number of bidders for each advertisement. The bidder list may include the name, address, email, phone number, DBE non-DBE status, age, and annual gross receipts of firms. In lieu of annual gross receipts, RTA may ask each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.).

RTA will collect bidder information in the following ways:

1. In each proposal and or bid packet, RTA will attach the required DBE forms and ask each bidder to include the information listed.
2. RTA will start having "How to do Business with the RTA" events to bring awareness of the requirements and bidding opportunities to DBE's and gather more emails to add to the email list.
3. RTA will post information that pertains to "How to do business with RTA" on its website at RTAok.org

49 CFR § 26.11.

## Assurances

Each financial assistance agreement RTA signs with a DOT operating administration (i.e., FHWA or FTA) or with a sub-recipient must include the following assurance:

RTA shall not discriminate on the basis of race, color, sex, or national origin 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 RTA of its failure to carry out its approved program, the DOT may impose sanction as provided for under 49 CFR 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.).

**Prime Contractors are required to submit electronically fully executed all subcontract agreements to RTA within 21 calendar days once a contract is awarded.**

RTA 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, sex, or national origin 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 non-responsible.

49 CFR § 26.13.

## SUBPART B - ADMINISTRATIVE REQUIREMENTS

### DBE Program Updates

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

49 CFR § 26.21.

### DBE Liaison Officer

RTA has designated the Executive Director as the individual responsible to serve as the DBE Liaison Officer. The current Executive Director is:

Jason Ferbrache  
2000 S. May Ave.

Oklahoma City, OK 73108  
(405) 297-2831

[Jason.ferbrache@okc.gov](mailto:Jason.ferbrache@okc.gov)

The DBE Liaison Officer is responsible for implementing all aspects of the DBE program and ensuring that RTA complies with all provisions of 49 CFR Part 26. An organization chart displaying the Interim Executive Director's position in the organization is found in Attachment 2 to this program.

The DBE Liaison Officer is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
5. Analyzes RTA's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Administrator on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Maintains RTA's updated directory on certified DBEs.

49 CFR § 26.25.

### DBE Financial Institutions

It is the policy of RTA 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. RTA has researched the availability of DBE owned financial institutions at <http://www.federalreserve.gov/releases/mob/>. The list below shows the DBE owned financial institutions within the Greater Oklahoma City region as of December 2022. RTA will update this list on an annual basis.

RTA has identified the following DBE institutions:

Chickasaw Community Bank  
7400 W Memorial Rd  
Oklahoma City, OK 73142  
(405) 946-2265  
[contactus@ccb.bank](mailto:contactus@ccb.bank)

First Security Bank and Trust Company  
1541 NE 23rd St  
Oklahoma City, OK 73111  
(405) 424-4341  
[info@fsbokc.com](mailto:info@fsbokc.com)

Sovereign Bank (f/k/a First National Bank and Trust Company)  
3030 NW Expressway Suite 130  
Oklahoma City, OK 73112  
(405) 275-8830  
[www.banksovereign.com/contact](http://www.banksovereign.com/contact)

Gateway First Bank  
6303 Waterford Blvd Suite 100  
Oklahoma City, OK 73118  
(405) 338-1578  
[www.gatewayfirst.com](http://www.gatewayfirst.com)

F & M Bank  
17100 N May Ave  
Edmond, OK 73012  
(405) 715-1100  
[www.fmbankok.com](http://www.fmbankok.com)

Information on the availability of DBE institutions can be obtained from the DBE Liaison Officer.

49 CFR § 26.27.

### Prompt Payment Mechanisms

RTA will include the following clause in each DOT-assisted prime contract and subcontract and it will apply to payments made to both DBE and non-DBE subcontractors:

**Prompt Payment:** The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

*Prompt Payment.* The Contractor shall establish procedures to ensure timely payment of amounts due pursuant to the terms of its subcontracts. The Contractor shall pay each DBE and non-DBE subcontractor for satisfactory performance of its contract, or any billable portion thereof, in accordance with the timing set forth in any applicable laws or no later than 30 days, whichever is less, from the date of the Contractor's receipt of payment from the Authority for work by that subcontractor.

**Retainage:** The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

*Prompt Return of Retainage.* If retainage is withheld from subcontractors, the Contractor is required to return any retainage payment to those DBE and non-DBE subcontractors in accordance with the timing set forth in any applicable laws or within 30 days, whichever is less, from the date of receipt of the retainage payment from the Authority related to the subcontractor's work. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of RTA.

**Monitoring and Enforcement:** The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

The Contractor shall certify on each payment request to the Authority that payment has been or will be made to all subcontractors. Lien waivers may be required for the Contractor and its subcontractors. The Contractor shall notify RTA on or before each payment request, of any situation in which scheduled subcontractor payments have not been made.

If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any Authority investigation, and if deemed appropriate by the Authority, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.

The participation of the DBE subcontractor or supplier will not be credited toward the Prime Contractor's DBE achievement unless and until the amount being counted toward the goal has been paid to the DBE.

If the Contractor fails to comply in the time specified, the RTA will issue an order stopping all payments until satisfactory action has been taken.

49 CFR § 26.29.

## Directory

RTA maintains a directory that is from the UCP Oklahoma DOT which identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. RTA will make the directory available to anyone who wishes to review by contacting the RTA or anyone may go to Oklahoma Department of Transportation website to print off the most current listing. The ODOT DBE list can be found at <https://okdot.gob2g.com>.

49 CFR § 26.31.

## Overconcentration

RTA has not identified that overconcentration exists in the types of work that DBEs perform.

If RTA determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, RTA will apply appropriate measures to address this overconcentration. RTA will obtain the approval of FTA Region VI for its determination of overconcentration and the measures RTA devises to address it. Once approved, the measures become part of RTA's DBE program.

These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which RTA has determined that non-DBEs are unduly burdened. RTA may also consider varying its use of contract goals, to the extent consistent with 49 CFR § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

Subsequently, RTA will conduct re-evaluations for overconcentration on a triennial basis during the DBE goal setting process.

49 CFR § 26.33.

## Business Development Programs

RTA does not currently have a Business Development Program due to the staffing requirements that such a program would need. However, RTA works closely with other government and non-government partners, such as The City of Oklahoma City, The City of Edmond, the City of Norman, Oklahoma Department of Transportation, and local chambers of commerce to foster small business participation in RTA projects. See Attachment 11 for RTA Small Business Participation Plan.

49 CFR § 26.35.

## Monitoring and Enforcement Mechanisms

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

1. RTA will bring to the attention of the DOT 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. RTA will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to the RTA in the events of non-compliance with the DBE regulation by a participant in its procurement activities.
3. RTA will monitor work sites, projects, and contracting records to verify that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is performed by the DBEs. RTA requires DBE forms to be submitted on DOT-assisted contracts to

monitor and track DBE participation. See Attachment 3 for the forms used by the RTA for this purpose.

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

49 CFR § 26.37.

### Small Business Participation

RTA has incorporated the following non-discriminatory elements to RTA's DBE program to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses).

4. RTA will remove any unnecessary or unjustified bundling of contracts.
5. RTA will not include excessive bonding requirements.
6. RTA will be willing to negotiate faster payment terms for small business.

The small business participation plan of RTA is an active part of its DBE program. RTA will utilize various means to reach out to small businesses and make it easier for them to compete for DOT-assisted contracts as suggested in 49 CFR § 26.39 (Attachment 11).

49 CFR § 26.39.

## SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

### Set-Asides or Quotas

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

49 CFR § 26.43.

### Overall Goals

RTA sets an overall goal for DBE participation in DOT-assisted contracts in accordance with 49 CFR § 26.45. RTAs overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all business ready, willing, and able to participate in RTA DOT-assisted contracts. RTAs overall goal reflects its determination of the level of DBE participation it would expect absent the effects of discrimination. See Attachment 4 in this program for a description of the methodology the RTA uses to calculate its overall goal and the RTAs goal calculations. RTA submits its methodologies and goals to the DOT as required. This section of the program will be updated every three years.

RTA will begin using its overall goal on October 1 for the next three years unless RTA receives other instructions from DOT. If the RTA establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

49 CFR § 26.45.

### Goal Setting and Accountability

If the awards and commitments shown on RTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year (Attachment 4), RTA will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis.

49 CFR § 26.47.

### Transit Vehicle Manufacturers Goals

RTA 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, RTA 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.

49 CFR § 26.49.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated when the goal calculation is updated.

49 CFR § 26.51.

### Contract Goals

RTA will use contract goals to meet any portion of the overall goal RTA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met using race-neutral means. (Attachment 5)

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

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

49 CFR § 26.51.

### Good Faith Efforts Procedures

#### 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 and guidance on good faith efforts are found in Appendix A to 49 CFR Part 26. See also Attachment 9 hereto.

The Executive Director is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Link is included in Attachment 12

#### Information to be submitted

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

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

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

### Administrative reconsideration

Within 15 days of being informed by RTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official: Jason Ferbrache, RTA Interim Executive Director, 2000 S. May Ave, Oklahoma City, Oklahoma, 73108, (405) 297-2831, [jason.ferbrache@okc.gov](mailto:jason.ferbrache@okc.gov). The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

### Good Faith Efforts when a DBE is replaced on a contract

RTA 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. RTA 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 RTA will require the prime contractor to obtain RTA's prior written 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, RTA 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 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.

### Sample Bid Specification

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of RTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 2.51 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 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 point four; and (6) if the contract goal is not met, evidence of good faith efforts must be submitted by the bidder/offeror.

#### Counting DBE Participation

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

49 CFR § 26.55.



## SUBPART D - CERTIFICATION STANDARDS

### Certification Process

RTA is not a DBE-certifying agency. The Oklahoma Department of Transportation (ODOT) is the DBE certifying agency within the State of Oklahoma.

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

Oklahoma Department of Transportation  
Civil Rights Division, External Programs  
200 N.E. 21st Street, Room 1-B-4  
Oklahoma City, Oklahoma 73105  
(405) 521-4139  
<https://oklahoma.gov/odot/business-center/contract-compliance.html>

49 CFR Subpart D

## SUBPART E - CERTIFICATION PROCEDURES

### Unified Certification Programs

As per 49 CFR § 26.81(b)(2), the UCP provides a one-stop-shop where disadvantaged businesses that meet the DBE certification requirements and become certified are eligible to be used to meet the DBE goal requirements on any project with funding from DOT. The UCP eliminates the need for multiple certifications with recipients of funding from DOT. ODOT is the UCP for the State of Oklahoma. ODOT is the certifying agency and maintains all signed agreements and the list of Oklahoma UCP partners. All DOT recipients (UCP partners) in the State of Oklahoma agree that only DBE firms certified by ODOT may participate.

RTA is a member of the UCP administered by ODOT.

For a list of ODOT UCP partners and more information, see: <https://oklahoma.gov/odot/business-center/contract-compliance/dbe.html>

49 CFR § 26.81.

### Certification Appeals

Any firm or complainant may appeal final ODOT certification determinations to DOT pursuant to 49 CFR § 26.89.

For information about appeals, firms and complainants should contact:

Oklahoma Department of Transportation  
Civil Rights Division, External Programs  
200 N.E. 21st Street, Room 1-B-4  
Oklahoma City, Oklahoma 73105  
(405) 521-4139

49 CFR § 26.89.

## SUBPART F - COMPLIANCE AND ENFORCEMENT

### Compliance

If RTA fails to comply with any requirement of this part, RTA may be subject to formal enforcement action under 49 CFR §§ 26.103 or 105 or appropriate program sanctions by the concerned operating administration (i.e., FHWA or FTA), such as the suspension or termination of federal funds, or refusal to approve projects, grants, or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR Part 1.36, and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

RTA will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because RTA has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

49 CFR § 26.101.

### Enforcement Actions in FHWA and FTA Programs

For enforcement actions in FHWA and FTA programs, see 49 CFR § 26.103. See also Attachment 3.

49 CFR § 26.103.

### Information and Confidentiality

RTA will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law.

RTA is subject to and complies with the Oklahoma Open Records Act, 51 O.S. §24A.1 et seq.

Notwithstanding any contrary provisions of state or local law, RTA 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.

In responding to requests for information concerning any aspect of the DBE program, DOT complies with provisions of the Federal Freedom of Information, 5 U.S.C. 552, and Privacy Acts, 5 U.S.C. 552a. DOT may make available to the public any information concerning the DBE Program release of which is not prohibited by federal law.

Notwithstanding the provisions above, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

49 CFR § 26.109.

### Cooperation

All participants in RTAs DBE program (including, but not limited to, recipients, DBE firms, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future/ contracts and/or suspension and debarment).

49 CFR § 26.109.

### Intimidation and Retaliation

Recipients, contractors, or any other participants in the program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Violations of this prohibition will result in noncompliance with this part.

49 CFR § 26.109.

### Monitoring Payments to DBEs

RTA 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 RTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

RTA 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 states in the schedule of DBE participation.

49 CFR § 26.109.

## ATTACHMENTS

Attachment 1 Policy Statement

Attachment 2 Organizational Chart

Attachment 3 Monitoring and Enforcement

Attachment 3 (A) On-Site Visit Form

Attachment 3 (B) Payment Monitoring

Attachment 3 (C) Certificate of Non-Discrimination

Attachment 3 (D) Disadvantaged Business Enterprise Utilization

Attachment 3 (E) Letter of Intent

Attachment 3 (F) Notification Change of DBE Participation

Attachment 4 Overall Goal Calculation

Attachment 5 Breakout of Estimated Participation

Attachment 6 DBE Qualification Form

Attachment 7 Notice to Bidder/Offeror

Attachment 8 Determination of Good-Faith Effort

Attachment 9 Assurance of Contract Provisions Flow-Down Certification

Attachment 10 Small Business Participation Plan

Attachment 11 Regulations: 49 CFR Part 26

## Attachment 1 - Policy Statement

## Policy Statement

The Regional Transportation Authority of Central Oklahoma (RTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. RTA is initiating a New Recipient Process with the Federal Transit Administration (FTA) and anticipates receiving federal financial assistance from the DOT. As a condition of receiving this assistance, RTA will sign an assurance that it will comply with 49 CFR Part 26.

It is the policy of RTA 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 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 marketplace outside the DBE Program.

The RTA Executive Director 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 RTA in its financial assistance agreements with the DOT.

RTA has disseminated this policy statement to the RTA Board of Directors and all of the components of its organization. RTA will distribute this statement to DBE and non-DBE business communities that perform work for the RTA on DOT-assisted contracts via email notification. RTA includes this statement in all bid and proposal documents and distributes copies to the bidders and proposers at all pre-bid/pre-proposal meetings for DOT-assisted contracts. RTA also posts this statement on bulletin boards at various RTA facilities and on the RTA website at [www.RTAok.org](http://www.RTAok.org).



Jason Ferbrache, Executive Director

July 19, 2023

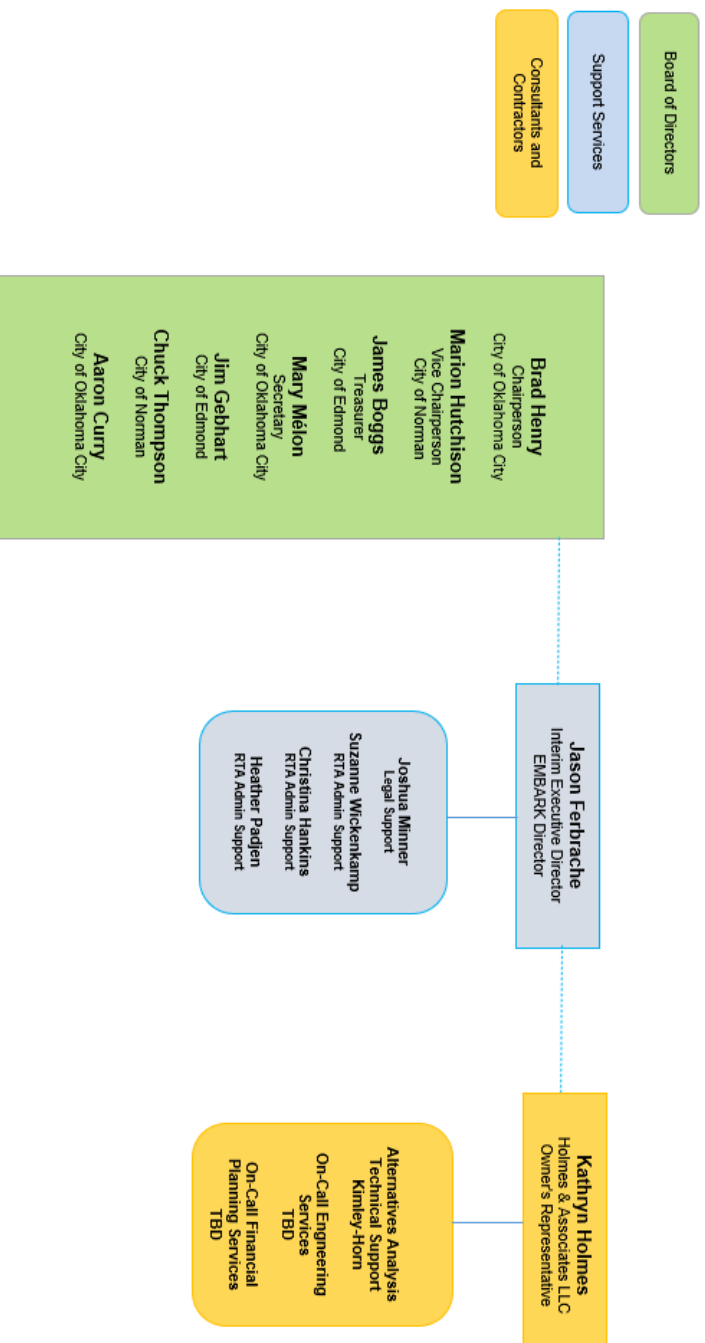
## Attachment 2 - Organizational Chart





**Organization Chart**  
Updated April 26, 2023

Updated April 26, 2023



## Attachment 3 - Monitoring and Enforcement

## Monitoring and Enforcement

RTA has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Referral of a complaint to ODOT for investigation, which may result in:
  - (a) Suspension of processing all or portion of progressive estimates;
  - (b) Refusal to issue proposal;
  - (c) Refuse to approve subcontractor or material suppliers;
  - (d) Suspension of work on the project;
  - (e) Suspension of prequalification;
  - (f) Contractor performance suspension;
  - (g) Contractor debarment;
  - (h) Contractor in default for breach of Contract; or
  - (i) Other actions deemed appropriate by ODOT;
2. Independent breach of contract action; or
3. Seek prosecution pursuant to 74 O.S. § 85.45h, or other applicable provisions of law.

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, the following:

1. Suspension or debarment proceedings pursuant to 2 CFR Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), and 2 CFR Part 1200, Nonprocurement suspension and Debarment;
2. Enforcement action pursuant to 49 CFR Part 31, Program Fraud and Civil Remedies; or
3. Prosecution pursuant to 18 USC 1001, or other applicable provisions of law.

49 CFR § 26.107.

The following forms are used pursuant to RTAs monitoring efforts:

Attachment 3 (A) - On-Site Visit Form

Attachment 3 (B) - Payment Monitoring

Attachment 3 (C) - Certificate of Non-Discrimination

Attachment 3 (D) - Disadvantaged Business Enterprise Utilization

Attachment 3 (E) - Letter of Intent

Attachment 3 (F) - Notification Change of DBE Participation

## Attachment 3 (A) - On-Site Visit Form

## RTA DBE MONITORING REPORT

### SECTION 1: PROJECT IDENTIFICATION

1. Contract No.	2. Board Approval Date	3. Prime Contractor
4. Construction Start Date	5. Est Completion Date	6. Is Prime a DBE?

### SECTION 2: SUBCONTRACTOR

7. Name of Subcontractor Firm		DEB Oklahoma Certified Yes [ ] No [ ]		
		8. Wage Determination		
9. Firm's Mailing Address	10. City	11. State	12. Zip	13. Phone
14. What is the DBE's Function on this Contract?			15. DBE's Number	
16. Subcontractor: Trucking Co. [ ] Rental Agreement without Operator [ ] Rental with Operator [ ] Supplier [ ]				
17. If DBE is a Subcontractor, Attach DBE Oklahoma Certification			18. Active Date on Certification	

### SECTION 3: OBSERVATION OF DBE'S OR SUBCONTRACTOR WORK AND WORKFORCE

19. Date Observed	20. Observer's Name	21. Description of Work Being Performed								
22. Number and Types of Workers		23. Number and Type of Equipment and Tools Used								
24. Does it Appear the DBE Firm: <table style="width: 100%; margin-top: 5px;"> <tr> <td style="width: 50%;">a. Controls and Supervises Their Own Work</td> <td>Yes [ ] No [ ]</td> </tr> <tr> <td>b. Employees Their Own Workers</td> <td>Yes [ ] No [ ]</td> </tr> <tr> <td>c. Performs Work with Their Own Workers</td> <td>Yes [ ] No [ ]</td> </tr> <tr> <td>d. Uses/Rents Own Equipment and Tools</td> <td>Yes [ ] No [ ]</td> </tr> </table>			a. Controls and Supervises Their Own Work	Yes [ ] No [ ]	b. Employees Their Own Workers	Yes [ ] No [ ]	c. Performs Work with Their Own Workers	Yes [ ] No [ ]	d. Uses/Rents Own Equipment and Tools	Yes [ ] No [ ]
a. Controls and Supervises Their Own Work	Yes [ ] No [ ]									
b. Employees Their Own Workers	Yes [ ] No [ ]									
c. Performs Work with Their Own Workers	Yes [ ] No [ ]									
d. Uses/Rents Own Equipment and Tools	Yes [ ] No [ ]									
25. Was Foreman or Superintendent Directing the Workers Yes [ ] No [ ] If Yes, Give Full Name and Employer Below: <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>										

26. Comments:			
<b>SECTION 4: DBE ADMINISTRATIVE REVIEW</b>			
27. Date	28. Name of Reviewer	29. Contract Amount	30. Change Orders
31. Payment		32. Board Approvals	
33. Does the DBE Employe, Pay, and Administer the Project? Yes [ ] No [ ]			
34. Does the DBE's Workers & Foreman Appear on the Payrolls of Other Contractors? Yes [ ] No [ ]			
35. Is the Work Listed on the Payouts the Same as Described in # 21? Yes [ ] No [ ]			
36. Has the DBE Subcontracted Work to Other Prime Contractors? Yes [ ] No [ ]			
37. If yes, name the Subcontractor:			
38. Is the Subcontractor Listed on Line #37 a DBE? Yes [ ] No [ ]			
39. If Construction, Who is the A&E Firm:			
40. RTA Project Manager:			
41. RTA Purchasing Manager:			
42. DBE Officer:			

## Attachment 3 (B) - Payment Monitoring

Month/Year: _____		Project Number_____		Contractor_____		
<b>Name of DBE Firm</b>		<b>Date of Payment</b>		<b>Amount</b>		<b>Amount Paid to DATE</b>

Authorized Signature \_\_\_\_\_

Date\_\_\_\_\_

Type/Print Name\_\_\_\_\_

Title\_\_\_\_\_



## Attachment 3 (C) - Certificate of Non-Discrimination

## **CERTIFICATE OF NON-DISCRIMINATION**

In connection with the performance of work under this Contract Agreement, the contractor/sub-contractor agrees as follows:

**(1) Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the contractor/sub-contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the contractor/sub-contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**(2) Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the contractor/sub-contractor:

**(a) Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the contractor/sub-contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect in the course of the project. The contractor/sub-contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the contractor/sub-contractor agrees to comply with any implementing requirements FTA may issue.

**(b) Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the contractor/sub-contractor agrees to refrain from discriminating against present and prospective employees for reason of age. In addition, the contractor/sub-contractor agrees to comply with any implementing requirements FTA may issue.

**(c) Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the contractor/sub-contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor/sub-contractor agrees to comply with any implementing requirements FTA may issue.

**(3)** The contractor/sub-contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

I have read the above clause and agree to abide by its requirements.

Attest: (Corporate Seal)

\_\_\_\_\_  
Name of contractor/sub-contractor

\_\_\_\_\_  
Signature of contractor/sub-contractor's Authorized Agent

\_\_\_\_\_  
Name and title of Authorized Agent

The following statement must be executed.

State of \_\_\_\_\_) §

County of \_\_\_\_\_)

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_

Notary Number \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## Attachment 3 (D) - Disadvantaged Business Enterprise Utilization

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION FORM

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

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

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

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

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

By \_\_\_\_\_ Title \_\_\_\_\_

Attachment 3 (E): letter of intent

**LETTER OF INTENT TO SUBCONTRACT**

Name of bidder/offeror \_\_\_\_\_

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

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

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

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

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

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

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

\*Ethnicity: \_\_\_\_\_ Age of Firm: \_\_\_\_\_ Annual Gross Receipts: \_\_\_\_\_

Description of work to be performed by DBE firm:

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

Bidder/offeror: \_\_\_\_\_  
(Signature) (Title)

**Affirmation**

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

DBE: \_\_\_\_\_  
(Signature) (Title)

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

## Attachment 3 (F): Notification Change of DBE Participation



**NOTIFICATION CHANGE OF DBE PARTICIPATION**

Project No.: \_\_\_\_\_ Date: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

**Change: from/to (fill in both sides)**

**From:**

**To:**

DBE Name \_\_\_\_\_ DBE Name \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_ Phone No. \_\_\_\_\_

**The DBE is a (check one):**

Subcontractor ☐

Supplier ☐

Trucking Firm ☐

Manufacturer ☐

Professional ☐

Change in service to be performed: \_\_\_\_\_

\_\_\_\_\_

Change DBE participation amount: \_\_\_\_\_

Explain reasons for changing: \_\_\_\_\_

\_\_\_\_\_

Note: Attach a copy of the letter by the original DBE stating reason for inability to perform work.

Signed: \_\_\_\_\_

(Contractor)

(Position)

Approved/Disapproved: DBELO \_\_\_\_\_

Approved/Disapproved: Grants and Procurement \_\_\_\_\_

Approved/Disapproved: General Manager \_\_\_\_\_

## Attachment 4 - Overall Goal Calculation

## Overall Goal Calculation

### Overall Goal Methodology

RTA sets an overall goal for DBE participation in DOT-assisted contracts in accordance with 49 CFR § 26.45.

RTA begins its goal setting process by determining a base figure for the relative availability of DBEs. RTAs overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all business ready, willing, and able to participate in RTA DOT-assisted contracts. Making this determination involves the following three steps:

1. Identification of the types of contracts and budget RTA will bid out in the next three years;
2. Identification of the number of available DBEs and all firms for each listing by NAICS codes utilizing the Census and ODOT's DBE information; and
3. Completion of the FTA's weighting Base Figure spreadsheet.

After calculating the base figure of the relative availability of DBEs, RTA examines all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at its overall goal.

RTA will consider the following types of evidence when determining if an adjustment is needed:

1. The current capacity of DBEs to perform work in RTAs DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
2. Evidence from disparity studies conducted anywhere within the RTAs jurisdiction, to the extent it is not already accounted for in its base figure; and
3. If RTAs base figure is the goal of another recipient, it will adjust it for differences in its local market and its contracting program.

If available, the RTA will also consider evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. These include, but are not limited to:

1. Statistical disparities in the ability of DBEs to get the financing, bonding, and insurance required to participate in RTAs program; and
2. Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent RTA can relate it to the opportunities for DBEs to perform in RTAs program.

If RTA attempts to make an adjustment to its base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment will be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

If evidence does not suggest an adjustment is necessary, the RTA will not make an adjustment.

In establishing an overall goal, RTA will provide for consultation and publication. This includes:

1. Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and RTA's efforts to establish a level playing field for the participation of DBEs. The consultation shall include a 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, and it shall occur before RTA is required to submit its methodology to the operating administration for review. RTA will document in its goal submission the consultation process engaged in.
2. A published notice announcing RTA's proposed overall goal before submission to the operating administration on August 1st. The notice shall be posted on RTA's official Internet website RTAok.org and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal shall be posted on RTA's official Internet site.

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

## RTAs Overall Goal and Calculations

RTA's overall goal for the 2021-2023 fiscal years is as follows:

RTA will expend 1.43% of all FTA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) in RTAs FTA-assisted contracts in the 2021-2023 fiscal years

The following chart reflects Step 1 of 49 CFR § 26.45 for the RTA:

NAICS	Project	OKC MSA(M) or Statewide (S)	DBE's Available	All Firms Available	Relative Availabil ity	
541840	Advertising	S	1	13	0.0769	
423120	Bus Parts	S	0	123	0.0000	
423130	Bus Tires	S	0	32	0.0000	
561621	Camera & Access Control	S	0	119	0.0000	
236210	Construction	S	3	26	0.1154	
541330	Engineering	S	42	569	0.0738	
336350	Engines & Transmissions	S	0	6	0.0000	
238220	Facility HVAC	M	3	600	0.0050	
561710	Facility Pest Control	M	0	103	0.0000	
336320	Farebox Equipment	S	0	5	0.0000	

238150	Glass for Fleet & Facilities	M	0	31	0.0000	
541430	Graphic Design	S	3	116	0.0259	
561730	Grounds Maintenance	M	2	401	0.0050	
423850	Janitor Supplies	S	0	558	0.0000	
561720	Janitorial Services	M	5	124	0.0403	
561622	Lock & Key Services	M	0	41	0.0000	
453210	Office Supplies	M	0	18	0.0000	
323111	Printing	M	2	75	0.0267	
541910	Rider Survey	S	2	21	0.0952	
541690	Safety Consulting Services	S	6	270	0.0222	
541690	Security Consulting Services	S	6	270	0.0222	
485991	Senior Citizen Transport	M	2	13	0.1538	
541511	Software Services	S	10	361	0.0277	
541511	Software Development	S	10	361	0.0277	
423850	Sprinkler System	S	2	52	0.0385	
812332	Uniform Service	M	0	6	0.0000	
423860	Vehicle Inspection Services	M	0	10	0.0000	
488410	Vehicle Towing	M	0	41	0.0000	
	<b>Totals</b>		<b>99</b>	<b>4,365</b>	<b>2.27%</b>	<b>Overall Availability of DBEs</b>

The following information reflects Step 2 of 49 CFR § 26.45 for the RTA:

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure to arrive at the overall goal. To reflect as accurately as possible, the DBE participation RTA would expect in the absence of discrimination RTA have adjusted its base figure by 0.73%. The data used to determine the adjustment to the base figure was past performance from this data. RTA has adjusted its base figure to: 1.43%

## Attachment 5 - Breakout of Estimated Participation

## Breakout of Estimated Participation

### Race-Neutral & Race Conscious Participation

RTA estimates that, in meeting its overall goal of 1.43%, RTA will obtain 1.43% from race-neutral participation and 0% through race-conscious measures. The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation:

- Race conscious participation will be calculated by the number of ODOT certified DBE firms and with the Census data listing to calculate each contract's DBE goal. Due to the lack of DBE certified firms that can perform the contracts, RTA will continue to work closely with minority organizations and ODOT to register new DBE's.
- RTA will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 49 CFR § 26.51 (f)) 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, 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.

### Transit Vehicle Manufacturers Goals

In accordance with 49 CFR § 26.49, RTA will require each transit vehicle manufacturer (TVM), 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, RTA 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.

### Contract Goals

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

RTA will express RTA's contract goals as a percentage of the total amount of a DOT-assisted contract. In order to ensure that its DBE program will be narrowly tailored to overcome the effects of discrimination, if RTA use contract goals RTA will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 49 CFR § 26.51(f)) and RTA will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures, DBE participation through a subcontract on a prime contract that does not carry DBE goal, DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

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



## Attachment 6 - DBE Qualification Form

## DBE Qualification Form

\_\_\_\_\_ Is your firm certified as a DBE with the Oklahoma Department of Transportation (ODOT)?

**In order to apply for certification as a Disadvantaged Business Enterprise (DBE), your firm *must* meet the following eligibility criteria stated in 49 CFR Part 26:**

The disadvantaged individual must be a U.S. citizen (or resident alien) and be a member of the following socially or economically disadvantaged group:

- a. African American
- a. Hispanic American
- b. Native American
- c. Asian-Pacific American
- d. Subcontinent-Asian American
- e. Woman

\_\_\_\_\_ Does your firm meet the following requirements to qualify as a DBE under the Department of Transportation DBE program?

\_\_\_\_\_ Others certified as disadvantaged (an individual who is not a member of the groups listed above can still be certified as a DBE by establishing their socially disadvantaged status).

\_\_\_\_\_ The disadvantaged individual must have a personal net-worth (PNW) of less than \$1,320,000. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm, and his or her equity in their primary residence.

\_\_\_\_\_ The firm must be a for-profit small business where socially and economically disadvantaged DBE owner(s) own at least a 51% interest, and have managerial and operational control of the business operations; the firm must not be tied to another firm in such a way as to compromise its independence and control.

\_\_\_\_\_ The socially and economically DBE owner(s) must possess the power to direct or cause the direction to the management and policies of the firm and to make day-to-day, as well as long-term decisions on matters of management, policy and operations.

\_\_\_\_\_ If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. (This rule varies from state to state. For example, if your state allows someone else to qualify your business then you should be able to certify your firm without possessing the particular license or credential on your own).

Contact ODOT at (405) 521-6046 if you need information regarding DBE Certification.

Please print the following information:

Firm Name \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

### **Obtaining Certification as a DBE**

Firms meeting the eligibility standards must contact the specific state or local transportation entity for which they wish to participate in contracts. In addition to requesting documentary evidence substantiating a firm's size, owner's PNW, independence, and an individual's ownership and control, recipients are required to perform an on-site visit to the firm's offices and job sites. Firms can obtain instructions on how to apply to become a DBE by contacting the State Department of Transportation. To ease the burden of applying to multiple DOT recipients within a state, the Department requires a Unified Certification Program (UCP) to be developed so that applicants need only apply once for DBE certification that will be honored by all recipients in the state.

If you need information regarding DBE Certification, contact:

Oklahoma Department of Transportation  
Civil Rights Division, External Programs  
200 N.E. 21<sup>st</sup> Street, Room 1-C-1  
Oklahoma City, Oklahoma 73105  
(405) 521-6046 Fax: (405) 522-2136

Please print the following information:

Firm Name

Authorized Signature

Title

Date

## Attachment 7 - Notice to Bidder/Offeror

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Each bidder shall comply with all rules and regulations promulgated by the Federal Transit Administration of the U.S. Department of Transportation (DOT) regarding participation of Disadvantaged Business Enterprises (DBE) in contracting opportunities created by any contract awarded under this solicitation. Each bidder must submit the appropriate, prepared, and signed DBE certification. The overall DBE goal is \_\_\_\_% and the contract DBE goal is \_\_\_\_% 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.

Company Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## Attachment 8 - Determination of Good-Faith Effort

## Determination of Good-Faith Effort

Bidder/Proposer/Contractor: \_\_\_\_\_

Vendor Identification Number: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ e mail: \_\_\_\_\_

In making a determination that a Good Faith Effort has been made, RTA requires the Bidder/Proposer to complete a checklist and submit supporting documentation explaining in what ways the Bidder/Proposer has made a Good Faith Effort according to each requirement with a copy of notice, or solicitation or letter of justification. The Bidder/Proposer will respond to the following and provide supporting documentation as requested.

Please answer “yes” or “no.” Were you able to meet the Contract Goal in selecting Small Businesses or Disadvantaged Businesses as part of your bid or proposal submission? **Yes**\_\_\_ **No**\_\_\_

If you answered “yes,” you are not required to answer the remaining questions below. If you answered “no,” please respond as requested below.

**In an effort to document my Good Faith Efforts to meet the Contract Goals regarding Small Business or Disadvantaged Business participation, I am able to present evidence of:**

**Yes**\_\_\_ **No**\_\_\_ Attendance at a pre bid meeting, if any, scheduled by RTA to inform SBEs and DBEs of subcontracting opportunities under a given solicitation.

**Yes**\_\_\_ **No**\_\_\_ Review of the list of ODOT-certified firms and RTA data bank to determine potential subcontractors.

**Yes**\_\_\_ **No**\_\_\_ Advertisement in general circulation media, trade association publications, and other media for at least 15 days before bids or proposals are due.

**Yes**\_\_\_ **No**\_\_\_ Written notification to SBEs/DBEs that their interest in the contract is solicited. The notice included a description of the subcontracting opportunities and identified the contact person within my office. The notice was sent to at least five (5) businesses in the current directory of certified SBE and DBE entities that perform the type of work required.

**Yes**\_\_\_ **No**\_\_\_ Efforts made to select portions of the work proposed to be performed by SBEs/DBEs in order to increase the likelihood of achieving the stated goal and, to the extent feasible and consistent with prudent industry practice, efforts to divide the contract work in reasonable lots.

**Yes**\_\_\_ **No**\_\_\_ Efforts to provide interested SBEs or DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to the solicitation.

**Yes\_\_\_ No\_\_\_** Negotiating in good faith with interested with SBEs or DBEs, including:

- a) DBEs that were contacted;
- b) A description of the information provided to SBEs or DBEs regarding the plans and specifications for portions of the work to be performed; and
- c) A statement of why additional agreements with SBEs and DBEs were not reached.

**Yes\_\_\_ No\_\_\_** Not rejecting SBEs or DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Concerning each Small Business or Disadvantaged Business the Bidder/Proposer contacted but rejected as unqualified, the reasons for the Bidder/Proposer's exclusion.

**Yes\_\_\_ No\_\_\_** Efforts made to assist the Small Businesses or Disadvantaged Business contacted that needed assistance in obtaining bonding or insurance required by the Bidder/Proposer or RTA.

**Yes\_\_\_ No\_\_\_** Efforts made to assist interested SBEs and DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

**Yes\_\_\_ No\_\_\_** Efforts made to utilize the services of available small business and/or disadvantage business organizations that provide assistance in the recruitment and placement of SBEs and DBEs.

**NOTE:** If the prime contractor is unable to meet the solicitation goal or if any of the above items are answered "no," the Bidder/Proposer/Contractor must attach supporting documentation or a letter of justification. The attachments submitted by the Bidder/Proposer/Contractor will be reviewed by RTA and a written notice of acceptance or deficiency of Good-Faith effort will be issued. This form is due at time of bid submission.

Signature of Bidder/Contractor: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_



## Attachment 9 - Assurance of Contract Provisions Flow-Down Certification

## Assurance of Contract Provisions Flow-Down Certification

Prime contractors must certify the flow-down of the following contract provisions to sub-contractors:

### **A) Contract Assurance**

The contractor, subrecipient, 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.

49 CFR §§ 26.13, 26.53.

### **B) Prompt Payment and Return of Retainage**

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 contractor receives from RTA. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's 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 of the RTA Executive Director. This clause applies to both DBE and non-DBE subcontractors.

49 CFR 26.29.

### **C) Hearing in Response to Untimely Payment**

Should payment not be rendered in a timely manner, RTA shall hold an informal hearing where the contractor and subcontractor meet with representatives from RTA. After hearing from both parties, a decision will be rendered within five days detailing the consequences/sanctions which shall be consistent with the non-compliant issue, which could, if warranted, include termination for default or convenience.

### **D) Consent to Termination**

The prime contractor shall not terminate a DBE subcontractor participating in the contract without the prior written consent of RTA. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall use the specific DBEs listed to perform the work and supply the materials for which each is listed and shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE, without the prior written consent of RTA.

I hereby certify that I have read all of the above contract provisions and will make sure it flows down to all subcontractors in accordance with contractual arrangements with them.

Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

## Attachment 10 - Small Business Participation Plan

# Small Business Participation Plan

## Fostering Small Business Participation

RTA is proposing a Small Business Enterprise (SBE) Program to foster small business participation in a variety of its projects once it receives direct recipient status with FTA. The program will follow Federal Transit Administration (FTA) guidelines. RTA's SBE Program is a part of RTA's Disadvantaged Business Enterprise (DBE) Program and scheduled to be incorporated into RTA's procurement system once approved by FTA. Thereafter, RTA will update its procurement documents and conduct outreach activities to small business.

It is RTA's intent that small businesses participate in its SBE Program (DBEs and non-DBEs alike) and each is subject to the same size standards and, consequently, compete with similarly-sized businesses. RTA offers several projects which are below \$1,000,000 that may encourage participation from small businesses.

49 CFR § 26.39.

## Definitions

RTA adopts the definitions contained in 49 CFR § 26.5 and 13 CFR Part 121 for this SBE Program.

## Eligibility

To be eligible for the RTA's SBE Program, a firm must:

1. Be an existing small business, as defined by Small Business Administration (SBA) standards in 13 CFR Part 121, appropriate to the type of work the firm seeks to perform in DOT-assisted contracts; and
2. Have had average annual gross receipts, as defined by the SBA, in accordance with 13 CFR 121.104, over the firm's previous three fiscal years, in an amount less than the current DBE annual gross receipts cap found in 49 CFR § 26.65, currently \$26.29 million.

For information on SBA size standards, how size standards are determined, and size protest appeals, visit <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>. See also 13 CFR Part 121.

49 CFR § 26.65.

## Objective

RTA seeks to implement this SBE Program into its current DBE Program in accordance with applicable law. RTA is including this element to facilitate competition and expand opportunities for small businesses. RTA is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors.

RTA's SBE Program is a race-neutral program for projects funded by the FTA. The following strategies will be implemented:

1. Set-asides – Where feasible, RTA will establish a percentage of the total value of all prime contract and subcontract awards to be set aside for participation by small businesses on contracts funded by DOT. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This requires that the RTA and its prime contractors/consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race, or geographic location. The project manager and RTA’s DBE Liaison Officer will review DOT-funded purchases and contracts to assess the small business opportunities, considering the size and scope of each purchase or contract to establish the set aside portion of the value of each contract for participation by small businesses. This set-aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy. If a set-aside is not established on a DOT-funded contract, the project manager and DBE Liaison Officer will document why a small business set-aside is inappropriate.
2. Unbundling – RTA, where feasible, will continue to “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. RTA will continue to review DOT-funded solicitations to determine whether portions of the project could be “unbundled” or bid separately. Similarly, RTA will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.
3. Business Development Opportunities – RTA works closely with the Oklahoma Department of Transportation (ODOT), metropolitan minority/women organizations, and local agencies to coordinate outreach activities to assist DBEs in accessing Prime Contractors and to educate small and minority businesses on how to do business with RTA and notify them of any upcoming opportunities. Information pertaining to available services from Oklahoma City area minority-owned financial institutions will be made available at outreach activities and at pre-bid conferences when appropriate.
4. RTA electronically communicates bid proposals to minority/small business community organizations, trade organizations, area Chambers of Commerce, and known DBE firms on its bidder’s list and those found in the ODOT database.
5. RTA encourages prime contractors to subcontract portions of work normally done by their own forces when subcontractors submit a lower quote.
6. RTA selects solicitations, times for the presentation of bids, quantities and specifications, and delivery schedules to facilitate small business participation.
7. RTA circulates a pamphlet to SBEs at outreach activities that discloses upcoming contracting opportunities.
8. To monitor the success of the RTAs SBE Program, RTA will count SBE participation in DOT-assisted contracts, following the general methodology outlined in 49 CFR § 26.55.

49 CFR § 26.39.

## DBE Certification

For the purposes of RTAs SBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification if not already certified. Only DBE-certified firms will be counted towards DBE race-neutral participation on DOT-assisted contracts.

## Outreach Efforts

RTA is committed to minimizing the barriers to participation in RTA contracts to all small business concerns. To provide support to the small business concerns, RTA will:

1. Promote small business opportunities at public events hosted by community organizations advocating small and minority businesses.
2. Notify small businesses of upcoming bid opportunities through postings on its website and email blasts to known small business concerns, area chambers of commerce and community organizations.
3. Partner with other ODOT, City of Oklahoma City, City of Edmond, and City of Norman partners in their small business programs to maximize available personnel and resources.

## Implementation Schedule

RTA will amend and incorporate this SBE into its DBE Program within nine (9) months after approval of the element by the FTA.

## Assurances

RTA makes the following assurances:

1. RTA's DBE Program, including its SBE Program, is not prohibited by state law.
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in RTAs SBE Program.
3. There are no geographic or local preferences or limitations imposed on DOT-assisted contracts and RTAs DBE Program is open to small businesses regardless of their location.
4. There are no limits on the number of contracts awarded to firms participating in RTAs DBE Program.
5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
6. Aggressive steps will be taken to encourage those minority and women-owned firms participating in RTAs SBE Program that are eligible for DBE certification to become certified.

  
\_\_\_\_\_  
Jason Ferbrache, Executive Director

July 19, 2023

## Attachment 11 - Regulations: 49 CFR Part 26



## Regulations: 49 CFR Part 26

49 CFR Part 26 may be found at the following link:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

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