



DISADVANTAGED BUSINESS ENTERPRISE
PARTICIPATION PROGRAM

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I. POLICY STATEMENT

The Merrimack Valley Regional Transit Authority (“MEVA”) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations contained in 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs.” MEVA receives Federal financial assistance from the DOT through the Federal Transit Administration (FTA), and as a condition of receiving this assistance, MEVA has signed an assurance that it will comply with 49 CFR Part 26.

The elements presented in MEVA’s DBE Program Plan are intended to ensure that Disadvantaged Business Enterprises (“DBEs”), as defined in part 26, shall have an equal opportunity to compete for and participate in the performance of all DOT-assisted contracts and subcontracts. The MEVA Administrator is responsible for carrying out the policies and procedures in the execution of the DBE Program Plan. It is also our policy:

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

The Chief Compliance Officer has been designated as the DBE Liaison Officer. In that capacity, the Chief Compliance Officer, is responsible for the development, implementation, monitoring, compliance and record keeping functions associated with this program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MEVA in its financial assistance agreements with the Federal Transit Administration.

MEVA has disseminated this policy statement to the MEVA Advisory Board members and all of the components of our organization. MEVA has also distributed this statement to the DBE and non-DBE business communities that perform work for us on FTA/DOT-assisted contracts.

Authorized signature _____
Noah Berger, Administrator

Date _____

II. PROGRAM GENERAL REQUIREMENTS

A. Objectives

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

B. Applicability

MEVA is an FTA recipient of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) with those funds exceeding \$250,000 in a Federal fiscal year, and thus is required to have an approved DBE Program. MEVA's DBE Program is based on provisions found in 49 CFR Part 26 and thus observes certain statutory and regulatory requirements. The DBE Program will apply to all projects receiving the following types of funds: Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405 as stated in §26.3.

49 CFR Part §26.3 was originally created under 64 FR 5126 on February 2, 1999 and amended at 79 FR 59592, on October 2, 2014. Since then, reauthorizing surface transportation programs have been passed in both 2015 (FAST Act) and 2021 (Bipartisan Infrastructure Law) that apportion federal transit funds which also fall under the purview of the DBE Program, although the statute has yet to be amended to reflect these reauthorizations.

C. Definitions

MEVA hereby references Section 26.5 of 49 CFR Part 26 as amended.

D. Forbidden Discriminatory Actions

It is the policy of MEVA that no person(s) will ever be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, national origin or sex. In the administration of its DBE Program, MEVA 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 this program with respect to individuals of a particular race, color, sex, or national origin.

E. Record Keeping Requirements

Reporting: MEVA will report DBE participation to the Federal Transit Administration using the Uniform Report of DBE Awards or Commitments and Payments form. FTA updated the electronic reporting version in October 2014 and moved it under the Civil Rights section of the recipient's organization in the Transit Award Management System (TrAMS). The system automatically generates a task twice a year (on April 1st and October 1st) for completion of this semi-annual report prior to June 1st and December 1st due dates. The DBE Liaison Officer has credentials to login to TrAMS to submit these reports.

Bidders List: MEVA has created and will maintain a bidders list. Said list presently consists of all firms which have bid on prime contracts and subcontracts or quoted on MEVA DOT-assisted projects within the past three years. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include, as required by Part 26, the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. MEVA collects this information in the following ways:

1. MEVA has created a form (*FINANCIAL AND LEGAL STATUS STATEMENT* - attached in Attachment 3) that is required to be submitted for all competitive procurements at the time of submission. This form is also required for all small purchases for new contractors. This form requires detailed information about their firm including (but not limited to) those required by §26.11(c)(2):
 - a. Firm Name
 - b. Firm Address
 - c. Age of the firm
 - d. Annual gross receipts*
The annual receipts are put into brackets (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) so as not to burden the firms with exact dollar values.
2. The firm's status as a DBE or non-DBE is obtained on a different form (*DBE PARTICIPATION SCHEDULE* - attached in Attachment 3). If the Prime is using Subcontractors; for prime and each subcontractor the following information is required:
 - a. Scope of DBE work (function)
 - b. Dollar Value of Bid and DBE Amount(s)

F. Nondiscrimination Assurances

MEVA acknowledges that it will include or require the inclusion of the appropriate assurance clauses as specified in Section 26.13 of 49 CFR Part 26 in its financial assistance agreements with FTA, or other applicable DOT operating administration, and in each contract executed with a contractor, and each subcontract the prime contractor executes with a subcontractor. The two assurances, respectively, are as follows:

1. Federal Financial Assistance Agreement Assurance: 26.13(a)

The recipient [MEVA] shall not discriminate on the basis of race color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to [MEVA] of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

2. Contract Assurance: 26.13(b)

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out the requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient [MEVA] deems appropriate, which may include but is not limited to: withholding payments, sanctions, liquidated damages, and/or disqualifying the contractor from future bidding as non-responsible.

III. ADMINISTRATIVE REQUIREMENTS

A. Program Updates

Since MEVA receives more than \$250,000 in any given Federal fiscal year from the Federal Transit Administration to carry out planning, capital, and/or operating programs, we will continue to carry out this program until all funds from DOT financial assistance have been expended. MEVA will provide to DOT updates representing significant changes in the program.

B. Liaison Officer

MEVA's Chief Compliance Officer has been designated as the DBE Liaison Officer. The Chief is a direct report to MEVA's Administrator and therefore has independent access concerning DBE program matters. An organizational chart is provided in Exhibit 1.

The DBE Liaison Officer (DBELO) is responsible for developing, implementing and monitoring MEVA's DBE Program. Relevant staff will be assigned various duties and responsibilities, which the DBELO will oversee and provide direction. These include:

1. Gathering and reporting statistical data and other information as required by FTA.
2. Reviewing third party contracts and purchase requisitions for compliance with this program.
3. Working with all departments to set overall annual goals.
4. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifying contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitoring results.
6. Analyzing MEVA's progress toward goal attainment and identifying ways to improve progress.
7. Participating in pre-bid meetings.
8. Advising the Administrator on DBE matters and achievement.
9. Making determinations of contractor compliance with good faith efforts.
10. Providing DBEs with information and guidance in preparing bids, obtaining bonding and insurance.
11. Assuring the certification of DBE's according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Massachusetts.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains MEVA's updated directory on certified DBEs.

C. Financial Institutions

It is the policy of MEVA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. Information on the availability of such institutions can be obtained from the Supplier Diversity Office Directory.

D. Prompt Payment Mechanisms

As a part of this program MEVA will require the following prompt payment and retainage clauses to be included in all of its third-party contracts which receive FTA funding. These clauses apply to both DBE and non-DBE subcontracts.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contracts no later than thirty (30) days from the receipt of each payment received by the prime contractor from MeVa. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MeVa. This clause applies to both DBE and non-DBE subcontracts.

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

MeVa will monitor all payment schedules for inclusion of work performed by subcontractors. MeVa will contact, at random, subcontractors to ensure that payments for satisfactory completed work have been received. If an occurrence is found in which a subcontractor was not paid by the Prime, the prime contractor will not be reimbursed for work performed by subcontractors, unless and until the prime contractor pays the subcontractors and ensures that the subcontractors continue to be promptly paid for work performed.

If a prime contractor determines subcontractor work to be unsatisfactory, it must notify MeVa immediately, in writing, and state the reasons. Failure to comply with this requirement will be construed to be a breach of contract, which may result in the termination of this contract or such other remedy as MeVa deems appropriate.

E. DBE Directory

MEVA uses and will continue to use as necessary, a DBE directory identifying all firms eligible to participate as DBEs in its program. MEVA will utilize the Massachusetts Supplier Diversity Office (SDO) as its DBE certifying agency. Contents of the directory will be downloaded directly from the SDO Directory of Certified Businesses in compliance with Section 26.31 of 49 CFR Part 26 of DOT's final rule on DBE participation.

F. Overconcentration

MEVA has not identified that an overconcentration exists in the types of work that DBEs perform in our region. MEVA will re-evaluate for overconcentration every three years. If, in subsequent years, MEVA does identify a situation where an overconcentration of DBE's is unduly burdening non-DBE firms, we would address the problem by developing a method to address the problem and bring it to

the attention of FTA. We might first vary the use of contract goals to lessen any burden on particular types of non-DBE specialty contractors. Secondly, we would assist prime contractors to find DBEs in non-traditional fields.

G. Business Development Programs

MEVA has not established its own DBE Business Development Program (BDP). It is our understanding that both the Massachusetts Office of Business Development (“MOBD”) and the SDO’s Supplier Diversity Program may be utilized by MEVA whenever we identify a company as a potential candidate in need of a business development program. MEVA would encourage companies to apply to participate in the above mentioned MOBD’s and SDO’s programs.

H. Compliance Mechanisms and Monitoring

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

1. MEVA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. MEVA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 2 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. MEVA will 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 adhering to the following steps and will occur for each contract/project in which there is a DBE participating.
 - a. Upon receipt of the DBE Participation Schedule (and other associated bid documents) from the prime contractor for each project, the DBELO checks each DBE in the Directory of Certified Businesses of the Supplier Diversity Office to verify the DBE’s Certification is current and certified to perform the specified work in the contract award.
 - b. The DBELO will monitor the Certified Payroll Reports received from the prime contractor and all subcontractors to ensure that the employees are actual DBE employees. Also checking that each contractor is paying the applicable pay rates for each work classification against the wage tables. This examination would be conducted, by appropriate staff (project manager and/or accounts payable), each time a payment is processed for the prime contractor. (See Procedure PRJ-001 for details.)
 - c. MEVA will also use its Project Manager (either in-house or outside OPM) to verify via on-site inspections that the work stated to be performed by DBE firms is actually being performed by DBE firms. The Project Manager will be responsible to turn in the Commercially Useful Function (CUF) report (See Procedure) to the DBELO once a DBE subcontractor has finished their work on a project.
4. In addition, a cumulative tally of the weekly statements (thru Prevailing Wage Reports) must be provided to MEVA by the prime contractor. That tally must include the following clause

and must be signed and dated by the Chief Financial Officer (or equivalent) of the Prime contractor.

All Subcontractors, both DBE and non-DBE, who completed work and were listed on this Application for Payment, herewith will be paid within the required fifteen (15) business days after the above-named Company receives payment from MEVA. The DBE firm(s) will be noted and therefore, DBE participation may be credited toward overall or contract goals.

The DBE Liaison Officer must be notified when a contract-change or amendment is made, and the prime contractor must submit a statement regarding how the change may affect DBE subcontracting. No terminations or substitutions of the DBE firms listed in the original contract may be done by the Prime Contractor without prior written consent by MEVA.

I. Fostering Small Business Participation

The Small Business Association defines a small business concern as a business that is not dominant in the field of operation for which it is bidding on a government contract, in addition to qualifying as a small business under the criteria and size standards in Title 13, Code of Federal Regulations, part 121 (13 CFR 121). ¹Size standards define the largest size a business can be to participate in government contracting programs and compete for contracts reserved or set aside for small businesses. Size standards vary by industry and are generally based on the number of employees or the amount of annual receipts the business has. <https://www.sba.gov/document/support-table-size-standards>. In addition to meeting the numerical standards for small, a business must:

- Be a for-profit business of any legal structure
- Be independently owned and operated
- Not be nationally dominant in its field
- Be physically located and operate in the U.S. or its territories

In accordance with § 26.39, MEVA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted projects by small business concerns (both DBEs and non-DBE). MEVA's SBE implementation will establish a race-neutral small business program for prime contracts. This will be proposed on a per fiscal year basis by the DBELO, in consultation with the Administrator.

MEVA, as a recipient of Urban 5307 funds for the majority of our capital projects, including most bus purchases, received about \$8 million per year. Operating Assistance and Preventative Maintenance activities use half of that apportionment. Large capital projects, which by some standards are more medium size (less than \$10 million), only come one at a time, and not in years that buses are purchased. Many of the projects on MEVA's Five-Year Capital Improvement Plan range from \$50,000 to less than \$500,000. About \$1 million is used annually for small rehab projects in our facilities and therefore are viable contracting opportunities for small business enterprises.

MEVA will take all reasonable steps to eliminate any obstacles to SBE participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business

¹ Information taken from the SBA website at <https://www.sba.gov/federal-contracting/contracting-guide/size-standards#id-size-standards-define-small-business>.

participation in procurements as prime contractors or subcontractors. As part of this program MEVA will include, but is not limited to, the following strategies:

1. MEVA will provide a reasonable number of prime contracts available for small businesses by taking a yearly assessment of possible contracting opportunities. This yearly assessment will take place at the beginning of the year when MEVA is reviewing its Capital Improvement Plan. Once a number is derived, we will seek approval of our Administrator. A blanket value cannot be set directly in this program since our capital expenditures vary greatly from year to year.
2. MEVA advertises contracting opportunities in local media outlets such as the Lowell Sun or Lawrence Tribune to reach small businesses in the region.
3. MEVA has a number of local chambers throughout the Merrimack Valley. MV Chamber of Commerce is the largest. But there are many smaller municipal chambers as well as independent Spanish business associations. MEVA will use these resources to find small businesses to add to our bidders list. MEVA will also build a communication pipeline to disseminate information about specific contracting opportunities to their members.
4. In multi-year design-build contracts, MEVA will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform. MEVA will stress during its pre-proposal meetings the benefits of using SBE's on their project teams.
5. MEVA will require prime contractors to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved. If MEVA is concerned that SBE participation is low during any contracting year, MEVA will institute contract clauses stating that SBE subcontracting requirements are mandatory and devise a form that will make it easier for the prime contractor to accomplish.
6. MEVA will annually track SBE participation to ensure that SBEs are included in contracting opportunities within MEVA. While many DBE firms may be SBEs, not all SBEs are DBEs. Therefore, SBE participation cannot be combined with DBE participation in measuring achievement of goals.

IV. DETERMINING, MEETING AND COUNTING OVERALL ANNUAL DBE GOAL FOR FEDERALLY-ASSISTED CONTRACTS

A. Set-asides or Quotas

MEVA hereby references Sections 26.43 of 49 CFR Part 26.

B. Overall Goals - Method: Step One, Base Figure; Step Two, Adjustments

The DBE Liaison Officer will set an overall DBE goal, in accordance with Section 26.45, to be submitted to FTA by August 1st every three years in accordance with the schedule set by Region 1. MEVA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA. The process used by MEVA to establish overall DBE goals is as follows:

Step 1: In order to determine a base figure for the DBE goal the following methodology is used: To determine the number of available DBE firms available to do business with MEVA, the SDO Certified Business Directory is downloaded, categorized, sorted and checked for duplicate

listings in similar categories. To calculate all Firms within the same geographic region MEVA will use resources such as census data, the NAICS database, and Massachusetts Chamber of Commerce website directories under the same categories; again, eliminating any duplicate firms which may be registered in multiple CoC's. Once the number of firms that fit the descriptions is determined, MEVA then divides the DBEs by category, by the Firms in the category, and this number is then multiplied by the percentage of the budget allocated to the category. All numbers are added together to give a final DBE base figure.

Step 2: MEVA will then study its historical data and overall DBE reporting. In then reviewing this overall number and also reviewing historical data, MEVA will determine its adjusted overall DBE goal if applicable.

C. Public Participation

Before finalizing the overall goal each year, MEVA will consult with the minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MEVA's efforts to establish a level playing field for the participation of DBEs. MEVA has relationships with the many Chambers of Commerce in our service area, along with many Latino business organizations such as Federación Hispana de Comerciantes and EPara Todos.

D. Published Notice

Following this consultation, MEVA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection on our website and during normal business hours at MEVA's principal office for 30 days following the date of the notice, and informing the public that MEVA and DOT will accept comments on the goals for 45 days from the date of the notice. The notice is issued to the local newspaper, Eagle Tribune, and minority newspaper, Rumbo. The notice will also be posted on the MVRTA website: www.mevatransit.com. Normally, MEVA will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

E. Goal Submission

MEVA's overall goal submission to DOT will include: the goal (including the breakout of estimated race- neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in the media outlets listed above.

MEVA will begin using its overall goal on October 1 of the specified year, unless MEVA has received other instructions from DOT. If MEVA establishes a goal on a project basis, it will begin using its goal by the time of the first solicitation for a DOT-assisted contract for the project. MEVA's goal will remain effective for the duration of the three-year period established and approved by FTA.

F. Goal Setting and Accountability

If the awards and commitments shown on MEVA’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, we 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 and to enable MEVA to meet fully our goal for the new fiscal year;
3. This analysis and corrective action plan must be completed within 90 days of the end of the fiscal year (December 29);
4. Maintain information/records regarding the analysis and efforts made in the records for three years and make it available to FTA on request for their review.

G. TVM Certification

MEVA requires that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements certify that it has complied with the requirements of Section 26.49 of 49 CFR Part 26 of DOT’s final rule on DBE participation.

Updates to the DBE regulation in 2014 required FTA recipients to submit, within 30 days of making an award, the name of the successful bidder for transit vehicles and the total dollar value of the contract. Therefore, when MEVA issues a contract, or PO, for the purchase of vehicles needed on an annual basis, MEVA will follow the policy and submit this report thru the link provided by FTA on their website at <https://www.transit.dot.gov/TVM>.

MEVA is not to report awards for vehicles not manufactured by eligible transit vehicle manufacturers, even if those vehicles are used for transit purposes (these awards are captured in the semi-annual reports). Conversely awards reported on the TVM site are NOT to be included in the semi-annual report. FTA’s List of Eligible Transit Vehicle Manufacturers is located at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>.

H. Race Neutral Measures vs. Contract Goals

It is MEVA’s intention to utilize race-neutral measures to achieve its overall DBE goal. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. § 26.51 (b) states, “Race-neutral means include, but are not limited to, the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.”

All bids issued by MEVA are fully competitive. The following procurement procedures are meant to help the DBE program meet its race-neutral goals.

1. Primarily, but not to the exclusion of other possible measures, MEVA will ensure the inclusion of DBE’s and other small businesses on MEVA’s mailing lists for bidders.
2. MEVA will ensure the dissemination, to bidders on prime contract, lists of potential subcontractors; and ensure awareness of MEVA’s DBE directory via our website.
3. MEVA has non-restrictive bonding requirements so as to not burden contractors of all sizes
4. Where appropriate MEVA can provide information on contracting opportunities in Spanish.
5. Partner with local business associations to help new firms start-up and become DBEs, particularly in fields in which DBE participation has historically been low

MEVA does not intend to set any contract goals as a part of its overall goal for DBE participation. If MEVA, thru submission of the Semi-Annual Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, demonstrates that current trends make it unlikely that MEVA will achieve its overall goal at the end of the fiscal year, FTA may require MEVA to make further good faith efforts, such as by modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

If MEVA must adjust our split to incorporate Contract Goals (race-conscious measures), then MEVA will consider the following:

1. MEVA will use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.
2. MEVA will not set a contract goal on every DOT-assisted contract.
3. MEVA doesn’t have to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the

period covered by your overall goal, MEVA must set contract goals so that they will cumulatively result in meeting any portion of the overall goal we do not project being able to meet through the use of race-neutral means.

4. FTA approval of each contract goal is not necessarily required. However, FTA may review and approve or disapprove any contract goal MEVA establishes.
5. MEVA's contract goals must provide for participation by all certified DBEs.

I. Good Faith Efforts Procedures

If at some point during the Federal Fiscal Year MEVA finds it necessary to utilize contract goals it will follow the regulations established in Section 26.53 of 49 CFR Part 26 in determining bidders/proposers' good faith efforts in meeting MEVA's established goal. These procedures are incorporated in Appendix E of our Procurement Policies and are included in bid documents requiring contract goals.

1. 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, MEVA will not award the contract to a bidder/proposer who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents 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 it has made sufficient good faith efforts prior to submission of its bid.
2. Evaluation of Good Faith Efforts: 26.53(a) & (c) – The Procurement Officer, in collaboration with the DBELO, is responsible for determining whether a bidder/proposer, who has NOT met the contract goal, has documented sufficient good faith efforts to be regarded as responsive. Making good faith efforts means taking all the necessary and reasonable steps to achieve a DBE goal which by their scope, intensity and appropriateness could reasonably be expected to obtain DBE participation even if these efforts were not fully successful.

The process used to determine whether good faith efforts have been made by a bidder are in accordance with Appendix A to Part 26. In order for MeVa to make a good faith effort determination, answers to the following questions are required:

- a. Has Proposer solicited, through all reasonable and available means, the interest of all DBEs who have the capability to perform the work of the contract?
- b. Has Proposer solicited the interest of DBEs within sufficient time to allow DBEs to respond to the solicitation?
- c. Has Proposer provided interested DBEs with adequate information about the plans and specifications in a timely manner to assist the DBEs in responding to the solicitation?
- d. Has Proposer taken reasonable and appropriate steps to follow up on its solicitations to interested DBEs?
- e. Has Proposer selected portions of work to be performed by DBEs in such a manner as to increase the likelihood that the DBE contract goal will be satisfied?
- f. Has Proposer negotiated in good faith with interested DBEs?
- g. Has Proposer rejected responses from interested DBEs without reasonable justification?

The kinds of efforts that will be considered demonstrative of good faith efforts include, but are not limited to, the following:

- a. Whether the contractor solicited through all reasonable and available means (e.g., attendance at pre-bid meetings or other outreach to MEVA Procurement, advertising and/or written notices) the interest of all certified DBE's who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow-up on initial solicitations.
 - b. Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - c. Whether the contractor negotiated in good faith with interested DBE's. It is the bidder/proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work (and where appropriate, breaking out contract work items into economically feasible units) or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - d. Whether or not the contractor rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - e. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by MEVA or the prime contractor.
 - f. Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - g. Whether the contractor effectively used the services of available minority/women community organizations and contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations to provide assistance in the recruitment and placement of DBEs.
3. Information to be Submitted: 26.53(b) – MEVA treats bidder/proposer's compliance with good faith efforts' requirements as a matter of responsiveness and being a responsible

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

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work that each DBE will perform;
- c. The dollar amount of the participation of each DBE firm participating;
- d. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- e. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and
- f. If the contract goal is not met, evidence of good faith efforts.
 - (1) Evidence of such efforts includes the names, addresses, and telephone numbers of DBE's that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached.
 - (2) Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI).

Each of the above items must be documented thru the bid forms (and required attachments) included with each competitive procurement which provide guidance to the bidder/proposer in meeting the contract goals in their bid response. (See MEVA's Procurement Policies)

4. Administrative Reconsideration: 26.53(d) - Within 5 days of being informed by MEVA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposers should make this request in writing to MEVA. The reconsideration official will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer 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/proposer will have the opportunity to meet in person with MEVA's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. MEVA will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder/proposer 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 Federal Transit Administration or the U.S. Department of Transportation.

5. Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f) – MEVA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without MEVA'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 to MEVA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to MEVA prior to consideration of the request to terminate. The DBE will then have five (5) days (sooner if a matter of public safety) to respond and advise MEVA of why it objects to the proposed termination. In those instances where "good cause" exists to terminate a DBE's contract,

MEVA will require the prime 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. MEVA 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, MEVA will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our Procurement office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Procurement officer may issue a termination for default proceeding.

6. **Sample Bid Specification:**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is MEVA's policy 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/proposers, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/proposer shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/proposer 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/proposer'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.*

Items (1) thru (4) must be documented on the "Schedule of Intended DBE Participation" form, and item (5) must be documented on the DBE Affirmation form.

J. Counting DBE Participation

At the time when MEVA establishes contract goals it will follow the regulations established in Section 26.55 of 49 CFR Part 26 on how to count DBE participation toward goals.

V. CERTIFICATION STANDARDS

A. Section 26.61 – 26.73 Certification Process

MEVA acknowledges Section 26.61 thru 26.73 of 49 CFR Part 26. MEVA will use the certification standards of Subpart D of Part 26 as determined by the Supplier Diversity Office. However, MEVA

is not a certifying entity. Please refer to the Massachusetts UCP agreement referenced in section VI.A below.

VI. CERTIFICATION PROCEDURES

A. Unified Certification Program

MEVA is a member of a Unified Certification Program (UCP) administered by the Commonwealth of Massachusetts' Supplier Diversity Office (SDO). The UCP will meet all of the requirements of this section. MEVA will use and count for DBE credit only those DBE firms certified by the SDO.

The Massachusetts SDO will provide "one stop shopping" for all DBE and SBE applicants for certification, such that an applicant is required to apply only once for DBE certification that will be honored by all Recipients in the Commonwealth of Massachusetts. The SDO was created as a successor the State Office of Minority and Women Business Assistance ("SOMWBA") within the Operational Services Division of the Executive Office for Administration and Finance. The SDO will make all certification decisions on behalf of all USDOT recipients in the state with respect to participation in USDOT DBE programs. SDO shall maintain a unified directory of DBE's (including those from other states certified under 49 CFR Part 26) which shall be available electronically on the internet, and in print upon request.

B. Procedures for Certification Decisions

MEVA acknowledges Sections 26.83 thru 26.91 of 49 CFR Part 26. However, MEVA is not a certifying entity. Please refer to the Massachusetts UCP agreement referenced in section VI.A above.

VII. MONITORING, COMPLIANCE AND ENFORCEMENT

A. Monitoring Payments to DBE's

Prime contractors that fail to comply with MEVA's Prompt Payment Policy, after MEVA has taken all initial measures to resolve untimely payments, would be subject to, at a minimum, the following compliance mechanisms developed by MEVA.

Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.

MEVA may also choose to pay subcontractors directly and deduct this amount from the retainage owed to the Prime Contractors if the above mechanism fails.

Further delays and failures to resolve payment issues may result in contract termination.

MEVA 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 MEVA or DOT/FTA. This reporting requirement is also extended to any certified DBE subcontractor. MEVA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that

the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the Schedule of DBE Participation.

B. Compliance and Enforcement

MEVA acknowledges the compliance and enforcement requirements under §26.101 and 26.103 for recipients; §105 does not apply to MEVA.

In accordance with §107, MEVA will bring to the attention of the Federal Transit Administration 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.

C. Confidentiality

MEVA will safeguard from disclosure to third parties (other than DOT) information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law without the written consent of the firm that submitted the information.

Notwithstanding the provisions of paragraph above, the identity of complainants, who brought allegations against a firm, 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.

D. Cooperation

All participants in the Department's DBE program (including, but not limited to, recipients (MEVA), DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and MEVA 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.

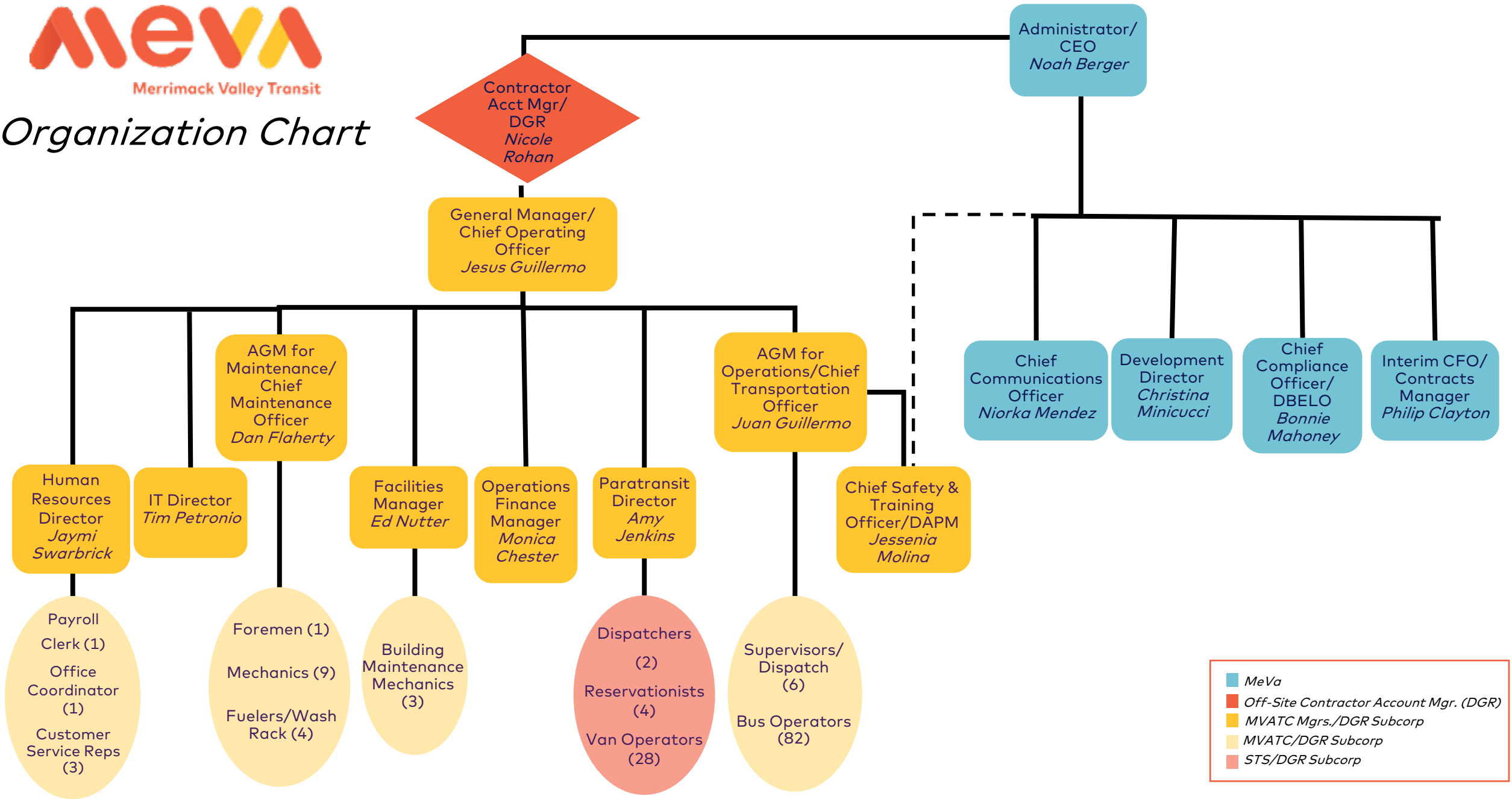
E. Intimidation and Retaliation.

MEVA, contractor(s), or any other participant 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 DBE Law, 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 law. If you violate this prohibition, you are in noncompliance.

Attachment 1 – MEVA Org Chart



Organization Chart



MeVa
Off-Site Contractor Account Mgr. (DGR)
MVATC Mgrs./DGR Subcorp
MVATC/DGR Subcorp
STS/DGR Subcorp

Attachment 2 – **MONITORING & ENFORCEMENT MECHANISMS/LEGAL REMEDIES**

The Merrimack Valley Regional Transit Authority, along with the monitoring activities defined in Section III.H above, has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Suspension or debarment proceedings pursuant to M.G.L. c. 29, §29F and M.G.L. c. 149, §44C

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 49 CFR part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

Attachment 3 – DBE Participation Forms

FINANCIAL AND LEGAL STATUS STATEMENT

A. Identification of Company and General Information

- 1. Tax Identification Number: _____
 Name of Organization: _____
 Business Address: _____
 Telephone Number: _____

2. Legal Status of Organization: (Check One)

- _____ For-profit corporation or Joint Venture Corporation
- _____ For-profit partnership or sole proprietorship
- _____ For-profit classified as a Small Business
- _____ Non-profit corporation _____ Public Agency
- _____ Other (Identify): _____

3. Please check the appropriate bracket for annual gross receipts:

- _____ Less than \$1,000,000 _____ \$1-2 Million _____ \$2-5 Million
- _____ \$5-10 Million _____ \$10-25 Million _____ \$25-50 Million _____ More than \$50M

4. How many years has your firm been engaged in this business under its present name? _____

5. Have you ever refused to sign a contract at your original proposal or proposed price? _____

6. Have you ever defaulted on a contract: _____

7. Upon request you will furnish any other information (appropriate to this solicitation) that MeVa may require. _____

8. Name of Chief Executive Officer (or Administrator) of Organization: _____

9. Name of individual designated to represent your organization in subsequent discussions or negotiations related to this solicitation:

(Name)

(Phone)

SIGNATURE OF CHIEF EXECUTIVE OFFICER

DATE

DISADVANTAGED BUSINESS ENTERPRISE LETTER OF INTENT

To: _____
 (Name of Prime Bidder/Proposer)

The undersigned intends to perform work in connection with this project as a DBE.

The Disadvantaged Business status of the undersigned can be confirmed on the most recent list of Certified Disadvantaged Business Enterprises published by Supplier Diversity Office of the Commonwealth of Massachusetts:

The undersigned is prepared to perform the following work in connection with the above project, (Specify in detail particular work items or parts thereof to be performed):

At the following price: _____

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the MeVa.

Name of Disadvantaged Business Enterprise: _____

Please provide contact information:

Contact Name:	
Contact Title:	
Contact Email:	
Contact Phone #:	
Billing Department Email:	
Billing Department Phone #:	

By: _____
 (Signature and Title of Person)

Date: _____

DISADVANTAGED BUSINESS ENTERPRISE (DBE) AFFIDAVIT

The undersigned being duly sworn, deposes and says that he/she is the

(Sole owner; partner; president; treasurer; or other duly authorized official of a corporation)

of

(Name of DBE)

and certifies that since the date of its certification by Supplier Diversity Office of the Commonwealth of Massachusetts:

(Insert Date)

that this certification has not been revoked, nor expired, nor has there been any change in the disadvantaged class status.

(Name of DBE Firm)

(Signature and Title of Person Making Affidavit)

Sworn to before me this _____ day of _____ 20

(Notary Public)

NOTE: The Proposer must attach the DBEs most recent certification letter or document to this affidavit.

Attachment 4 – Good Faith Effort Forms

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

FAILURE TO COMPLETE THIS FORM AND IDENTIFY YOUR UTILIZATION OF DBEs WILL RENDER YOUR BID AS UNRESPONSIVE AND NOT ELIGIBLE FOR ACCEPTANCE AS A COMPLETE SUBMISSION.

I acknowledge the overall certified DBE subcontract participation goal of x%. I have made a good-faith effort to achieve this goal. If awarded the contract, I will continue to attempt to increase DBE participation during the project, when and where feasible within the constraints of the contract.

- 1 **I have met the overall DBE goal for this project.**
 - Attachment A [*DBE Project Participation Statement*] is required
- 2 **After having made a good-faith effort to achieve the overall DBE goal, I can achieve partial success only.**
 - Attachment A [*DBE Project Participation Statement*] is required
- 3 **After having made a good faith effort to achieve the overall DBE goal for this project, I am unable to achieve any portion of the goal.**
 - Attachment B [*DBE Waiver Statement*] will be required

I understand that if I am the apparent awardee or conditional awardee, I must submit **within 5 business days** any other documentation MEVA requires to ascertain my responsibility in connection with the DBE participation contract goal.

I acknowledge that if I fail to timely return complete documents, MEVA may determine that I am not responsible and therefore not eligible for contract award.

In the solicitation of subcontract quotations or offers, DBE subcontractors were provided the same information and amount of time to respond as were non-DBE subcontractors.

The process was conducted in such a manner that did not place DBE subcontractors at a competitive disadvantage to non-DBE subcontractors.

I affirm under the penalties of perjury that this Affidavit is true to the best of my knowledge, information, and belief.

Signature of Contractor's Authorized Representative

Company Legal Name

Printed Name/Title

Date

DISADVANTAGED BUSINESS ENTERPRISE WAIVER STATEMENT

I acknowledge the overall certified DBE subcontract participation goal of x%.

I have made a good-faith effort to achieve this goal in accordance with Section 26.53 of 49 CFR Part 26.

I was unable to achieve DBE Participation on this project despite a good faith effort to include DBEs.

1 I was unable to locate any DBEs for the specified Trade

OR

2 I was able to locate DBEs, however their cost, availability, or other critical aspect of their proposal was prohibitive

Backup documentation clearly and articulately showing either outreach efforts, cost comparison, availability issues or other, must be submitted with this form to the satisfaction of the DBE Liaison Officer for acceptance.

I affirm under the penalties of perjury that this Affidavit is true to the best of my knowledge, information, and belief.

Signature of Contractor's Authorized Representative

Company Legal Name

Printed Name/Title

Date

Attachment 5 – CERTIFICATION FORMS

MEVA has signed a UCP Agreement with the Massachusetts Supplier Diversity Office, attached here. The following link will bring the potential DBE to SDO's website where they can learn about the certification process and access all required forms.

<https://www.sdo.osd.state.ma.us/Content/download-forms.aspx>

The firm may also contact the SDO via alternative forms of communication at the following:

Supplier Diversity Office (SDO)
The McCormack Building
One Ashburton Place, Room 1313
Boston, MA 02108
Phone - (617) 502-8831
Fax - (617) 502-8841
Email: wso@state.ma.us

Attachment 6 – Section 49 Code of Federal Regulations Part 26