



VT Agency of Transportation

Disadvantaged Business Enterprise (DBE) Program



Vermont Agency of Transportation
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Agency of Transportation

VTrans DBE Policy Statement

Objectives/Policy Statement ~ 49 CFR §26.1; §26.23

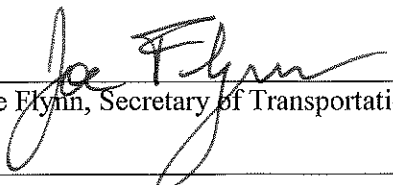
The Vermont Agency of Transportation (VTrans) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. VTrans has received Federal financial assistance from the Department of Transportation, and as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

It is the policy of VTrans 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;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Chief of Civil Rights and Labor Compliance, Lori Valburn, has been delegated as the VTrans DBE Liaison Officer. In that capacity, she 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 VTrans in its financial assistance agreements with the Department of Transportation.

VTrans has disseminated this policy statement to the Agency's Executive Team, other senior management, and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Distribution is accomplished by a variety of methods, including the posting of this statement on our website ([VTrans DBE Program Policy Statement](#)) and a widespread email distribution that includes all of our certified DBEs, our non-DBE contractors and consultants, our sub-recipients, the Association of General Contractors and other trade and professional organizations, numerous technical assistance and service providers, and community based organizations serving the disadvantaged business community.


Joe Flynn, Secretary of Transportation

Date: 09/25/2017



SUBPART A – GENERAL REQUIREMENTS

Objectives ~ 49 CFR [§26.1](#)

The Vermont Agency of Transportation (VTrans) is committed to engaging small disadvantaged, minority and women-owned business enterprises as defined herein in all contracts to the maximum feasible extent, and will continue working to ensure the maximum feasible opportunity for these businesses to participate in contracts financed in whole or in part with federal funds.

The VTrans Disadvantaged Business Enterprise (DBE) Program has been carefully designed to incorporate 49 CFR Part 26, issued in February 1999, replacing 49 CFR Part 23, as amended. It also incorporates any new rule changes and will continue to be amended as new rules are promulgated. This Program, as set forth herein, is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a “level playing field”, and foster equal opportunity in USDOT-assisted contracts; improve the flexibility and efficiency of the DBE Program; and reduce burdens on small businesses.

In keeping with VTrans’ multi-modal focus, responsibility for carrying out the Program is Agency-wide. All of VTrans will ensure that its contractors, subcontractors, and other parties indicated by federal law will meet the Program requirements. Additionally, VTrans recognizes the importance of small businesses in Vermont’s economy, and will work cooperatively with any and all other parties who also act in good faith to enhance development and growth opportunities of small businesses owned by disadvantaged individuals, minorities and women.

VTrans, as the certifier of all DBEs in Vermont, will be diligent in ensuring that all DBEs certified in Vermont have met the requirements set forth in 49 CFR 26. Additional information on the VTrans DBE Program, and DBE resources and useful links can be accessed on the VTrans DBE webpage: [VTrans DBE Webpage](#).

Applicability ~ 49 CFR [§26.3](#)

VTrans is the recipient of Federal –aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

VTrans is the recipient of 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, II, and V of the Teas-21, Pub. L. 105-178.

VTrans is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

VTrans is a recipient of Federal Rail Administration funding through American Recovery and Reinvestment Act, TIGER grant.

Definitions ~ 49 CFR [§26.5](#)

VTrans will use terms in this program that have the meaning defined in Section 26.5. These definitions can be found electronically by clicking on the above CFR reference or in **Attachment 1** of this document.

For the purposes of this program, ***“a socially and economically disadvantaged individual”*** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - ii. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. Women;
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Non-discrimination Requirements ~ 49 CFR [§26.7](#)

VTrans 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, VTrans 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.

Record Keeping Requirements ~ 49 CFR [§26.11](#)

Reporting to DOT: Section 26.11(b):

Since VTrans will receive an annual grant during the reporting period of \$250,000 or more for airport planning or development, \$250,000 or more in FTA planning capital and/or operating assistance in a

Federal fiscal year, and FHWA funds as authorized by statute, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit updated overall annual goals every three years to each Federal funding administration of DOT, as directed and in accordance with different modal schedules.

VTrans will report DBE participation to USDOT as follows:

- As Recipients of FAA funding, VTrans will submit/transmit annually on December 1, as required the Uniform Report of DBE Awards or Commitments and Payment Form, found in Appendix B to this Program, at the intervals stated on the form.
- As Recipients of FTA funding, VTrans will report DBE participation on a semi-annual basis, on December 1 and June 1, using the electronic Uniform Report of DBE Awards or Commitments and Payment Form available in the FTA TRAM-web system.
- As Recipients of FHWA funding, VTrans will report DBE participation on a semi-annual basis, on December 1 and June 1, using the Uniform Report of DBE Awards or Commitments and Payment Form.

Bidders List ~ 49 CFR [§26.11\(c\)](#)

VTrans has created and will maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our USDOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information through the use of a survey sent to all contractors in April of each year via e-mail. The Contractor will fill out the Bidders Survey, **Attachment 2**, and will send copies of the survey to any subcontractors it has employed on federally funded VTrans projects. The survey will be returned by the last Friday in April of each year.

Maintenance of Records and Reporting of UCP Information ~ [§26.11 \(d\) & \(e\)](#)

As a certifying agency, VTrans will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, VTrans will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. We understand that these records must be retained in accordance with applicable record retention requirements of our financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for our financial assistance agreement, whichever is longer.

VTrans is designated as the UCP for the State of Vermont, established pursuant to § 26.81 of this part, and will report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Federal Financial Assistance Agreement ~ 49 CFR [§26.13](#)

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

VTrans does not and will 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. VTrans' 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 VTrans of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 49 CFR [§26.13](#)

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

“The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the 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”.

Every DOT-assisted contract and subcontract shall also contain the VTrans Disadvantaged Business Enterprise (DBE) Policy Contract Requirements, CA-110, a copy of which is attached as **Attachment 3**.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates ~ 49 CFR [§26.21](#)

Since VTrans will receive an annual grant during the reporting period of \$250,000 or more for airport planning or development, \$250,000 or more in FTA planning capital and/or operating assistance in a Federal fiscal year, and FHWA funds as authorized by statute, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for DOT's approval. We will submit updated overall annual goals every three years to each Federal funding administration of DOT, as directed. The VTrans DBE Plan applies to all VTrans sub recipients and local public agencies who award federally assisted contracts.

Policy Statement ~ 49 CFR [§26.23](#)

The Policy Statement is elaborated on the first page of this program.

DBE Liaison Officer (DBELO) ~ 49 CFR [§26.25](#)

We have designated the following individual as our DBE Liaison Officer:

Lori Valburn, Chief of Civil Rights & Labor Compliance
Vermont Agency of Transportation
One National Life Drive
Montpelier, VT 05633-5001

Phone: (802) 828-5561
Fax: (802) 828-1047
e-mail: Lori.Valburn@vermont.gov

In that capacity, Lori Valburn is responsible for implementing all aspects of the DBE program and ensuring that the Vermont Agency of Transportation complies with all provisions of 49 CFR Part 26. Lori Valburn has direct, independent access to the Secretary of the VT Agency of Transportation, Joe Flynn, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 4** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO's staffing resources include a Civil Rights Program Specialist assigned to the DBE program on a half-time basis and a Civil Rights Program Specialist assigned to the DBE Program on a quarter-time basis. An additional Program Specialist and a Deputy Chief of Civil Rights provide team support as needed, and share responsibility for various program elements. Duties and responsibilities include the following:

- Overall program administration and planning, and compliance monitoring.

- Directs and monitors the activities of supportive services consultants.
- Advises the Agency's Secretary and management team on DBE matters and achievement.
- Plans and participates in DBE outreach and training seminars, conferences and other networking events.
- Analyzes VTrans' progress toward goal attainment and identifies ways to improve progress and overcome barriers to DBE participation.
- Oversees the collection and reporting of statistical data and other information as required by DOT.
- Oversees the DBE certification program.
- Obtains internal and external input, and analyzes data, to set overall annual goals.
- Oversees and monitors the progress of the Vermont Business Development Program.
- Works with all Agency divisions and sub-recipients to set overall, triennial goals.
- Oversees electronic notification to DBEs of all contracting opportunities.
- Oversees the dissemination of information on website and the publication of resource guides.
- Supervises and supports efforts of the VTrans DBE Program Team.
- Manages the Unified Certification Process (UCP) in Vermont.

DBE Program Team

The DBE Program Team, consisting of a half-time Program Manager, a quarter-time Program Manager, and three other Civil Rights staff who provide program and administrative support, share the following responsibilities for the DBE Program:

- Recruit firms to participate in the DBE program.
- Provide technical and business assistance to DBE clients.
- Administer the DBE certification program according to criteria set by DOT.
- Maintain, publish and distribute the VTrans DBE Directory of certified firms, online and in hard copy.

- Gather, analyze and report statistical data and other information as required by DOT.
- Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plan and participate in DBE outreach and training seminars, conferences and other networking events.
- Consult with contractors and Agency personnel to resolve DBE contract performance problems.
- Conduct site visits, evaluate eligibility criteria, and make recommendations on certification applications.
- Manage consultant supportive services contracts.
- Conduct marketing and needs assessment surveys.
- Make presentations to DBEs, industry organizations, community-based organizations, and state and federal agencies.
- Make determinations of contractor compliance with good faith efforts.
- Provide outreach to DBEs and community organizations to advise them of opportunities.
- Monitor prompt payment to all subcontractors on all DOT-assisted contracts.
- Create, update, publish and distribute information on the website and in “How-To” publications and resource guides.
- Develop and support a dynamic resource and referral network of technical assistance and service providers for women, minority and disadvantaged business owners.

DBE Financial Institutions ~ 49 CFR [§26.27](#)

VTrans has not identified any women or minority owned financial institutions in Vermont, despite a diligent search of current women and minority owned business listed by the Federal Reserve, as well as a search of Vermont financial institutions. It is the policy of VTrans 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.

Prompt Payment Mechanisms ~ 49 CFR [§26.29\(a\)](#)

The following provisions will be included in all VTrans DOT-assisted prime contracts:

Notwithstanding any contrary agreement, when a subcontractor has performed in accordance with the provisions of its contract, a prime contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and material based on work completed or service provided under the subcontract, seven days after receipt of each progress or final payment or seven days after receipt of the subcontractor's invoice, whichever is later.

Additionally, prime contractors shall not be allowed to hold any retainage from any DOT-assisted subcontractor, material supplier or other service provider.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the VTrans.

If any progress or final payment to a subcontractor is delayed beyond the due date, without the prior written approval of VTrans, the prime contractor shall pay its subcontractor interest, beginning on the next day, at the statutory rate of interest, on such unpaid balance as may be due.

This clause is found in Attachment 3, the [VTrans DBE Policy Contract Requirements](#), CA-110, and applies to both DBE and non-DBE subcontractors.

Return of Retainage ~ 49 CFR [§26.29\(b\)](#)

VTrans does not hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

Satisfactory Completion and Acceptance ~ 49 CFR [§26.29\(c\)](#)

Under the DBE regulations, a subcontractor's work is satisfactorily completed when all of the tasks identified in the subcontract have been completed and documented as required by VTrans. In determining whether satisfactory completion has been achieved, the contractor may require the subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the subcontractor's work have been paid in full. The contractor may also require from the subcontractor any documentation that is mandated by the subcontract, or by the contract between the contractor and contracting agency, or by law, such as affidavits of wages paid.

Additional Mechanisms to Ensure Prompt Payment ~ 49 CFR [§26.29\(e\)](#)

VTrans is vigilant in the monitoring and enforcement of all prompt payment requirements. Since 2002, VTrans has required all prime contractors to use a web-based system to report payments to all subcontractors at least once a month. Information on prompt payment requirements is provided on the VTrans DBE webpage: [VTrans DBE Prompt Payment](#), is included in the poster package on all federally projects, is reviewed at all pre-construction conferences, and is included in contractor compliance reviews.

Failure by a contractor or subcontractor to comply with the VTrans prompt payment requirements may result in one or more of the following: 1. Reflection in the prime contractor's performance evaluation; 2. Cancellation, termination or suspension of the contract, in whole or in part; and/or 3. Other sanctions as provided by the contract, subcontract, or by law under applicable prompt payment statutes, including the following:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding.

DBE Directory ~ 49 CFR [§26.31](#)

VTrans maintains a directory identifying 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. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The VTrans DBE Directory is continuously updated online. We make the Directory available as follows:

- The VTrans DBE Directory is available online and searchable by scope of work: [VTrans DBE Directory](#), along with many other DBE online resources, downloadable forms, and useful links.
- The VTrans DBE Directory receives widespread distribution in hardcopy at numerous seminars, conferences, trainings, expos, and matchmakers, and other networking events, including the Women's Economic Opportunity Conference, the Vermont Business and Industry Expo, SBA's Annual Spring Business Fair, etc.

Over-concentration ~ 49 CFR [§26.33](#)

VTrans has not identified that over-concentration exists in the types of work that DBEs perform. VTrans will review all relevant data to reevaluate whether overconcentration exists at least annually.

Business Development Programs and Other DBE Supportive Service Programs ~ 49 CFR [§26.35](#)

VTrans implements a Disadvantaged Business Enterprise Business Development Program, the Vermont Business Development Program (VBDP) and other DBE Supportive Services (DBE/SS) in accordance with 23 CFR 230.204, to assist certified VTrans DBEs in obtaining work and improving their businesses, thus increasing equal opportunity, competition and diversity in Vermont's bridge and highway construction industry.

The following services are offered through the VBDP, and specific program areas are targeted for instruction:

- Provide technical and resource assistance with financial and business planning including accounting, invoicing and auditing practices, business planning, marketing/networking, and setting and achieving goals. Assistance with bonding, financial assistance, lease agreements, taxes, fringe benefits, and payroll. Assure capability to comply with all FHWA requirements and paperwork regarding personnel, EEO, Title VI, DBE, AA, training and Davis Bacon and related Acts.
- Provide technical and general assistance with awareness, process, estimating, and submitting quotes for VTrans federal aid contracts. Offer guidance to DBEs regarding VTrans project plans and website to keep up to date with contract opportunities in their business areas.
- Provide technical support for computer systems, particularly CADD translation to Microstation to be compatible with VTrans files and electronic bidding assistance.
- Provide technical support and education regarding partnering with other consultants/contractors/agencies and how to create and deliver products or services under a joint venture. DBEs participating will have new tools to improve or expand their business capabilities.
- Provide technical assistance and education regarding reading, writing and understanding construction contracts and subcontracts. Legal assistance in ensuring contracts and subcontracts protect the interest of the DBE, include all phases of the work, and contain all needed language for compliance when working on a FHWA funded projects.
- Widely distribute an information guide and brochure regarding the DBE program. Continue to educate contractors and consultants, as well as VTrans staff, about the purpose of the program and their obligations under federally funded contracts.
- Networking/Matchmaking conference held in conjunction with the Vermont SBA Office, the Vermont Procurement Technical Assistance Center (PTAC), and other partners. Matchmaking session between DBEs and government entities and prime consultants and contractors. Networking time for DBEs to meet with civil rights staff and each other, and other activities to promote DBE growth and quality. Educational seminars.
- Tuition reimbursement for successfully completed classes taken by DBEs to grow and/or improve their business in the Federal-aid bridge and highway construction industry is also offered.

The VTrans VBBDP uses a variety of methods to assess a firm's current qualifications. These include, but are not limited to:

- One-on-one business review/assessment at the DBE's home office, with a follow up action plan and timeline.
- Feedback from primes and from VTrans requesting assistance for a firm.
- Requests from the DBEs themselves for assistance.

The VTrans DBE/SS Program uses industry business standards and VTrans prequalification standards, as well as feedback from the primes and others to determine what each DBE should have for comparable skills and qualifications. This is done on a case by case basis as each company delivers a unique set of products and services.

Monitoring and Enforcement Mechanisms ~ 49 CFR [§26.37](#)

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

1. We 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 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We will avail ourselves of all applicable regulations, provisions, and contract remedies in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also implement a monitoring and enforcement mechanism to ensure that, on all contracts with project specific DBE goals, work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished through the use of our online prompt pay reporting system, investigations, and cross-checking payments through Site Manager.
5. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Fostering Small Business Participation ~ 49 CFR [§ 26.39](#)

The VTrans Small Business Program, which received approval from USDOT in October 2012, is administered through the VTrans Office of Civil Rights and Labor Compliance. The purpose of the program is to foster small business participation on federally funded VTrans business opportunities by structuring contracting requirements to facilitate competition by small business concerns and taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

Additional goals and objectives of the VTrans Small Business Program include the enhancement of the capacity and capability of small and underutilized transportation related consultants and construction contractors, by providing leadership to ensure non-discrimination and equal access in transportation decision making and services for Vermont residents, and by leading innovative programs that promote VTrans and contractor equal employment opportunity, satisfaction and retention.

The USDOT approved VTrans Small Business Program is described in detail in **Attachment 5**, and incorporated herein by reference. It is also accessible on the VTrans Small Business Center webpage: [VTrans Small Business Center](#), along with the [VTrans Small Business Application](#), and other program materials and resources.

Since obtaining USDOT approval, we have been actively implementing the VTrans Small Business Program to foster small business participation, through marketing, networking, and participating in Small Business matchmaking events in Vermont and neighboring states. Doing so is a requirement of the good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas ~ 49 CFR [§26.43](#)

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

Overall Goals ~ 49 CFR [§26.45](#)

VTrans will establish overall goals every three years in accordance with the 2-Step process as specified in 49 CFR Part 26.45 for FHWA, FTA, and FAA-assisted projects. The first step is to create a baseline figure reflecting the relative availability of “ready, willing and able DBEs” in our marketplace; the second step is to examine all relevant evidence, including past DBE participation, to determine what adjustments, if any, are needed to arrive at our overall goal.

A description of the methodologies used to calculate the overall goal and the goal calculations for FHWA, FTA, and FAA can be found in **Attachments 6, 7, and 8** to this program, and is also available on the VTrans DBE webpage: [DBE Program Goals](#). In accordance with Section 26.45(f), VTrans will submit its overall goal on August 1st to FHWA, FTA, and FAA on a three-year cycle.

For FHWA, the current approved overall goal is 6.46% for the goal period FY 2016 – 2018, and the next proposed overall goal is due August 1st, 2018 for the goal period FY 2019 – 2021. For FTA, the current approved overall goal is 2.25% for the goal period FY 2015 – 2017, and the next proposed overall goal is due August 1st, 2017 for the goal period FY 2018 – 2020. For FAA, the current approved overall goal is 4.6% for the goal period FY 2015 – 2017, and the next proposed overall goal is due August 1st, 2017 for the goal period FY 2018 – 2020.

In establishing its overall goal for FHWA, FTA, and FAA, VTrans will solicit ideas and suggestions for developing and implementing overall goals by inviting input from the women, minority, and general contracting community. We will utilize a collaborative and inclusive approach to formulating a goal setting methodology, which includes a series of open meetings with industry and community groups, and prime and DBE contractors and consultants.

Information concerning the purpose and elements of the DBE Program will be widely disseminated in writing, and through a series of presentations and public meetings involving a diverse range of individuals and organizations, including our currently certified DBEs, our non-DBE contractors and consultants, the Associated General Contractors of Vermont, the American Council of Engineering Consultants, the Vermont Commission on Women, the U.S. Small Business Administration, the Vermont Public Transportation Association, the Vermont Procurement Technical Assistance Center, the Vermont Agency of Commerce and Community Development, the Vermont Women’s Business Center, the Vermont Small Business Development Centers, the Vermont Community Action Agencies, the Vermont Department of Labor, the Micro Business Development Program, the Women’s Small Business Program, Vermont Works for Women (formerly Northern New England Tradeswomen), Vermont Chambers of Commerce, Vermont Regional Planning Commissions, public transit providers and various towns and municipalities.

Feedback from these individuals and organizations will include information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the scope and effectiveness of VTrans' efforts to establish a level playing field for the participation of DBEs.

The overall annual goal for each of our USDOT-assisted contracting programs will be established through an ongoing dialogue with all our stakeholders and represents an informed consent by stakeholder groups.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at VTrans for 30 days following the date of the notice, and informing the public that VTrans will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the year which the goal is analyzed. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to USDOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from USDOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Goal Setting and Accountability ~ 49 CFR [§26.47](#)

If the awards and commitments shown on the VTrans 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, we will take the following steps:

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
3. Submit the plan to the applicable administering federal agency (FAA, FHWA, and/or FTA) within 90 days of the end of the affected fiscal year.

Transit Vehicle Manufacturers Goals ~ 49 CFR [§26.49](#)

VTrans 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, VTrans may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Breakout of Estimated Race-Neutral & Race-Conscious Participation ~ 49 CFR [§26.51](#) (a-c)

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

- Providing technical assistance and other services to DBEs, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions;
- Administering a business development program, the Vermont Business Development Program (VBDP), for certified DBEs that provides one-on-one business counseling and needs assessments, business and marketing plan development, and training and networking opportunities.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Producing and distributing free How To Do Business with the Agency of Transportation Guide and other resource materials;
- Providing formal and informal training and presentations to DBEs and other contractors.
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities;
- Conducting periodic user surveys and needs assessments to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info;
- Producing and distributing an electronic newsletter that showcases successful DBEs, introduces new DBEs, provides a calendar of events, and many web links to contracting and business development resources.
- Ensuring distribution of our DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including mail distribution to all potential prime bidders, and widespread distribution at conferences, expos, and seminars;
- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women's Economic Opportunity Conference, matchmaker events, etc.;

- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links;
- Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Serving on the Advisory Council of the Vermont Women’s Business Center (VWBC), and supporting the VWBC’s mission through collaborative efforts and sponsorship of training programs;
- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with the VT Agency of Transportation;
- Networking with local, state and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral network with technical assistance and service providers;
- Coordinating with other state DBE Liaison Officers, to ensure certification reciprocity and to maximize interstate contracting opportunities; and
- Assisting DBEs to establish prequalification status.

While VTrans has affirmed its commitment to meeting the maximum feasible portion of our overall goal using race-neutral means, we will also provide the requisite projection of a breakout of participation derived from both race-neutral and race-conscious measures, as specified in Section 26.51.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see Section 26.51(f)) and we 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 a DBE goal.
- DBE participation on a prime contract exceeding a contract goal.
- DBE participation through a subcontract from a prime contractor that did not consider a firm’s DBE status in making the award.

Contract Goals ~ 49 CFR [§26.51](#) (d-g)

If our approved projection under paragraph (c) of Section 26.51 estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Good Faith Efforts Procedures ~ 49 CFR [§26.53](#)

Demonstration of good faith efforts ~ 49 CFR [§26.53\(a\) & \(c\)](#)

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

The VTrans DBELO 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.

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

Information to be submitted ~ 49 CFR [§26.53\(b\)](#)

When a specific contract goal has been established, the VTrans will, at the time of the opening of bids, treat bidders' compliance with good faith efforts requirements as a matter of responsiveness.

In such instances, the bidders/offerors will be required to submit the following information with their sealed bids on forms provided with the bid documents:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration ~ 49 CFR [§26.53\(d\)](#)

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

VTrans Secretary of Transportation
One National Life Drive
Montpelier, VT 05633-5001
Phone: 802-828-2657
Chris.Cole@vermont.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 the reconsideration official (or a designee) to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Agency will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract ~ 49 CFR [§26.53\(f\)](#)

VTrans 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. The prime contractor will notify the Agency resident engineer on the project and the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we 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. We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if

the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. We have determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, the VTrans Construction Section will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, VTrans may issue a termination for default proceeding.

Applying Good Faith Efforts when a DBE is the Prime Contractor ~ 49 CFR [§26.53\(i\)](#)

VTrans and its sub-recipients shall apply these requirements to DBE bidders for prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, VTrans shall count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Availability of All DBE Subcontracts Upon Request ~ 49 CFR [§26.53\(j\)](#)

VTrans and its sub-recipients will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or an

agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with 49 CFR Part 26.

Counting DBE Participation ~ 49 CFR [§26.55](#)

VTrans will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor’s final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. VTrans monitors its projects to ensure that DBEs are performing a Commercially Useful Function (CUF). In addition to CUF monitoring and enforcement by the VTrans Office of Civil Rights, the VTrans Resident Engineers monitor and report on CUF for every DBE on every federally funded project, using a Resident Engineer Verification Form. The following information is collected and reported to the VTrans Office of Civil Rights on a weekly basis:

DBE

- Are DBEs working on the project as primes or subs? Yes No If Yes, complete the CUF Form below

To view the complete list of DBE’s go to: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/directory>

Commercially Useful Function (CUF) Monitoring

DBE Company

Name:

DBE is performing as:

-
- | | | |
|--|--|---|
| <input type="checkbox"/> Prime Contractor | <input type="checkbox"/> Subcontractor | <input type="checkbox"/> Second Tier Subcontractor |
| <input type="checkbox"/> Material Supplier | <input type="checkbox"/> Manufacture | <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Broker |

Performing

- Does the DBE have employees on the job to perform work? Yes No
- Do the DBE’s employees only work for the DBE? Yes No
- Is the DBE working without assistance from the prime contractor or another subcontractor? Yes No
- Is the DBE only using equipment it owns, rents, or leases? Yes No

Materials

- Does a review of the load tickets and/or bills of lading indicate the material is being supplied by the DBE? Yes No

Supervising

- Is the DBE supervising it’s employees and their work? Yes No
- Is the supervisor a full-time employee of the DBE? Yes No

CUF

- Does the DBE appear to be performing a Commercially Useful Function (CUF)? Yes No

If the DBE is **not** performing a CUF, contact Sonya Boisvert at 828-2644 or e-mail: sonya.boisvert@vermont.gov

Comments:

Joint Ventures ~ 49 CFR [§26.55\(b\)](#)

DBEs participating in a joint venture counts towards DBE participation only for the work the DBE contractor has performed using its own resources. VTrans has the responsibility for approval of Joint Venture Agreements involving DBEs, in accordance with the following process:

a. If the VTrans Prequalification Committee approves the Joint Venture Contractor Prequalification, the prequalification documentation will be reviewed by the VTrans Office of Civil Rights to determine if the DBE has sufficient management and financial capabilities.

b. If the DBE is participating in a joint venture as a subcontractor, the VTrans Prequalification Committee will not be involved in the DBE Joint Venture approval process.

c. The VTrans Office of Civil Rights will work with the VTrans Prequalification Committee to determine if the work history, equipment, and key personnel of the DBE firm are adequate to perform the joint venture.

d. The VTrans Office of Civil Rights will review the Joint Venture Agreement to determine if the information contained within accurately reflects the DBE's present certification.

e. The VTrans Office of Civil rights will confirm whether the DBE is certified to perform the scopes of work indicated on the proposal.

f. The VTrans Office of Civil Rights will review the certification documentation and review the last on-site review forms to determine if a new on-site review is necessary.

g. If a DBE Joint Venture is determined to be the apparent low bidder on a contract, the DBE partner will submit a bid item break out letter to the VTrans Office of Civil Rights. This document will contain: • The item(s) of work the DBE will perform; • Equipment which will be used to perform the work; and • Personnel and supervisors who will be performing the work. The non-DBE joint venture partner shall not exercise supervision, management, or control over the elements of work assigned to the DBE partner. Any practice, arrangement, or condition that erodes the independence or inhibits the DBE firm in performing a CUF on its selected items of work shall prevent that firm's participation from being counted towards project or overall DBE goals. Such practices, arrangements, or conditions may also jeopardize the DBEs certification.

h. Upon approval, the VTrans Office of Civil Rights will provide an approval letter to the firms with the following language: • If you are the apparent low bidder, you will be required to provide specific bid items and dollar amounts for the work performed by the (name of the DBE/JV) prior to execution of the contract. (Name of the DBE/JV) shall be held responsible to perform the distinct elements of the work therein described, with its own work force, equipment and supervision to be credited toward the DBE contract goal. Further, (name of non - DBE/JV) shall not exercise direct supervision, management or control over the elements of the work assigned to (name of DBE/JV). Any practice, arrangement or condition that erodes the independence of (name of DBE/JV) or inhibits the firm in the performance of a Commercially Useful Function, on its elements of work shall result in the loss of credit toward the DBE contract goal.

i. If the DBE joint venture partner becomes unwilling or unable to perform the work, the other joint venture partner shall make good faith efforts to replace the joint venture partner.

j. If VTrans does not approve the Joint Venture Agreement, a letter detailing the reasons for the disapproval will be sent to the contractors on the proposed joint venture agreement.

Commercially Useful Function ~ 49 CFR [§26.55\(c\)](#)

To ensure that all requirements of 49 CFR 26.55 are being met, the VTrans Office of Civil Rights will review the role and performance of DBEs during execution of contracts, to ensure DBEs are performing a Commercially Useful Function (CUF). VTrans staff will complete a DBE Onsite Review Form on every DBE firm working on a project with federal funding regardless of whether or not the DBE firm is performing in a race-neutral or race-conscious capacity.

In-depth CUF reviews are conducted by VTrans Civil Rights staff on select projects/DBEs. These in-depth reviews may be the result of: • A complaint of alleged non-compliance; • “Red Flags” noted on the DBE On-Site Review form or based on other information received by VTrans; • Randomly selected DBE firms; • Specific department initiated reviews; or • At the request of USDOT (FHWA, FTA, FAA, FRA, or FMCSA).

Only work performed by DBEs in the work description for which they are certified on the DBE Directory shall count towards the goals. Expenditures may only be counted if the DBE is performing a commercially useful function. In general, a DBE must perform at least 30 percent of the total value of its contract with its own work force. Decisions on commercially useful functions are subject to review by the USDOT operating administration, but are not administratively appealable to USDOT.

Trucking ~ 49 CFR [§26.55\(d\)](#)

In order to count DBE participation for the services of trucking firms (certified by VTrans), the DBE must be performing a CUF. The DBE receives credit for the value of the transportation services it provides on a contract using trucks that it owns, insures, and operates, using drivers it employs. If the DBE firm is a trucking firm, 100 percent of its participation will be counted towards the goal, so long as all subcontractors are DBE certified.

The following factors will be used in determining whether a DBE trucking company is performing a commercially useful function: a. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed; b. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract; If a DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, the total value of the hauling services is eligible for DBE credit provided the DBE performed a CUF; d. The DBE receives credit only for the value of the transportation services it provides on the contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs. If trucks are being leased by the DBE trucking firm, the lease must indicate that the DBE has exclusive use of and control over the trucks. This does not preclude the leased truck from working for others, provided it is with the consent of the DBE and the lease provides the DBE first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE; e. The DBE may lease trucks from another DBE firm including an owner-operator who is certified provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the contract; f. In any lease or owner-operator

situation, as described in requirements d and e above, the following rule applies: A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms of the agreement. The agreements must be submitted and approved by the contracting agency prior to the beginning of the work. The agreement must show the leaser's name, truck description and agreed upon amount and method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. This requirement does not apply to owner-operator arrangements; and g. Credit may only be claimed for DBE trucking firms operating under a subcontract or a written agreement approved by VTrans prior to performing work. The rental/lease agreement must provide the DBE firm with exclusive authority of use during the duration of the agreement. All rental/lease agreements for trucks must be sent to the VTrans Office of Civil Rights for approval, which will have five business days to provide a response back to the project office, which in turn will advise the prime contractor and DBE of the status of the approval.

VTrans has chosen not to adopt the option of "one-for-one" counting allowed by 49 CFR 26.55 (d); hence, a DBE trucking firm will not receive credit for any work performed by non-DBE lessees. Where a DBE trucking firm acts as a broker, it shall only receive credit for its fees and services in accordance with 49 CFR 26.55 (a) (2), provided the firm is certified as a broker on VTrans' directory of certified firms. DBE brokers, packagers, ad hoc suppliers and manufacturers representatives' commission or fees on the contract are all that are counted towards DBE participation.

No Credit Given to Firms Not Certified at Time of Award ~ 49 CFR [§26.55\(f\)](#)

DBE participation will only be counted when the DBE firm is certified by VTrans in the appropriate work descriptor prior to bid opening. No DBE credit will be given towards meeting any goals if the firm is not certified by VTrans prior to the bid opening.

Firm Ceases to Be Certified ~ 49 CFR [§26.55\(g\)](#)

Attainment achieved by a DBE on a project, prior to decertification shall count towards participation. Credit towards meeting the contract goal varies, depending on the type of work the DBE performs. The varying types of credit are as follows: • DBE prime contractor participation counts as 100 percent only for the work the DBE prime contractor performs with its own resources and personnel forces. All prime contractors are required to perform at least 30 percent of the total contract. • DBE subcontractors count as 100 percent only for that portion of the subcontract work that the DBE subcontractor is certified to perform. In addition, the DBE must be determined to be performing a CUF (with its own forces) on the subcontract in order to count towards the contract's DBE goal. • Force account work. When the contractor elects to utilize force account work to meet the DBE goal (as demonstrated by listing this force account work on the DBE Utilization Certification Form), only 50 percent of the proposal amount shall be credited. One hundred percent of the actual amounts paid to the DBE for the force account work shall be credited towards DBE goal or DBE participation.

Counting Credit ~ 49 CFR [§26.55\(h\)](#)

VTrans will not count DBE participation toward the contractor's contract goal until the amount being counted has been paid to the DBE for work performed.

SUBPART D – CERTIFICATION STANDARDS

Certification Process ~ 49 CFR ~ [§26.61](#) - [§26.73](#)

VTrans will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. Additionally, VTrans utilizes 49 CFR Part 23, Subpart C, to determine the eligibility of airport concessionaries to participate as Airport Concessionaire DBEs (ACDBE) in DOT-assisted contracts. The firm seeking certification has the burden of proving by a preponderance of the evidence that it meets the requirements concerning group membership or individual disadvantage, business size, ownership, and control. VTrans will make certification decisions based on all the facts in the record as required by Parts 26 and 23.

In determining whether to certify a firm as eligible to participate as a DBE, VTrans applies the standards of 49 CFR 26.61. The firm seeking certification has the burden of demonstrating to VTrans, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 Subpart D & E concerning group membership, business size, economic disadvantage, ownership, and control. VTrans defines preponderance of the evidence as enough evidence to make the fact alleged more likely than not. VTrans considers the credibility of all evidence presented.

VTrans holds a rebuttable presumption that members of the designated groups identified in 49 CFR 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to VTrans they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in 49 CFR 26.67(a). Applicants do have the obligation to provide VTrans with information concerning their economic disadvantage (see 49 CFR 26.67). VTrans makes determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, business size, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

The rebuttably presumed to be socially and economically disadvantaged groups are: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, and any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

VTrans verifies citizenship or permanent residency for all applicants by collecting documentation such as birth certificate, passport, naturalization paper, tribal card, permanent resident card, or any other documents that support citizenship or permanent residency. VTrans recognizes that being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the rebuttably presumed to be socially and economically disadvantaged groups. VTrans verifies Native Americans are enrolled members of a federally or state recognized Indian tribe, Alaska Natives, or Native Hawaiians by collecting tribal cards or other supporting documentation the applicant offers.

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see 49 CFR 26.61(c)), VTrans has a well-founded reason to question the individual's claim of membership in that group, VTrans will require the individual to present additional evidence that he or

she is a member of the group. A well-founded reason may include a discrepancy between the presumptively disadvantaged group checked on the affidavit and the documentation provided to verify citizenship or permanent residency. VTrans provides the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence.

In determining a group membership classification, VTrans considers whether the person has held himself or herself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. VTrans may require the applicant to produce appropriate documentation of group membership.

In implementing this section, VTrans takes special care to ensure that it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate 49 CFR 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21. If there is a determination that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis using the guidance found in Appendix E of 49 CFR Part 26.

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

Sonya Boisvert, DBE Program Manager
VTrans Office of Civil Rights and Labor
One National Life Drive
Montpelier, VT 05633-5001
Phone: (802) 828-2644
Fax: (802) 828-1047
email: Sonya.Boisvert@vermont.gov

Our certification application forms and documentation requirements are found on our DBE webpage at: [Uniform DBE Application](#) and [DBE Certification Application Frequently Asked Questions](#).

Business Size Standards ~ 49 CFR ~ [§26.65](#)

To qualify for certification as a DBE, a firm must be an existing small business, as defined by federal Small Business Administration business size standards found in 13 CFR Part 121, and have had average annual gross receipts (as defined by SBA regulations in 13 CFR 121.402) for the firm's three previous fiscal years less than the amount specified in Part 26, Section 26.65(b) and (c).

Social and Economic Disadvantage Standards ~ 49 CFR ~ [§26.67](#)

Citizens of the United States and lawfully admitted permanent residents who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA are presumed to be socially and economically disadvantaged individuals. Applicants in one of these groups must submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. In addition, each firm owner whose ownership and control are relied upon

for DBE certification must certify that he or she has a personal net worth that does not exceed \$1.32 million. An individual's presumption of disadvantage can be rebutted in one of two ways: (1) Having a net worth in excess of \$1.23 million. (2) Demonstrating that the individual has the capacity to accumulate significant wealth. If the presumption is rebutted, that individual's ownership interest cannot be counted toward meeting requirements for DBE certification. If the second method of rebuttal is used, a proceeding is required to present evidence in support of the rebuttal. Individuals that are not presumed to be disadvantaged and those whose presumed disadvantage has been rebutted may apply for an individual determination of social and economic disadvantage. The individual determination shall include a proceeding where the firm has the burden of proving that the individuals who own and control it are socially and economically disadvantaged. Appendix E of Part 26 will be used in making these determinations.

Determining Ownership ~ 49 CFR ~ [§26.69](#)

In determining whether the socially and economically disadvantaged participants in a firm own the firm, VTrans considers all the facts in the record, viewed as a whole. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. VTrans collects proof of contribution of capital at the time of application. This is typically in the form of a cancelled check or bank statements that show a withdrawal from a personal account and a deposit into a business bank account. If the contribution of capital is through a loan, VTrans reviews documentation regarding the value of the assets used as collateral for the loan, guarantors, who the loan was from, and in some cases proof of repayment. If the business started more than 7 years prior to application, VTrans requests proof of ongoing capital contribution. This may include additional cash paid into the business or loans/lines of credits in which the eligible owner is the guarantor. If the applicant is unable to provide any proof of capital contribution, VTrans accepts a notarized statement sworn to by the eligible owners of the amount of the original investment, where the funds came from, and what was purchased with the funds.

The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. VTrans reviews business tax returns to ensure that the distributions are commensurate with their ownership interests. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:

- The beneficial owner of securities or

assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or • The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership: The owner's expertise must be: • In a specialized field; • Of outstanding quality; • In areas critical to the firm's operations; • Indispensable to the firm's potential success; • Specific to the type of work the firm performs; and • Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm. The individual whose expertise is relied upon must have a significant financial investment in the firm.

VTrans always deems as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individual: • As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or • Through inheritance, or otherwise because of the death of the former owner.

VTrans presumes as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is: • Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; • Involved in the same or a similar line of business; or • Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to VTrans, by clear and convincing evidence, that: • The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and • The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

VTrans applies the following rules in situations in which marital assets form a basis for ownership of a firm: • When marital assets (other than the assets of the business in question) held jointly by both spouses are used to acquire the ownership interest asserted by one spouse, VTrans deems the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the

ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. VTrans does not count a greater portion of joint assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

VTrans may consider the following factors in determining the ownership of a firm. However, VTrans does not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;
- There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual.

In this case, VTrans gives particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Determining Control ~ 49 CFR ~ [§26.71](#)

In determining whether socially and economically disadvantaged owners control a firm, VTrans considers all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

In determining whether a potential DBE is an independent business, VTrans scrutinizes relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. VTrans collects lease agreements, equipment lists, insurance and bonding agreements, and other documentation to review.

VTrans considers whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm. VTrans examines the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

VTrans collects contracts, when available, to assist in evaluating the applicant's independence. VTrans does not require contracts as a condition of certification. In considering factors related to the independence of a potential DBE firm, VTrans considers the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts, or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory

agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR 26.69(j)(2).

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of 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.

A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated.

The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees.

The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

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. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, VTrans does not deny certification solely on the ground that the person lacks the license or credential. However, VTrans does take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

VTrans does consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm.

VTrans may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, VTrans may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, VTrans will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as VTrans does in other situations, without regard to whether or not the other persons are immediate family members.

If VTrans cannot determine that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm can demonstrate to VTrans, by clear and convincing evidence, that: The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owners, VTrans may consider whether the firm owns equipment necessary to perform its work. However, VTrans does not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal

industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

NAICS Codes ~ 49 CFR ~ [§26.71\(n\)\(1\)](#)

VTrans grants certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to VTrans only that it's socially and economically disadvantaged owners are able to control the firm with respect to that type of work. VTrans does not, in this situation, require that the firm be recertified or submit a new application for certification, but VTrans does verify the disadvantaged owner's control of the firm in the additional type of work.

The types of work a firm can perform (whether on initial certification or when a new type of work is added) will be described in terms of the most specific available NAICS code for that type of work. In addition, VTrans applies a detailed description of work for every NAICS code. A correct NAICS code is one that describes, as specifically as possible, the principle good or services which the firm would provide to DOT recipients. VTrans assigns multiple NAICS codes where appropriate.

VTrans checks carefully to make sure that the work codes are kept up-to-date and accurately reflect work which VTrans has determined the firm's owners can control. The firm bears the burden of providing detailed company information VTrans needs to make an appropriate work code designation. If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that VTrans, in its certification documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and VTrans will rely on such a description in determining whether a firm's participation can be counted toward DBE goals. VTrans is not precluded from changing a certification classification or description if there is a factual basis in the record. However, VTrans does not make after-the- fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

Other Standards ~ 49 CFR ~ [§26.73](#)

When making certification decisions, VTrans may consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or the requirements of the DBE program. In all other situations, the eligibility of the firm for certification will be evaluated only on present circumstances.

SUBPART E – CERTIFICATION PROCEDURES

Unified Certification Program ~ 49 CFR [§26.81](#)

VTrans is the certifying agency for all USDOT recipients in Vermont for the DBE program, which was approved by USDOT in 1002. All recipients are required to have signed the UCP Agreement in order to participate in USDOT assisted programs. VTrans has a list of all participating recipients and has signed copies of agreements on file. A copy of Vermont's UCP Agreement is attached as **Attachment 9**, and is also available on the VTrans DBE webpage: [Vermont UCP Agreement](#).

Procedures for Certification Decisions ~ 49 CFR [§26.83](#)

Re-certifications Section 26.83(a) & (c):

We will ensure the UCP reviews the eligibility of DBEs that we certified under former Part 23, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than three years from the most recent certification date of each firm.

For firms that we ensure UCP have certified or reviewed and found eligible under Part 26, we will again review their eligibility every seven years. These reviews will include the following components: Completion of Re-Certification Application, and an on-site review if needed, to be determined on a case-by-case basis.

“No Change” Affidavits and Notices of Change Section 26.83(j):

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

The UCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I hereby swear that the business listed below is a disadvantaged/woman-owned business. I affirm there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in the DBE application form, except for changes already reported to the VTrans office or noted below. I affirm that this firm continues to meet SBA business size criteria and the overall gross receipts cap and I further state that no change in stock ownership, management and/or financial control has occurred since this firm's latest certification by the Vermont Agency of Transportation.

The UCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The UCP will notify all currently certified DBE firms of these obligations as part of our annual review and update of eligibility process.. This notification will inform DBEs that to submit the “no change” affidavit,

their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.83 Procedures for Certification Decisions ~ 49 CFR [§26.83](#)

Certification Process:

To be certified as a DBE, and for currently certified firms to remain in good status, a firm and the majority owner must meet all eligibility requirements, including furnishing the Personal Financial Statement. Certification and renewal decisions are based on the facts as a whole. As such, the burden of proof for all applicants and those seeking renewal must furnish all evidence required under 49 CFR Part 26. For information about the certification process or to request an application, contact the VTrans Office of Civil Rights at: (802) 828-2644 or go to the VTrans DBE webpage at: [VTrans DBE Center](#).

You can download an application at this link: [DBE Uniform Certification Application](#)

Applicants whose business home state is Vermont, and who submit a completed application will undergo both a desk (paper) audit and field audit interview (which will be held at the office of the applicant firm). VTrans is under no obligation to either accept or consider any application which is not complete. Incomplete applications are not acceptable. The burden of proof to comply with all requirements of the application process is with the applicant. The applicant may elect to furnish a completed application or terminate the request for DBE certification until such time as a complete application can be presented. Once VTrans certifies a DBE, that DBE will remain certified until and unless its certification is removed.

In-State Applicants:

The VTrans DBE Program Manager will process certification applications including conducting both desk and field audits. All determinations to certify are issued by the VTrans Office of Civil Rights. VTrans will advise applicants within 30 days of receipt of the initial application whether an application is complete or if more information is necessary. Additional information requested must be received within 10 business days upon receipt of additional requests. A one-time extension may be granted upon written request. Failure to provide information or request an extension will result in the application being administratively closed, without prejudice. Applicants whose applications have been closed for this reason may apply anytime in the future.

Determinations are made within 90-days after a fully complete application and all supporting documents are accepted by the VTrans Office of Civil Rights. Firms and their owners who fail to submit all necessary documentation may be afforded a one-time, 20-day extension to complete submissions. This extension must be requested in writing, either via e-mail or regular mail. Applicants are exclusively responsible to furnish all information honestly, accurately and completely and to satisfy questions by VTrans in order to be fully considered for certification. Applicants failing to respond after the date of the aforementioned extension shall have all materials returned to them and VTrans will terminate the application process without prejudice. An applicant may withdraw VTrans' consideration of its application by requesting in writing that VTrans cease action and return all materials to the applicant. If

an applicant chooses to withdraw before a determination is made by the VTrans, it may resubmit at any time.

If an applicant is granted VTrans certification, the firm will be notified in writing, will commence being listed in VTrans' DBE Directory, and will have full benefits of the VTrans DBE Program.

If an applicant is denied, he/she will receive written notification via certified mail explaining VTrans' determination, as it relates to 49 CFR Part 26 Subpart D and E. Without exception, if the applicant elects to "correct the record" he/she may reapply 12 months from the month/date that VTrans issued its denial memorandum. If the recipient believes VTrans erred in its determination, it may elect to appeal VTrans' action to USDOT (see Certification Appeal). However, VTrans' determination stands until such time as overturned by USDOT or the applicant reapplies and is granted certification.

Interstate Certification ~ 49 CFR [§26.83](#)

A firm certified as a DBE in its home state may apply for certification in Vermont. VTrans may, at its discretion, accept the home state's certification and certify the firm without further procedure. To obtain certification in this manner, the firm shall provide the VTrans with a copy of its certification notice from its home state and VTrans will confirm the validity of the certification from the home state. If VTrans chooses not to accept the home state's certification, the firm shall provide the information required by Part 26, Section 26.85(c)(1), to VTrans, which shall make a determination of certification as required by Part 26, Section 26.85.

Denials of Initial Requests for Certification ~ 49 CFR [§26.85](#)

If VTrans denies a firm's application or decertifies a firm, it may not reapply until 12 months have passed from our action.

Removal of a DBE's Eligibility ~ 49 CFR [§26.87](#)

In the event of removal of eligibility of a DBE, the procedures outlined in Part 26 are followed. The firm may reapply for certification six months from the date removal of eligibility was issued. Prior to removing eligibility, the DBE is notified of its right to an administrative due process hearing where a stenographer is present to create a verbatim transcript of the proceedings. When a DBE's eligibility is removed, the firm is advised of its right to appeal the decision to the USDOT. To ensure separation of functions in a removal of eligibility proceeding, VTrans confirms that the initial decision-maker has not participated in any way in the earlier removal decision against the firm or the decision to initiate such proceeding.

Summary Suspension of Certification ~ 49 CFR [§26.88](#)

VTrans shall immediately suspend a DBE's certification if an owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated. The VT UCP may immediately suspend a DBE's certification where there is adequate evidence that there has been a material change in

circumstances that may affect the firm's DBE eligibility or when the firm fails to notify VTrans of a material change in circumstances or fails to file an annual Affidavit of No Change. The suspension notice will be communicated to the firm immediately. The suspension takes effect when the DBE receives or is deemed to have received the notice. Following receipt of a notice suspension, a DBE that believes it is no longer eligible for the program may voluntarily withdraw from the program. If the DBE believes that its eligibility should be reinstated, it must provide to VTrans information demonstrating its eligibility. VTrans, within 30 days of receiving this information, must either lift the suspension and reinstate the DBE's certification or commence a hearing under Section 26.87.

Certification Appeals ~ 49 CFR [§26.89](#)

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

US Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The UCP will promptly implement any DOT certification appeal decision affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, and Cooperation ~ 49 CFR [§26.109](#)

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

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

All participants in the VTrans DBE program (including, but not limited to, recipients, 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 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).

VTrans, our contractors, or any other participant in the program will 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. If we violate this prohibition, we are in noncompliance with this part.

Monitoring Payments to DBEs

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

We 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.

Appendices to 49 CFR Part 26

Guidance, Guidelines, and Uniform Application

- [Appendix A to Part 26](#) --Guidance Concerning Good Faith Efforts
- [Appendix B to Part 26](#) --Uniform Report of DBE Awards or Commitments and Payments Form
- [Appendix C to Part 26](#) --DBE Business Development Program Guidelines
- [Appendix D to Part 26](#) --Mentor-Protégé Program Guidelines
- [Appendix E to Part 26](#) --Individual Determinations of Social and Economic Disadvantage
- [Appendix F to Part 26](#) --Uniform Certification Application Form
- [Appendix G to Part 26](#) --Personal Net Worth Statement
- [DOT DBE Regulations](#) -- 49 CFR Part 26

ATTACHMENTS

- Attachment 1 [Definition of Terms – 49 CFR Part 26](#)
- Attachment 2 [Bidders List Collection Form](#)
- Attachment 3 [VTrans DBE Policy Contract Requirements, CA-110](#)
- Attachment 4 [Organizational Chart](#)
- Attachment 5 [VTrans Small Business Program](#)
- Attachment 6 [VTrans Overall DBE Goals \(FHWA\) and Goaling Methodology](#)
- Attachment 7 [VTrans Overall DBE Goals \(FTA\) and Goaling Methodology](#)
- Attachment 8 [VTrans Overall DBE Goals \(FAA\) and Goaling Methodology](#)
- Attachment 9 [Vermont UCP Agreement](#)

DEFINITIONS

Definitions of terms used in 49 CFR Part 26:

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

1. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - i. One concern controls or has the power to control the other; or
 - ii. A third party or parties controls or has the power to control both; or
 - iii. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

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

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

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

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

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

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

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

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Those management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

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

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

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
4. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of

the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- vi. Women;
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

Bidder's List Survey Form

VTRANS BIDDER INFORMATION

Prime Contractor: Contact Person: EEO Officer:

List all DBE and Non-DBE Subcontractors and Suppliers that provided quotes to you for VTrans federal-aid projects between April 1, 20__ and March 30, 20__.

Return Report by:

Please list alphabetically

<u>Subcontractor Name</u>	<u>Address (Town/State)</u>	<u>DBE</u>	<u>Non-DBE</u>	<u>Business Age (Yrs)</u>	<u>Annual Gross Business Receipts</u>
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000
					<input type="checkbox"/> Less than \$500,000; <input type="checkbox"/> \$500,000 - \$1,000,000; <input type="checkbox"/> \$1,000,000 - \$2,000,000; <input type="checkbox"/> \$2,000,000 - \$5,000,000; <input type="checkbox"/> Over \$5,000,000

Use Additional Sheets as Necessary

State of Vermont
Agency of Transportation

March 2011
CA-110

DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY CONTRACT REQUIREMENTS

Disadvantaged Business Enterprise (DBE) Policy. It shall be the policy of the Vermont Agency of Transportation (VTrans) to ensure nondiscriminatory opportunity for Disadvantaged Business Enterprises (DBEs) to participate in the performance of all contracts and subcontracts financed with Federal funds as specified by the regulations of the United States Department of Transportation (USDOT), Federal Highway Administration and as set forth below.

1. **Policy.** It is the policy of USDOT that DBEs as defined in 49 Code of Federal Regulation (CFR) Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 and 23 CFR, Chapter 1, Part 230, Subpart b apply to this contract.
2. **DBE Obligation.** The State and its Contractors agree to ensure that DBEs as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. **Each subcontract the prime contractor signs with a subcontractor must include this assurance:** *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-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 VTrans deems appropriate.*
3. **Sanctions for Noncompliance.** The Contractor is hereby advised that failure of the Contractor, or any Subcontractor performing work under this contract, to carry out the requirements set forth in paragraphs 1 and 2 above shall constitute a breach of contract and after the notification of the Vermont Agency of Transportation, Secretary of Transportation, may result in termination of this contract by the State or such remedy as the State deems necessary.
4. **Inclusion in Subcontracts.** The Contractor shall insert in each of its subcontracts this Disadvantaged Business Enterprise (DBE) Policy and also a clause requiring its subcontractors to include this same Policy in any lower tier subcontracts which they may enter into, together with a clause requiring the inclusion of the Policy in any further subcontract that may in turn be made. This Policy shall not be incorporated by reference.

Disadvantaged Business Enterprise (DBE) Program Goals. The Vermont Agency of Transportation (VTrans) is required to set an overall DBE goal for participation in all transportation related Federal-aid projects. The goal is determined following guidelines set forth in 49 CFR 26.45, and based on the availability of ready, willing and able DBEs who submitted bids and quotes for transportation related projects, compared as a percentage of all available contractors who submitted bids and quotes for transportation related projects during the same time period. The DBE goal may be adjusted to take into account other factors impacting DBE utilization, in an effort to narrowly tailor the overall DBE goal. The detailed goal setting methodology and current overall DBE goal may be viewed on the VTrans website at: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/program-goals> .

VTrans currently utilizes a race/gender neutral policy to fulfill its overall DBE goals, and relies on the voluntary participation of contractors to utilize certified DBEs on every project sufficient to obtain the Agency's overall DBE goal. In order for this practice to continue, contractors must be proactive and solicit bids and quotes from certified DBEs for use when submitting their own bids, and employ certified DBEs when participating on transportation related projects. Otherwise, VTrans may have to implement specified contract goals on projects to ensure the overall DBE goals are met. VTrans may include specific DBE contract goals in certain cases to ensure DBE participation, if failure to obtain the project DBE goal would negatively impact the Agency's overall DBE goal because of the size of the contract.

Disadvantaged Business Enterprise (DBE) Definition. A DBE is defined as a business that is owned and controlled by one or more socially and economically disadvantaged person(s). For the purposes of this definition:

- (1) "Socially and economically disadvantaged person" means an individual who is a citizen or lawful permanent resident of the United States and who is a Woman, Black, Hispanic, Portuguese, Native American, Asian American, or a member of another group, or an individual found to be disadvantaged by the Small Business Administration pursuant to Section 3 of the Small Business Act.
- (2) "Owned and controlled" means a business which is:
 - a. A sole proprietorship legitimately owned and controlled by an individual who is a disadvantaged person.
 - b. A partnership, joint venture or limited liability company in which at least 51% of the beneficial ownership interests legitimately is held by a disadvantaged person(s).
 - c. A corporation or other entity in which at least 51% of the voting interest and 51% of the beneficial ownership interests legitimately are held by a disadvantaged person(s).

The disadvantaged group owner(s) or stockholder(s) must possess control over management, interest in capital, and interest in earnings commensurate with percentage of ownership. Disadvantaged participation in a joint venture must also be based on the sharing of real earnings, as above. If the disadvantaged group ownership interests are real, substantial and continuing and not created solely to meet the requirements of the program, a firm is considered a bona fide DBE.

Certified DBE Directory. The current Vermont Unified Disadvantaged Business Enterprise (DBE) Directory is available online at: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/directory>. This directory contains all currently certified DBEs available for work in Vermont, and is updated continuously. Only firms listed in this directory are eligible for DBE credit on Vermont Federal-aid projects. If you have questions about DBE certification, or do not have access to the Internet, please call the DBE Program Manager at (802) 828-5858 for assistance.

Counting DBE Participation Towards Project Goals. In order for payments made to DBE contractors to be counted toward DBE goals, the DBE contractors must perform a commercially useful function (CUF). The DBE must be responsible for execution of the work of the contract and must carry out its responsibilities by actually performing, managing, and supervising the work involved, consistent with standard industry practices.

This means that:

- The DBE must also be responsible for ordering its own materials and supplies, determining quantity and quality, negotiating price, installing (where applicable) and paying for the material itself;
- The DBE must perform work commensurate with the amount of its contract;
- The DBE's contribution cannot be that of an extra participant or a conduit through which funds are passed in order to obtain the appearance of DBE participation;
- The DBE must exercise responsibility for at least fifty percent of the total cost of its contract with its own workforce;
- None of the DBE's work can be subcontracted back to the prime contractor, nor can the DBE employ the prime's or other subcontractor's supervisors currently working on the project;
- The DBE's labor force must be separate and apart from that of the prime contractor or other subcontractors on the project. Transferring crews between primes, subcontractors, and DBE contractors is not acceptable;
- The DBE owner must hold necessary professional or craft license(s) or certification(s) for the type of work he/she performs on the project;
- The DBE may rent or lease, at competitive rates, equipment needed on the project from customary leasing sources or from other subcontractors on the project.

Allowable credit for payments made to DBEs for work performed. A contractor may take credit for payments made to a certified DBE that satisfies CUF requirements at the following rate:

- A DBE Prime Contractor: Count 100% of the value of the work performed by own forces, equipment and materials towards the DBE goals.
- An approved DBE subcontractor: Count 100% of the value of work performed by the DBE's own forces, equipment and materials, excluding the following:
 - The cost of materials/supplies purchased from a non-DBE Prime Contractor.
 - The value of work provided by non-DBE lower tier subcontractors, including non-DBE trucking to deliver asphalt to a DBE contractor.
- A DBE owner-operator of construction equipment: Count 100% of expenditures committed.
- A DBE manufacturer: Count 100% of expenditures committed. The manufacturer must be a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.
- A regular DBE dealer/supplier: Count 60% of expenditures committed. A regular dealer/supplier is defined as a firm that owns, operates, or maintains a store, warehouse or other establishment, in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A person may be a dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without

owning, operating or maintaining a place of business, if the person both owns and operates distribution equipment for the products, by the means of a long term agreement, and not by a contract by contract basis.

- A DBE broker: Count for DBE credit only the fees or commissions charged for assistance in the procurement, and, fees and transportation charges for the delivery of materials or supplies required at the job site, but not the cost of materials procured. A broker is defined as any person(s) or firm who arranges or expedites transactions for materials or supplies, and does not take physical possession of the materials or supplies at their place of business for resale.
- A DBE renter of construction equipment to a contractor: Count 20% of expenditures committed, with or without operator.
- A bona fide DBE service provider: Count 100% of reasonable fees or commissions. Eligible services include professional, technical, consultant, or managerial, services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of the contract. Eligible services also include agencies providing bonding and insurance specifically required for the performance of the contract.
- A trucking, hauling or delivery operation: Count 100% of expenditures committed when trucks are owned, operated, licensed and insured by the DBE and used on the contract and, if applicable, includes the cost of the materials and supplies. 100% of expenditures committed when the DBE leases trucks from another DBE firm including an owner-operator. 100% of reasonable fees, or commissions, the DBE receives as a result of a lease arrangement for trucks from a non-DBE, including an owner-operator.
- Any combination of the above.

Removal of Approved DBE From Transportation Related Project. Contractors may not terminate for convenience, any approved DBE subcontractor and perform the work with their own forces, without prior written consent from the VTrans DBE Program Manager or VTrans Chief of Civil Rights.

Federal-aid projects which specify a DBE contract goal. The provisions of the Vermont Agency of Transportation Supplemental Specification – Disadvantaged Business Enterprise (DBE) Utilization (CA 160) shall apply to all VTrans Federal-aid projects which specify a DBE contract goal.

Compliance With Prompt Payment Statute. In accordance with Vermont’s Prompt Payment Act and VTrans Standard Specifications for Construction, Section 107.01(g), the Contractor shall fully comply with the provisions of 9 V.S.A. Chapter 102, also referred to as Act No. 74 of 1991 or the Prompt Payment Act, as amended.

Subcontractor Payments. In accordance with VTrans Standard Specifications for Construction, Section 107.01(h), on all federal-aid and state funded contracts, the Contractor, during the life of the Contract and on a monthly basis, shall submit electronically, a listing of payments to subcontractors on the form specified by the State and made available at: <http://apps.vtrans.vermont.gov/promptpay/>. Electronic reports shall be filed with the Agency Office of Civil Rights by an authorized representative and received in the Agency Office of Civil Rights on or before the tenth working day after month end. Contractors without access to the internet shall obtain and submit manual reports to the Agency Office of Civil Rights. Manual reports shall be signed by an authorized representative, sent to the Agency Office of Civil Rights, and postmarked on or before the tenth working day after month end. There shall be no direct compensation allowed the

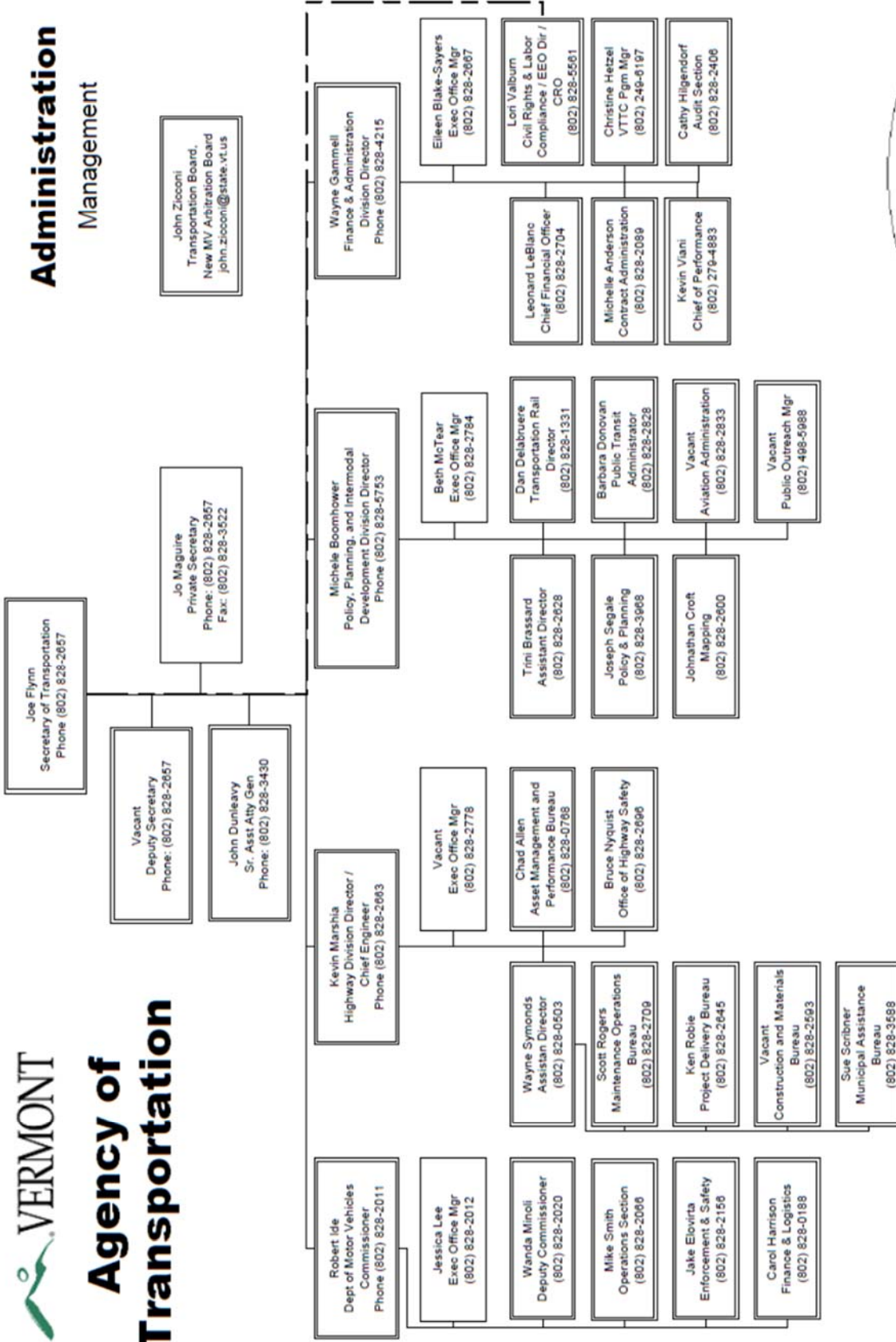
Contractor for this work, but the cost thereof shall be included in the general cost of the work. In accordance with 9 V.S.A. Section 4003, notwithstanding any contrary agreement, payments made to subcontractors after seven days from receipt of a corresponding progress payment by the State to the Contractor, or seven days after receipt of a subcontractor's invoice, whichever is later, violate this agreement. Violations shall be reported to the Agency Office of Civil Rights for review. Failure to resolve disputes in a timely manner may result in a complaint made to the Agency Pre-qualification Committee. In this Committee's judgment, appropriate penalties may be involved for failure to comply with this specification. Penalties may include suspension, reduction or revocation of the Contractor's pre-qualification rating. This clause shall be included in the prime Contractor's Contract made with all of its subcontractors.



Agency of Transportation

Administration

Management



**The Vermont Agency of Transportation
Small Business Element of the
Disadvantaged Business Enterprise (DBE) Program**

Introduction and Overview of the Small Business Element:

The Vermont Agency of Transportation (VTrans) has a longstanding commitment to promote small business participation on all Agency contracts and procurement opportunities. This is incorporated in the Agency's mission and embedded in the Agency's business model: By making the contracting and procurement process small business friendly, VTrans encourages competitive bidding and levels the playing field for DBEs and other small businesses.

Since FY 2000, VTrans has been successful in meeting its overall DBE goal by using race and gender neutral strategies to promote DBE and other small business participation on USDOT-assisted projects. While DBEs have been eligible to receive an array of supportive services, all small businesses have benefited from the resources that have been developed and delivered to encourage small business participation, including networking and matchmaking events and business development training. In recent years, VTrans has increasingly turned to electronic technologies to make the bidding and contracting process more readily accessible, cost effective and user friendly.

In accordance with the requirements of 49 CFR Part 26, Section 26.39 VTrans has designed a Small Business Program to ensure that DBEs and all small businesses have a maximum opportunity to participate on USDOT-assisted projects.

VTrans Small Business Program Goals and Objectives:

- Identify and eliminate all obstacles to the successful participation of DBEs and other small businesses in the VTrans federal-aid program, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- Increase the total statewide number of DBEs and other small businesses that are active in the VTrans federal-aid program.
- Promote growth and self-sufficiency for DBEs and other small and emerging businesses through a range of technical assistance and business development services that are designed to build capacity for successful work on USDOT-assisted projects.
- Develop effective tools for assessing small business needs and barriers through surveys, reporting data, etc., and implement a program that effectively meets those needs and helps small business firms participate, grow, diversify, and build capacity to successfully compete in the transportation industry.
- Provide business development information, guidance, referrals, specialized training, and one-on-one business counseling to help small businesses succeed in the transportation industry.

- Develop and maintain a system for implementing, documenting, monitoring, evaluating, and reporting the program's effectiveness, its strengths and weaknesses, and other outcomes, including all performance goals and measures.

Eligibility for Participation in the VTrans Small Business Program:

The rules set forth in Code of Federal Regulations, Title 13, Sections 121.401 through 121.413, apply to all Federal Procurement programs for which status as a small business is required or advantageous, including the VTrans Small Business Program. Any firm that wants to participate in the VTrans Small Business Program must be an existing, for-profit, small business, as defined by Small Business Administration (SBA) standards and 49 CFR Part 26. VTrans applies the SBA business size standard that correlates to the appropriate type of work that the small business seeks to perform on VTrans federally funded projects.

Participation Criteria and SBA Size Standards: To be eligible to participate in the VTrans Small Business Program, a firm must meet the small business definition set forth at 49 CFR Part 26.65. The USDOT definition currently limits the size standard to \$22.41 million in gross revenues, averaged over the past three years. If average gross receipts are under the SBA size standard for the primary type of work the firm performs and under \$22.41 million annually, the firm would be considered a small business, eligible to apply for participation in the VTrans Small Business Program.

Examples of the type of work typically used in road and bridge construction and the current size standard (dollars are shown in millions) for that type of work are listed below. SBA’s complete list of size standards, matched to the North American Industry Classification System (NAICS), is available online: [SBA Small Business Size Standards](#)

Highway, Street, and Bridge Construction	\$22.41
Other Heavy and Civil Engineering Construction	\$22.41
Poured Concrete Foundation and Structure Contractors	\$14.00
Structural Steel and Precast Concrete Contractors	\$14.00
Electrical Contractors	\$14.00
Masonry Contractors	\$14.00
Site Preparation Contractors	\$14.00
All Other Specialty Trade Contractors	\$14.00
General Freight Trucking, Local	\$22.41
Office of Real Estate Appraisers	\$2.00
Architectural Services	\$7.00
Landscape Architectural Services	\$7.00
Engineering Services	\$14.00
Drafting Services	\$7.00
Surveying and Mapping Services	\$14.00
Testing Laboratories	\$14.00
Graphic Design Services	\$7.00
Computer System Design Services	\$22.41
Public Relations Agencies	\$7.00
Landscaping Services	\$7.00

Due to the size standards being the same as the USDOT size standards, all Vermont UCP DBE certified firms are eligible to participate in the VTrans Small Business Program.

Application, Verification, and Monitoring Procedures: Firms wishing to participate in the VTrans Small Business Program may apply by submitting a notarized affidavit on a form provided by VTrans, attesting to meeting the USDOT/SBA definition of a small business. The application form (one page, double-sided) requires the firm to provide the following information: Business names and contact information; date established; federal employer I.D. number; legal structure, identification of all owners, including name, title, and percentage owned; gross revenues for the past three years; affiliation with other firms; principal goods or services to be provided; applicable NAICS codes; and whether the firm is registered to do business with the Vermont Secretary of State.

Upon receipt of the notarized affidavit, VTrans DBE Program Administrators will review and verify the application for thoroughness and accuracy. If approved, the firm will be notified and will be added to the VTrans Small Business Program, including the online directory, and will immediately become eligible for notification and participation in all training, networking, and business development opportunities offered to all participants in the VTrans Small Business Program. To maintain eligibility, all participants are required to provide a notarized “No Change Affidavit,” on a form provided by VTrans, attesting to the firm continuing to meet the USDOT/SBA definition of a small business, and providing updated information on annual gross revenues and any change in ownership, legal structure, principal activity, etc.

VTrans DBE Program Administrators are responsible for verifying and monitoring all changes and updates to the VTrans Small Business Program registry, and communicating any change in program requirements to all program participants.

Outreach Mechanisms to Inform the Small Business Community About the VTrans Small Business Program and the Agency’s Small Business Initiatives:

Initial Outreach to Publicize and Promote the VTrans Small Business Program: In anticipation of receiving USDOT approval, VTrans has already started a campaign to generate interest in the new VTrans Small Business Program. Informational materials and signup sheets for the new program were distributed by VTrans Civil Rights and Contract Administration staff who participated in the recent Department of Defense Regional Matchmaker held in Rochester, New York on October 10 – 12, 2012, and will continue to be used by VTrans at similar outreach events, including the Vermont Women’s Economic Opportunity Conference on November 10th. VTrans intends to use a wide variety of mechanisms to conduct outreach to the small business community within the first three months of obtaining USDOT approval, including the following:

- Immediately upon approval, incorporate the amendment in the VTrans DBE Program Plan, post prominently on the VTrans website, and distribute widely to all stakeholders through email, social media, and other electronic means, with a memo of support from the VTrans Secretary of Transportation.
- Utilize Constant Contact to provide information about the new VTrans Small Business Program to all businesses (primes and subs, contractors and consultants) currently active on VTrans federally funded projects, as well as all VTrans sub-recipients, including Regional Planning

Commissions, Public Transits, and Towns and Municipalities. The information provided will highlight the benefits of the program and the ease of application and enrollment, and will include links to the online application and other web-based information.

- Partner with other state agencies and departments, including the Vermont Agency of Commerce and Community Development and the Vermont Secretary of State, to distribute information about the new VTrans Small Business Program to the small business community.
- Use current network of program partners, including the Vermont Women's Business Center, the Small Business Administration, the Vermont chapters of the Association of General Contractors (AGC) and the American Council of Engineering Companies (ACEC), to publicize and promote the program at meetings and presentations and through newsletters and social media.

Winter 2013 VTrans Specific Matchmaker and Training Event: To officially launch the new Small Business Program, VTrans hopes to host a transportation specific matchmaker and training event. Working in concert with other VTrans Sections and Divisions and external Agency partners, the VTrans Civil Rights and Contract Administration Sections will invite current and prospective VTrans contractors and consultants to participate in a networking session designed to match up primes, subs, and other team collaborations. Participants will also receive training on bidding and estimating and/or responding to an RFP, an online tour of contracting resources, and an introduction to small business technical assistance and service providers. Recruitment for the new VTrans Small Business Program, and the benefits and ease of enrollment will be emphasized at key points throughout the day.

Ongoing Outreach Mechanisms: VTrans will continue to employ many of the outreach mechanisms identified above on an ongoing basis, to encourage members of the small business community to enroll in the VTrans Small Business Program. Ongoing outreach efforts will include the frequent distribution of updated program information electronically (website, email, social media, e-newsletters) and in hardcopy at small business training and networking events.

Specific Strategies for Promoting DBE and Small Business Participation on VTrans USDOT-Assisted Projects:

Identification of Projected Contracting Opportunities and Current Barriers: VTrans DBE Program administrators meet frequently with the Agency's planners and program and project managers, in order to anticipate DBE and other small business opportunities and/or barriers on upcoming USDOT-assisted projects, and design and deliver services to promote these opportunities and address these barriers. The Agency's Statewide Transportation Improvement Program (STIP) and Anticipated Advertising Schedule are other tools used to project upcoming DBE and other small business contracting opportunities, so that training and other capacity building can be timely delivered.

Use of Electronic Contracting and Bidding Technologies: Beginning in FY 2009, VTrans adopted mandatory electronic bidding procedures for all Agency construction contracts. Since August of 2010, all plans are available online, free of charge. All RFPs, construction contracts, and design-build projects are advertised online, and all bid results are promptly posted online. The implementation of these technologies, coupled with the use of list serves and social media to promote the Agency's contracting and procurement opportunities to DBEs and other small businesses has greatly helped to level the playing field, particularly for new and emerging businesses with limited resources.

Networking, Training and Business Development: Successful networking with key Agency staff and primes is critical for DBEs and other small business firms to increase their participation on VTrans USDOT-assisted projects. DBEs and other small businesses are encouraged to attend all Agency meetings and events with professional and/or trade organizations, such as ACEC and AGC-VT, and are invited to participate in a wide variety of conferences, matchmaker events, seminars, and other business development training:

- **Participation in the Small Business Transportation Resource Center Northeast Region, the Women’s Economic Opportunity Conference, the Vermont and Northeast Regional Council Matchmaker Conferences, and Similar Events:** In collaboration with a network of partners, VTrans currently participates in the planning and presentation of numerous conferences and workshops designed to provide education, training, and technical assistance to Vermont DBEs and other small businesses on a wide range of issues. Over the past twelve months, VTrans has hosted two matchmaker conferences in partnership with other state and federal agencies, including the Small Business Administration (SBA), the Procurement Technical Assistance Center (PTAC), and the Office of Small and Disadvantaged Business Utilization (OSDBU). Several hundred DBEs and other small businesses attended each event, and availed themselves of the opportunity to “meet and greet” primes and government entities during 10 minute networking sessions. The events also featured government contracting workshops that included staff from the VTrans Offices of Civil Rights and Contract Administration, who demonstrated online resources and demystified the bidding and contracting process. VTrans also helps to plan and sponsor the Women’s Economic Opportunity Conference, an annual all day event, with more than 300 attendees who participate in 25 workshops with a focus on small business issues. During the past three years, VTrans has networked with counterparts at other state DOTs in the region through the Small Business Transportation Resource Center Planning Committee. Active participation in these partnerships and helping to plan and sponsor these events is critical to the continued business development needs of our small business firms, including DBEs.
- **Other Training and Business Development Workshops:** In concert with the VTrans Contract Administration Section, the VTrans Construction Section, and other Agency divisions, the VTrans Civil Rights Section develops and delivers training specifically designed to encourage small business participation on federal-aid projects. Examples including Bidding and Estimating Workshops, Safety Training, and an Annual Contractor’s Seminar. In collaboration with program partners at other state and federal agencies, VTrans informs DBEs and small businesses of numerous business development workshops and industry specific networking opportunities.

Effective Communication Tools: In recent years, VTrans has implemented and expanded on an array of communication tools designed to promote greater DBE and other small business participation on VTrans USDOT-assisted projects, including the following:

- **Weekly Electronic Notification of Bid Opportunities:** The VTrans Office of Civil Rights sends DBEs electronic notification of bid opportunities and RFPs with links to Contract Administration’s webpage.

- **Electronic Notification of Training and Networking Opportunities:** Again, using the same online tool (Constant Contact), the VTrans DBE Program Manager sends frequent notices and invitations to training and networking events to DBEs, other small businesses, and other Agency contractors and consultants.

Prompt Payment Monitoring and Enforcement: Rigorous enforcement of prompt payment requirements assures that the Agency's DBEs and other small businesses will have sufficient cash flow to work successfully on VTrans projects. VTrans utilizes a web-based, user-friendly system for contractor reporting of payments to all subcontractors, and prompt payment requirements are emphasized in all contractor training, pre-construction conferences, site visits, and presentations. In addition to conducting a substantial number of investigations and enforcement actions, VTrans has developed and distributed new informational materials on prompt payment rights and responsibilities to all Agency prime and subcontractors on federally funded projects.

Additional Race and Gender Neutral Strategies for Promoting Small Business Participation: Further examples of race and gender neutral means that VTrans employs to promote greater participation by DBEs and other small businesses on USDOT-assisted projects, include the following:

- Providing technical assistance and other services to DBEs and other small businesses, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Producing and distributing free How To Do Business with the Agency of Transportation Guides and other resource materials;
- Providing formal and informal training and presentations to DBEs and other small businesses.
- Working with the Small Business Administration, the Small Business Development Centers, and other program partners to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Conducting periodic user surveys and needs assessments to better determine small business needs (e.g., training, financing, etc.) and to obtain better contact info;
- Producing and distributing an electronic newsletter that showcases successful DBEs and other small businesses, provides a calendar of events, and many web links to contracting and business development resources.
- Ensuring distribution of our DBE Directory and Small Business Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including online accessibility to all potential prime bidders, and widespread distribution at conferences, expos, and seminars;

- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women’s Economic Opportunity Conference, matchmaker events, etc.;
- Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Serving on the Advisory Council of the Vermont Women’s Business Center (VWBC), and supporting the VWBC’s mission through collaborative efforts and sponsorship of training programs;
- Participating in the Vermont Entrepreneurship Collaborative, the Vermont Technical Assistance Providers Association, and other organizations dedicated to developing business development resources and promoting small and disadvantaged businesses;
- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with the Vermont Agency of Transportation;
- Networking with local, state and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral network with technical assistance and service providers; and
- Coordinating with other state DOTs to maximize interstate contracting opportunities.

New Small Business Initiatives for FY 2012 and FY 2013: In addition to the above-described race and gender neutral means that the VT Agency of Transportation already employs to increase DBE and small business participation, we propose implementing and expanding our efforts in the following ways during FY 2013:

- Developing and implementing a new Small Business Online Directory to help promote and market the greater use of small businesses by the Agency’s prime contractors and consultants.
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE and small business participation has historically been low. We propose working within our organization and with the transportation industry to identify new and/or emerging businesses, with a particular focus on areas which will be critical to the industry in the next decade. We will then actively pursue the creation of businesses that can perform and develop expertise in these emerging areas.

- Ensuring that our prime contractors consider the use of DBEs and other small businesses in all possible work categories, by providing quick reference guides detailing the expertise and capacities of the DBEs and small businesses in our directories;
- Providing frequent updates to DBEs and other small businesses on all bidding and subcontracting opportunities; and
- Assisting more DBEs and small businesses to establish prequalification status.

Implementation Timeline for the VTrans Small Business Element: VTrans proposes the following implementation timeline for all VTrans Small Business Program new initiatives for the nine months following final USDOT program approval. All small business outreach and small business initiatives will continue on an ongoing basis unless otherwise noted:

- Obtain final USDOT program approval by 11/30/12. Upon approval, incorporate the amendment in the VTrans DBE Program Plan, post on website, and distribute widely through email, social media, and other electronic means, with a memo of support from the Agency Secretary.
- Develop and implement a verification process, to verify eligibility of firms to participate in the VTrans Small Business Program by 12/31/12. Publicize the features and benefits of registration and inclusion in the new directory by 1/31/13. Develop and implement a new Small Business Online Directory to help promote and market the greater use of small businesses by the Agency's prime contractors and consultants by 6/30/13.
- Develop and implement more effective tools to provide frequent updates to DBEs and other small businesses on all bidding and subcontracting opportunities by 2/28/13.
- Work with key VTrans staff to develop and implement ways of assisting more DBEs and small businesses to establish prequalification status by 2/28/13.
- Ensure that our prime contractors consider the use of DBEs and other small businesses in all possible work categories, by providing quick reference guides detailing the expertise and capacities of the DBEs and small businesses in our directories by 6/30/12.
- Work with VTrans managers to identify ways of unbundling contracts, and incorporate strategies into project development process by 6/30/13.

The Vermont Agency of Transportation Overall DBE Three Year Goal Methodology On FHWA-Assisted Projects

Introduction and Overview of Goal Setting Process:

The Vermont Agency of Transportation (VTrans) has availed itself of a variety of techniques to comply with the goal setting provisions for participation by disadvantaged business enterprises (DBEs) in its FHWA-assisted contracting program, as required by Section 26.45 of the DBE Regulations.

VTrans has solicited ideas and suggestions for developing and implementing overall goals by inviting input from the women, minority, and general contracting community. In keeping with our past process, we have utilized a collaborative and inclusive approach to formulating a goal setting methodology, which has included a series of open meetings as well as scheduled, direct, and interactive exchanges with industry and community groups, and prime and DBE contractors and consultants.

Information concerning the purpose and elements of the DBE Program were widely disseminated in writing, and through a series of presentations and public meetings involving a diverse range of individuals and organizations, including our currently certified DBEs, our non-DBE contractors and consultants, the Associated General Contractors - Vermont Chapter, the American Council of Engineering Consultants, the Vermont Commission on Women, the U.S. Small Business Administration, the Vermont Public Transportation Association, the Vermont Procurement Technical Assistance Center, the Vermont Agency of Commerce and Community Development, the Vermont Women's Business Center, the Vermont Small Business Development Centers, the Vermont Partnership for Fairness and Diversity, the Vermont Community Action Agencies, the Vermont Department of Labor, the Micro Business Development Program, the Women's Small Business Program, Vermont Works for Women (formerly Northern New England Tradeswomen), the Vermont Refugee Resettlement Program, Vermont Chambers of Commerce, Vermont Regional Planning Commissions, the Vermont League of Cities and Towns, the University of Vermont Transportation Research Center, regional planning commissions, transit providers and various towns and municipalities.

Feedback from these individuals and organizations included information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the scope and effectiveness of VTrans' efforts to establish a level playing field for the participation of DBEs.

The final goal for our FHWA-assisted contracting program was established through an ongoing dialogue with all our stakeholders and represents an informed consent by stakeholder groups.

To comply with the goal setting provisions of the DBE regulations, VTrans has employed the two step process outlined in Section 26.45, by first creating a baseline figure reflecting the relative availability of "ready, willing and able DBEs" in our marketplace, and then examining all relevant evidence, including past DBE participation, to determine what adjustments, if any, are needed to arrive at our overall goal.

While VTrans has affirmed its commitment to meeting the maximum feasible portion of our overall goal using race-neutral means, we have also provided the requisite projection of a breakout of participation derived from both race-neutral and race-conscious measures, as specified in Section 26.51. In addition

to summarizing our current race-neutral program components, we have identified a variety of new strategies, the implementation of which will serve as additional program performance measures.

Amount of Goal:

Federal Highway Administration (FHWA) Goal:

In FY 2016 - FY 2018, VTrans intends to expend 6.46% of the Federal financial assistance received from FHWA with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of VTrans that this expenditure is obtained through a race and gender neutral program.

Goal Methodology:

Goal Methodology: Federal Highway Administration (FHWA) Goal:

Pursuant to the 2010 USDOT rule amendments to 49 CFR Section 26.45, VTrans’ overall annual goal of 6.46% on FHWA funded contracts is effective for a period of three years: FY 2016 – FY 2018. The following describes the goal methodology used to determine this three year goal:

Step 1: Base Figure for the Relative Availability of DBEs:

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (“base figure”) for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. VTrans employed the bidder’s list method (Example #2) for calculating a base figure. This method allowed us to measure availability by the number of firms (DBE and non-DBE) that have directly participated in or attempted to participate in our DOT-assisted contracting program over the past three years. We obtained our data and calculated the relative availability percentage in the following manner:

- Our bidder’s list survey identified all prime contractors (construction and consultants) that bid or attempted to bid on DOT-assisted contracts over the past three years (calendar years 2012, 2013, and 2014), a total of 178 prime contractors and consultants. Prime contractor and consultant bidders identified all subcontractors who provided a quote on any DOT-assisted contracts over the past three years (calendar years 2012, 2013, and 2014).
- Based on the number of known prime bidders (178) and the number of additional subcontractors identified who bid or quoted (473), and their status as DBEs or non-DBEs, we have been able to calculate the relative availability percentage as follows:

DBE Primes that bid	13
DBE Subs that quoted	<u>28</u>
Total DBEs that bid or quoted	41
Total Primes that bid	178
Total Subs that quoted	<u>473</u>
Total Businesses that bid or quoted	651

Relative Availability of DBEs in the Marketplace (41 of 651)

6.3%

Step 2: Adjustment to Base Figure:

As specified in Section 26.45, once the relative availability of ready, willing and able DBEs in our marketplace has been determined, it is necessary to examine additional evidence and, if appropriate, make adjustments to the base figure, to ensure that our goal truly and accurately reflects the level of DBE participation we would expect absent the effects of discrimination. Accordingly, VTrans has gone beyond the formulaic measurement of current availability in Step 1, to consider and account for other evidence of conditions affecting DBEs, including past participation and trends, capacity limits, goals of other DOT recipients, and the impact of other specific factors requiring the narrow tailoring of the DBE program.

To arrive at the proposed overall goal of 6.46%, the Step 1 Base Figure of 6.3% was adjusted, based on the following data and criteria:

Capacity Limits:

- **Current capacity of DBEs to perform work in our FHWA-assisted contracting program, as measured by the volume of work DBEs have performed in recent years:** VTrans has analyzed data reflecting DBE participation and trends on FHWA-funded projects in recent years. For the past eight years, the median DBE goal attainment is 6.625%:

<u>Federal Fiscal Year</u>	<u>DBE Goal Attainment</u>
FY 2007	5.20%
FY 2010	6.31%
FY 2014	6.47%
FY 2013	6.55%
FY 2008	6.65%
FY 2009	7.12%
FY 2012	8.61%
<u>FY 2011</u>	<u>10.96%</u>
Eight Year Median:	6.625%

Using the approach approved by USDOT’s General Counsel, we have averaged our 8 Year past Participation Median Figure of 6.625% with our Step One Base Figure of 6.3% to arrive at a proposed goal of 6.46%:

Eight Year Median Figure:	6.625%
Step One Base Figure:	6.3%
Average:	6.46%

Recent attainment levels support an upward adjustment to 6.46%, as do our DBE participation trends, particularly as measured by dollar volume. As FHWA funding has increased in recent years, due in part to ARRA and Irene recovery efforts, VTrans DBEs have demonstrated a significant growth in capacity, as evidenced by the strong and steady increase in the dollar

volume of DBE participation. Since FY 2007, DBE participation, as measured by dollar volume, has doubled from \$8.6 million to an average of \$16.4 million annually.

<u>Federal Fiscal Year</u>	<u>DBE Participation By Dollar Volume</u>
FY 2007	\$8,663,920
FY 2008	\$9,958,637
FY 2009	\$12,360,219
FY 2010	\$15,600,972
FY 2011	\$16,239,544
FY 2012	\$20,032,195
FY 2013	\$15,248,839
FY 2014	\$15,014,918

Consistent with this trend, DBE participation for the first half of FY 2015 is \$13.19 million. The strength of recent DBE participation levels and trends supports the proposed Step 2 upward adjustment to 6.46%.

- **DBE capacity to compete as primes and subs:**

- **DBE Primes:** The number of VTrans DBEs actively bidding and winning prime contracts has increased significantly in the past several years. For the first nine months of FY 2015, 3 DBEs have been awarded 7 prime construction contracts totaling in excess of \$11.2 million. During this same period, 3 DBEs have been awarded 6 consultant contracts totaling \$7.3 million. In addition to an increase in the number and size of prime DBE contracts, there has been a significant increase in the number of first time DBEs bidding and winning prime contracts. Much of this trend is attributable to increased enrollment and active participation in the Vermont Business Development Program (VBDP), which provides one-on-one business coaching, training and networking opportunities to certified DBEs. Fifty percent (50%) of the DBEs that have won VTrans prime contracts in FY 2015 are active participants in VBDP, and this trend is projected to continue as more certified DBEs enroll in the program.

- **DBE Subs:** The capacity of DBE subs to compete on VTrans federally-funded projects has also increased significantly in the last several years. In response to increased contracting opportunities, VTrans DBEs have expanded their capacity, enhanced their bidding and estimating skills, and strengthened their working relationships with primes and suppliers. In FY 2014, DBEs secured \$9.7 million in construction sub-contracts on FHWA-funded projects, constituting almost 20% of the Agency's total. VTrans DBEs are proactively seeking work on VTrans projects, and are well equipped and positioned to perform.

- **Goals of Other DOT Recipients:** As part of the goal setting process, Section 26.45 recognizes the relevance of goals set by other DOT recipients, and authorizes the consideration and use of the goal of another DOT recipient in the same or substantially similar market. The highway construction industry is substantially uniform throughout the northern tier of New England, comprised of Vermont, New Hampshire, and Maine, and the three states share many of the same contractors and market conditions. Therefore, VTrans has considered the goals set by New Hampshire and Maine as relevant in its own goal setting process.

For FY 2015 - 2017, New Hampshire DOT has set an overall annual goal of 5.63% on FHWA-funded projects, and intends to achieve this level of DBE participation running a race and gender neutral program.

For FY 2016 - 2018, Maine DOT has proposed an overall annual goal of 3.0%, an upward adjustment from the Step 1 Base Figure of 2.5%. Maine DOT intends to achieve this level of DBE participation running a race and gender neutral program.

Based on all the additional data, evidence and criteria affecting DBE participation levels, as described above, VTrans has adjusted the Step 1 Base Figure of 6.3%, to arrive at the proposed overall goal of 6.46% for FY 2016 – FY 2018.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

- Providing technical assistance and other services to DBEs, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions;
- Administering a business development program, the Vermont Business Development Program (VBDP), for certified DBEs that provides one-on-one business counseling and needs assessments, business and marketing plan development, and training and networking opportunities.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Producing and distributing free How To Do Business with the Agency of Transportation Guide and other resource materials;
- Providing formal and informal training and presentations to DBEs and other contractors.
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities, including the weekly use of Constant Contact to provide information and links on all new Invitations to Bid and RFP's;
- Conducting periodic user surveys and needs assessments to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info;

- Producing and distributing an electronic newsletter that showcases successful DBEs, introduces new DBEs, provides a calendar of events, and many web links to contracting and business development resources.
- Ensuring distribution of our DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including mail distribution to all potential prime bidders, and widespread distribution at conferences, expos, and seminars;
- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women's Economic Opportunity Conference, matchmaker events, etc.;
- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links;
- Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with the VT Agency of Transportation;
- Networking with local, state and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral network with technical assistance and service providers;
- Coordinating with other state DBE Liaison Officers, to ensure certification reciprocity and to maximize interstate contracting opportunities; and
- Assisting DBEs to establish prequalification status.

In addition to the above-described race-neutral means that VTrans already employs to increase DBE participation, we propose implementing and expanding our efforts in the following ways:

- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low. We propose working within our organization and with the transportation industry to identify new and/or emerging businesses, with a particular focus on areas which will be critical to the industry in the next decade. We will then actively pursue the creation of businesses that can perform and develop expertise in these emerging areas.
- Providing more one-on-one business counseling services to our DBEs;

- Ensuring that our prime contractors consider the use of DBEs in all possible work categories, by providing quick reference guides detailing the expertise and capacities of our DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities; and
- Providing more effective outreach with minority businesses.

Breakout of Estimated Race-Neutral and Race-Conscious Participation: FHWA-Assisted Contracting Program:

On our FHWA-assisted contracts, VTrans estimates that we will meet our entire overall goal of 6.46% through race-neutral participation, and that we will not have to resort to race-conscious measures.

The recent level of DBE participation on FHWA- assisted contracts supports our estimated breakout. We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we 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 a DBE goal.
- DBE participation on a prime contract exceeding a contract goal.
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The Vermont Agency of Transportation's Disadvantaged Business Enterprise (DBE) Triennial Goal And Goal Setting Methodology for FFY 2018-2020

Introduction and Overview of Goal Setting Process:

The Vermont Agency of Transportation (VTrans) has availed itself of a variety of techniques to comply with the goal setting provisions for participation by disadvantaged business enterprises (DBEs) in its DOT-assisted contracting program, as required by Section 26.45 of the DBE Regulations.

VTrans has solicited ideas and suggestions for developing and implementing overall goals by inviting input from the women, minority, and general contracting community. In keeping with our past process, we utilized a collaborative and inclusive approach to formulating a goal setting methodology, which included a series of open meetings with industry and community groups, and prime and DBE contractors and consultants.

Information concerning the purpose and elements of the DBE Program were widely disseminated in writing, and through a series of presentations and public meetings involving a diverse range of individuals and organizations, including our currently certified DBEs, our non-DBE contractors and consultants, the Associated General Contractors - Vermont Chapter, the American Council of Engineering Consultants, the Vermont Commission on Women, the U.S. Small Business Administration, the Vermont Public Transportation Association, the Vermont Procurement Technical Assistance Center, the Vermont Agency of Commerce and Community Development, the Vermont Women's Business Center, the Vermont Small Business Development Centers, the Vermont Community Action Agencies, the Vermont Department of Labor, the Micro Business Development Program, the Women's Small Business Program, Vermont Works for Women (formerly Northern New England Tradeswomen), Vermont Chambers of Commerce, Vermont Regional Planning Commissions, the Vermont League of Cities and Towns, the University of Vermont Transportation Research Center, public transit providers and various towns and municipalities.

Feedback from these individuals and organizations included information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the scope and effectiveness of VTrans' efforts to establish a level playing field for the participation of DBEs.

The final goal for each of our USDOT-assisted contracting programs was established through an ongoing dialogue with all our stakeholders and represents an informed consent by stakeholder groups.

In accordance with the requirements of 49 CFR Part 26, Section 26.45 VTrans publishes the goals in various media to solicit public comment.

To comply with the goal setting provisions of the DBE regulations, VTrans has employed the two step process outlined in Section 26.45, by first creating a baseline figure reflecting the relative availability of “ready, willing and able DBEs” in our marketplace, and then examining all relevant evidence, including past DBE participation, to determine what adjustments, if any, are needed to arrive at our overall goal.

VTrans has affirmed its commitment to meeting the maximum feasible portion of our overall goal using race-neutral means. In addition to summarizing our current race-neutral program components, we have identified a variety of new strategies, the implementation of which will serve as additional program performance measures.

Amount of Goal:

Federal Transit Administration (FTA) Goal:

In FY 2018 – FY 2020, VTrans intends to expend 1.65% of the federal financial assistance received from the Federal Transit Administration with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of VTrans that this expenditure be obtained through a race and gender neutral program.

Goal Methodology:

Goal Methodology: Federal Transit Administration (FTA) Goal:

Pursuant to February 2010 USDOT rule amendments to 49 CFR Section 26.45, VTrans’ overall annual goal of 1.65% on FTA funded contracts is effective for a period of three years: FY 2018 – FY 2020. The following describes the goal methodology used to determine this three year goal:

Step 1: Base Figure for the Relative Availability of DBEs

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (“base figure”) for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms (Method 1). VTrans employed the use of our DBE directory and Census Bureau Data for calculating a base figure. We obtained our data and calculated the relative availability percentage in the following manner:

- We reviewed VTrans past spending for FY15-16 on direct contracts from the agency, and tabulated our subrecipients (rural transit providers in Vermont) for their operating and planning spending for this period. This spending was subdivided by line item, and all spending for wages and other non-contract spending was excluded. To these operating and planning figures, we added projected capital spending for the FY18-FY20 period based on capital requests from the subrecipients and a VTrans forecast as to which items are likely to be funded. The itemized spending was then categorized by six-digit North American Industry Classification System (NAICS) code. The average spending for operations and planning was multiplied by three (to represent the coming three-year period) and the capital spending projections were added to those figures. This collection of codes, federal spending, and their descriptions are shown below in Table 1.

Table 1. NAICS Codes

NAICS Code	Description	FY18-20 Spending	% of Total
237310	Highway, Street, and Bridge Construction	\$10,980	0.1%
238110	Poured Concrete Foundation and Structure Contractors	\$68,725	0.4%
238130	Framing Contractors	\$48,000	0.3%
238150	Glass and Glazing Contractors	\$2,614	0.0%
238160	Roofing Contractors	\$50,944	0.3%
238190	Other Foundation, Structure, and Building Exterior Contractors	\$124,317	0.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$104,755	0.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$37,288	0.2%
238290	Other Building Equipment Contractors	\$283,401	1.7%
238310	Drywall and Insulation Contractors	\$187,831	1.1%
238320	Painting and Wall Covering Contractors	\$67,000	0.4%
238350	Finish Carpentry Contractors	\$87,139	0.5%
238390	Other Building Finishing Contractors	\$9,242	0.1%
238910	Site Preparation Contractors	\$3,891	0.0%
321992	Prefabricated Wood Building Manufacturing	\$29,600	0.2%
323111	Commercial Printing (except Screen and Books)	\$56,248	0.3%
333921	Elevator and Moving Stairway Manufacturing	\$7,011	0.0%
334220	Radio and Wireless Communications Equipmt. Manufacturing	\$32,607	0.2%
334310	Audio and Video Equipment Manufacturing	\$125,924	0.8%
334519	Other Measuring and Controlling Device Manufacturing	\$331,600	2.0%
335129	Other Lighting Equipment Manufacturing	\$8,400	0.1%
339950	Sign Manufacturing	\$15,642	0.1%
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	\$126,000	0.8%
423430	Computer Equipment and Software Merchant Wholesalers	\$476,457	2.9%
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	\$74,480	0.5%
423830	Industrial Machinery and Equipment Merchant Wholesalers	\$244,808	1.5%

424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	\$106,122	0.6%
441310	Automotive Parts and Accessories Stores	\$888,663	5.4%
441320	Tire Dealers	\$238,982	1.5%
442110	Furniture Stores	\$17,401	0.1%
442210	Floor Covering Stores	\$15,600	0.1%
444110	Home Centers	\$45,450	0.3%
443141	Household Appliance Stores	\$5,192	0.0%
444130	Hardware Stores	\$14,675	0.1%
444190	Other Building Material Dealers	\$32,938	0.2%
451212	News Dealers and Newsstands	\$2,367	0.0%
453210	Office Supplies and Stationery Stores	\$396,497	2.4%
453220	Gift, Novelty, and Souvenir Stores	\$1,336	0.0%
454210	Vending Machine Operators	\$2,065	0.0%
454310	Fuel Dealers	\$3,001,158	18.4%
485310	Taxi Service	\$549,187	3.4%
485991	Special Needs Transportation	\$420,135	2.6%
488410	Motor Vehicle Towing	\$13,714	0.1%
511110	Newspaper Publishers	\$107,037	0.7%
511210	Software Publishers	\$422,120	2.6%
515112	Radio Stations	\$1,074	0.0%
517110	Wired Telecommunications Carriers	\$165,254	1.0%
517210	Wireless Telecommunications Carriers (except Satellite)	\$184,046	1.1%
518210	Data Processing, Hosting, and Related Services	\$5,294	0.0%
519130	Internet Publishing and Broadcasting and Web Search Portals	\$33,377	0.2%
524126	Direct Property and Casualty Insurance Carriers	\$1,902,311	11.6%
524128	Other Direct Insurance (except Life, Health, and Medical) Carriers	\$160,253	1.0%
532420	Office Machinery and Equipment Rental and Leasing	\$29,451	0.2%
541110	Offices of Lawyers	\$108,339	0.7%
541211	Offices of Certified Public Accountants	\$272,705	1.7%
541310	Architectural Services	\$18,826	0.1%
541430	Graphic Design Services	\$4,234	0.0%
541512	Computer Systems Design Services	\$540,610	3.3%
541611	Administrative Management and Management Consulting Services	\$987,300	6.0%
541613	Marketing Consulting Services	\$234,596	1.4%
541620	Environmental Consulting Services	\$4,406	0.0%
541690	Other Scientific and Technical Consulting Services	\$1,083,451	6.6%
541890	Other Services Related to Advertising	\$142,008	0.9%
541921	Photography Studios, Portrait	\$21,588	0.1%
561621	Security Systems Services (except Locksmiths)	\$4,641	0.0%
561720	Janitorial Services	\$266,040	1.6%
561730	Landscaping Services	\$40,712	0.2%
561790	Other Services to Buildings and Dwellings	\$32,453	0.2%
562111	Solid Waste Collection	\$25,508	0.2%

611430	Professional and Management Development Training	\$5,690	0.0%
621111	Offices of Physicians (except Mental Health Specialists)	\$1,200	0.0%
621910	Ambulance Services	\$61,922	0.4%
621999	All Other Miscellaneous Ambulatory Health Care Services	\$74,716	0.5%
722513	Limited-Service Restaurants	\$14,747	0.1%
811111	General Automotive Repair	\$874,600	5.4%
811212	Computer and Office Machine Repair and Maintenance	\$95,122	0.6%
811310	Commercial and Industrial Machinery and Equipt. Maintenance	\$53,399	0.3%
	TOTAL	\$16,400,149	100.0%

- We determined the number of ready, willing and able DBEs in our market from our DBE directory for each of these NAICS codes. Then, using the Census Bureau's County Business Pattern (CBP) database, we determined the number of all ready, willing and able businesses available in our market that perform work in the same NAICS codes. For the purpose of setting an overall DBE goal for funds received from FTA, it was determined that our market or service area was the State of Vermont, with a few exceptions.
 - The first listed code, Highway, Street and Bridge Construction had 24 DBEs in the registry, but only four of these were actually based in Vermont. Eleven of the DBEs in the registry were based in Massachusetts or New York. Thus, the total number of Massachusetts and New York establishments in this category were added to the 29 total establishments in Vermont to better reflect the market area for this service.
 - Five codes in the 5415-5416 series were treated similarly. These codes have the highest number of DBE firms in the VAOT registry, but the great majority of these DBE firms are from outside of Vermont. The work done under these codes, mostly consulting services, can be more easily done by firms from anywhere in the country compared to most of the other NAICS codes which are more easily done by firms in Vermont. For each code, the most common source states for the DBEs were identified, so that states housing at least half of the DBE firms would be represented. The states included for each of these codes are shown below. All of the states are in the northeastern part of the US.

NAICS Code	DBE firms in VAOT registry	VT DBE firms in VAOT registry	Other states with firms in registry	DBE firms in registry coming from these states
541512	16	0	MA NH MD PA	8
541611	26	3	MA MD PA	11
541613	10	1	MA	4
541620	24	9	MA NH	10
541690	16	2	MA NH NJ	9

Table 2 shows the number of VAOT-certified DBE firms in each of these categories and calculates the unweighted relative availability of DBEs.

Table 2. Relative Availability of DBE Firms by NAICS Code

NAICS Code	Description	CBP	
		VT DBE Firms	Total for VT
237310	Highway, Street, and Bridge Construction	24	726*
238110	Poured Concrete Foundation and Structure Contractors	2	65
238130	Framing Contractors	1	53
238150	Glass and Glazing Contractors	1	12
238160	Roofing Contractors	2	78
238190	Other Foundation, Structure, and Building Exterior Contractors	2	11
238210	Electrical Contractors and Other Wiring Installation Contractors	8	271
238220	Plumbing, Heating, and Air-Conditioning Contractors	3	302
238290	Other Building Equipment Contractors	3	21
238310	Drywall and Insulation Contractors	2	69
238320	Painting and Wall Covering Contractors	5	153
238350	Finish Carpentry Contractors	0	99
238390	Other Building Finishing Contractors	2	13
238910	Site Preparation Contractors	17	324
321992	Prefabricated Wood Building Manufacturing	0	8
323111	Commercial Printing (except Screen and Books)	1	44
333921	Elevator and Moving Stairway Manufacturing	0	0
334220	Radio and Wireless Communications Equipmt. Manufacturing	0	0
334310	Audio and Video Equipment Manufacturing	0	0
334519	Other Measuring and Controlling Device Manufacturing	0	3
335129	Other Lighting Equipment Manufacturing	0	1
339950	Sign Manufacturing	1	11
423110	Automobile and Other Motor Vehicle Merchant Wholesalers	0	13
423430	Computer Equipment and Software Merchant Wholesalers	2	14
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers	0	30
423830	Industrial Machinery and Equipment Merchant Wholesalers	0	41
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	0	9
441310	Automotive Parts and Accessories Stores	0	102
441320	Tire Dealers	0	46
442110	Furniture Stores	0	58
442210	Floor Covering Stores	0	33
444110	Home Centers	0	17
443141	Household Appliance Stores	0	33
444130	Hardware Stores	0	79
444190	Other Building Material Dealers	4	116
451212	News Dealers and Newsstands	0	1
453210	Office Supplies and Stationery Stores	0	19
453220	Gift, Novelty, and Souvenir Stores	0	76
454210	Vending Machine Operators	0	6
454310	Fuel Dealers	0	110
485310	Taxi Service	0	13
485991	Special Needs Transportation	1	6
488410	Motor Vehicle Towing	1	18
511110	Newspaper Publishers	0	42
511210	Software Publishers	1	29
515112	Radio Stations	0	22

517110	Wired Telecommunications Carriers	0	105
517210	Wireless Telecommunications Carriers (except Satellite)	0	20
518210	Data Processing, Hosting, and Related Services	3	34
519130	Internet Publishing and Broadcasting and Web Search Portals	0	21
524126	Direct Property and Casualty Insurance Carriers	0	41
524128	Other Direct Insurance (except Life, Health, and Medical) Carriers	0	1
532420	Office Machinery and Equipment Rental and Leasing	0	1
541110	Offices of Lawyers	1	423
541211	Offices of Certified Public Accountants	3	143
541310	Architectural Services	4	78
541430	Graphic Design Services	7	78
541512	Computer Systems Design Services	16	5,559*
541611	Administrative Management and Management Consulting Services	26	6,365*
541613	Marketing Consulting Services	10	986*
541620	Environmental Consulting Services	24	390*
541690	Other Scientific and Technical Consulting Services	16	1,049*
541890	Other Services Related to Advertising	0	17
541921	Photography Studios, Portrait	0	15
561621	Security Systems Services (except Locksmiths)	0	10
561720	Janitorial Services	1	173
561730	Landscaping Services	6	438
561790	Other Services to Buildings and Dwellings	2	44
562111	Solid Waste Collection	1	43
611430	Professional and Management Development Training	4	30
621111	Offices of Physicians (except Mental Health Specialists)	1	315
621910	Ambulance Services	0	37
621999	All Other Miscellaneous Ambulatory Health Care Services	1	13
722513	Limited-Service Restaurants	0	398
811111	General Automotive Repair	0	329
811212	Computer and Office Machine Repair and Maintenance	2	17
811310	Commercial and Industrial Machinery and Equipt. Maintenance	0	50
		211	20,420

*Includes establishments from other states

The 211 ready, willing, and able DBE firms in the Vermont DBE Registry, divided by the 20,420 total Vermont firms from the County Business Patterns database (plus other states for selected codes), yields an unweighted base figure of 1.0%.

In order to better reflect the availability of DBE contractors with regard to potential spending, we recalculated the relative availability using a weighted approach, so that the NAICS codes with higher spending are weighted more heavily. This is appropriate, since the historical awards to DBEs are based directly on spending, rather than on relative availability.

The percentages of total spending represented by each of the NAICS categories, shown in the rightmost column of Table 1, were multiplied by the percent availability of DBE contractors for each NAICS code. The results of this calculation are shown below in Table 3.

Table 3. Weighted Average of DBE Availability

NAICS Code	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Pct Available		Weight	Weighted Availability
237310	24	726	3.3%	x	0.1%	0.00%
238110	2	65	3.1%	x	0.4%	0.01%
238130	1	53	1.9%	x	0.3%	0.01%
238150	1	12	8.3%	x	0.0%	0.00%
238160	2	78	2.6%	x	0.3%	0.01%
238190	2	11	18.2%	x	0.8%	0.14%
238210	8	271	3.0%	x	0.6%	0.02%
238220	3	302	1.0%	x	0.2%	0.00%
238290	3	21	14.3%	x	1.7%	0.25%
238310	2	69	2.9%	x	1.1%	0.03%
238320	5	153	3.3%	x	0.4%	0.01%
238350	0	99	0.0%	x	0.5%	0.00%
238390	2	13	15.4%	x	0.1%	0.01%
238910	17	324	5.2%	x	0.0%	0.00%
321992	0	8	0.0%	x	0.2%	0.00%
323111	1	44	2.3%	x	0.3%	0.01%
333921	0	-	0.0%	x	0.0%	0.00%
334220	0	-	0.0%	x	0.2%	0.00%
334310	0	-	0.0%	x	0.8%	0.00%
334519	0	3	0.0%	x	2.0%	0.00%
335129	0	1	0.0%	x	0.1%	0.00%
339950	1	11	9.1%	x	0.1%	0.01%
423110	0	13	0.0%	x	0.8%	0.00%
423430	2	14	14.3%	x	2.9%	0.42%
423820	0	30	0.0%	x	0.5%	0.00%
423830	0	41	0.0%	x	1.5%	0.00%
424320	0	9	0.0%	x	0.6%	0.00%
441310	0	102	0.0%	x	5.4%	0.00%
441320	0	46	0.0%	x	1.5%	0.00%
442110	0	58	0.0%	x	0.1%	0.00%
442210	0	33	0.0%	x	0.1%	0.00%
444110	0	17	0.0%	x	0.3%	0.00%
443141	0	33	0.0%	x	0.0%	0.00%
444130	0	79	0.0%	x	0.1%	0.00%

444190	4	116	3.4%	x	0.2%	0.01%
451212	0	1	0.0%	x	0.0%	0.00%
453210	0	19	0.0%	x	2.4%	0.00%
453220	0	76	0.0%	x	0.0%	0.00%
454210	0	6	0.0%	x	0.0%	0.00%
454310	0	110	0.0%	x	18.4%	0.00%
485310	0	13	0.0%	x	3.4%	0.00%
485991	1	6	16.7%	x	2.6%	0.43%
488410	1	18	5.6%	x	0.1%	0.00%
511110	0	42	0.0%	x	0.7%	0.00%
511210	1	29	3.4%	x	2.6%	0.09%
515112	0	22	0.0%	x	0.0%	0.00%
517110	0	105	0.0%	x	1.0%	0.00%
517210	0	20	0.0%	x	1.1%	0.00%
518210	3	34	8.8%	x	0.0%	0.00%
519130	0	21	0.0%	x	0.2%	0.00%
524126	0	41	0.0%	x	11.6%	0.00%
524128	0	1	0.0%	x	1.0%	0.00%
532420	0	1	0.0%	x	0.2%	0.00%
541110	1	423	0.2%	x	0.7%	0.00%
541211	3	143	2.1%	x	1.7%	0.04%
541310	4	78	5.1%	x	0.1%	0.01%
541430	7	78	9.0%		0.0%	0.00%
541512	16	5,559	0.3%		3.3%	0.01%
541611	26	6,365	0.4%		6.0%	0.02%
541613	10	986	1.0%		1.4%	0.01%
541620	24	390	6.2%		0.0%	0.00%
541690	16	1,049	1.5%		6.6%	0.10%
541890	0	17	0.0%		0.9%	0.00%
541921	0	15	0.0%		0.1%	0.00%
561621	0	10	0.0%		0.0%	0.00%
561720	1	173	0.6%		1.6%	0.01%
561730	6	438	1.4%		0.2%	0.00%
561790	2	44	4.5%		0.2%	0.01%
562111	1	43	2.3%		0.2%	0.00%
611430	4	30	13.3%		0.0%	0.00%
621111	1	315	0.3%		0.0%	0.00%
621910	0	37	0.0%		0.4%	0.00%
621999	1	13	7.7%		0.5%	0.04%
722513	0	398	0.0%		0.1%	0.00%
811111	0	329	0.0%		5.4%	0.00%

811212	2	17	11.8%	0.6%	0.07%
811310	0	50	0.0%	0.3%	0.00%

The weighted average DBE availability is the sum of the weighted availabilities in the rightmost column, which comes out to 1.79%. This is the step 1 base figure.

Step 2: Adjustment to Base Figure

As specified in Section 26.45, once the relative availability of ready, willing and able DBEs in our marketplace has been determined, it is necessary to examine additional evidence and, if appropriate, make adjustments to the base figure, to ensure that our goal truly and accurately reflects the level of DBE participation we would expect absent the effects of discrimination. Table 4 below shows the historical awards to DBE firms by year for the past five years. The annual percent to DBEs was calculated by adding together the semi-annual reports for each year, and then dividing the DBE contracting by the total contracting figure.

Table 4. Historical Contract Awards to DBE Firms

Year	Total Dollars	Total to DBEs	Percent to DBEs
FY 2013	\$1,124,191	\$84,764	7.54%
FY 2014	\$4,133,713	\$38,673	0.94%
FY 2015	\$6,121,708	\$41,955	0.69%
FY 2016	\$4,986,586	\$104,044	2.09%
		Median	1.52%

It can be seen in Table 4 that the State of Vermont overachieved in DBE contracting in FY2013, but has fallen short of the goal (2.25%) since then. The majority of DBE contract dollars in FY 2013 (\$57,309) went to one DBE firm that was conducting a statewide policy plan for public transportation as well as an intercity bus plan. Those plans were completed in FY 2014. The uptick in DBE spending in FY2016 represented a single contract worth \$65,000 to the same firm that did the statewide policy plan.

The shortfall analyses completed for FY14, FY15, and FY16 explained the reasons why the goals were not met in those years. VTrans and its subrecipients continue to make strong efforts to encourage eligible firms to register as DBEs in Vermont and to make use of such firms whenever possible.

The experience thus far in FY17 suggests that meeting the DBE goal will continue to be a challenge. VTrans thus chooses to average the weighted base figure with the median figure from the past four years to result in a goal of 1.65%.

VTrans considered several other potential adjustments to the base figure before concluding the analysis:

- **Disparity Studies:** There has been no known disparity study performed in Vermont, New Hampshire, or Maine for any public agency or private sector company.
- **Statistical Disparities in the Ability of DBEs to Get the Financing, Bonding, and Insurance Required to Participate in the VTrans DBE Program:** VTrans has not collected and analyzed this data related to transit contracts. VTrans offers training, mentoring, and one-on-one business coaching to its DBEs through the VTrans Business Development Program, and partners with the Small Business Administration and other agencies to promote accessible financing, bonding, and insurance to all certified DBEs. This has not been identified as a barrier to contracting and procurement opportunities for DBEs in Vermont.
- **Data on Employment, Self-Employment, Education, Training and Union Apprenticeship Programs, to the Extent They Relate to the Opportunities for DBEs to Perform in the VTrans DBE Program:** VTrans has not collected and analyzed this data related to transit contracts. Through the VTrans Business Development Program, DBEs are assessed for training needs, and VTrans funds DBE training to remove barriers, build capacity, and enhance critical business skills.

After full consideration of these factors, VTrans concludes that the adjusted weighted base figure of 1.65% is an appropriate goal for FY 2018 – 2020 for our FTA-assisted contracts.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

- Providing technical assistance and other services to DBEs, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions;
- Administering a business development program, the Vermont Business Development Program (VBDP), for certified DBEs that provides one-on-one business counseling and needs assessments, business and marketing plan development, and training and networking opportunities.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Producing and distributing free How To Do Business with the Agency of Transportation Guide and other resource materials;
- Providing formal and informal training and presentations to DBEs and other contractors.

- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities;
- Conducting periodic user surveys and needs assessments to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info;
- Producing and distributing an electronic newsletter that showcases successful DBEs, introduces new DBEs, provides a calendar of events, and many web links to contracting and business development resources.
- Ensuring distribution of our DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including mail distribution to all potential prime bidders, and widespread distribution at conferences, expos, and seminars;
- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women's Economic Opportunity Conference, matchmaker events, etc.;
- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links;
- Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Serving on the Advisory Council of the Vermont Women's Business Center (VWBC), and supporting the VWBC's mission through collaborative efforts and sponsorship of training programs;
- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with the VT Agency of Transportation;
- Networking with local, state and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and

resources, and develop comprehensive resource and referral network with technical assistance and service providers;

- Coordinating with other state DBE Liaison Officers, to ensure certification reciprocity and to maximize interstate contracting opportunities; and
- Assisting DBEs to establish prequalification status.

In addition to the above-described race-neutral means that VTrans already employs to increase DBE participation, we propose implementing and expanding our efforts in the following ways:

- Providing more one-on-one business counseling services to our DBEs;
- Ensuring that our prime contractors consider the use of DBEs in all possible work categories, by providing quick reference guides detailing the expertise and capacities of our DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities; and
- Providing more effective outreach with minority businesses.

Breakout of Estimated Race-Neutral and Race-Conscious Participation: FTA-Assisted Contracting Program:

On our FTA-assisted contracts, VTrans estimates that we will meet our entire overall goal of 1.65% through race-neutral participation, and that we will not have to resort to race-conscious measures.

Since 1999, VTrans has administered a race and gender neutral DBE Program, and has not resorted to race-conscious measures, including project specific DBE goals. Therefore, all past participation by DBE prime contractors and subcontractors since 1999 has been race and gender neutral.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we 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 a DBE goal.
- DBE participation on a prime contract exceeding a contract goal.

- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Section 26.45: Overall DBE 3-Year Goal Methodology on FAA-Assisted Projects

Name of Recipient: Vermont Agency of Transportation (VTTrans)

Goal Period: FY-2018-2019-2020 – October 1, 2017 through September 30, 2020

DOT-assisted contract amount:	FY-2018	\$6,967,500
	FY-2019	\$17,117,000
	FY-2020	<u>\$16,090,000</u>
Total		\$40,174,500

DBE 3-Year Overall Goal: (percentage) 1.75%

Total dollar amount to be expended on DBE's: \$703,053.75

Describe the Number and Type of Projects that the airport anticipates awarding:

Contracts FY18

1. Franklin Co. (KFSSO) Avigation Easements – Right of Way - \$150,000 – FY18
2. Franklin Co. (KFSSO) Taxiway Access Hangar area – Preliminary Engineering - \$275,000 – FY18
3. Franklin Co. (KFSSO) Taxiway Access Hangar area – Construction - \$1,500,000 – FY18
4. Hartness (KVSF) Avigation easements – Right of Way - \$600,000 – FY18
5. Caledonia Co. (KCDA) Avigation Easements – Right of Way - \$300,000 – FY18
6. Caledonia Co. (KCDA) Master Plan update/ALP – Preliminary Engineering - \$137,500 – FY18
7. Caledonia Co. (KCDA) Environmental Assessment – Preliminary Engineering - \$200,000 – FY18
8. Middlebury (6B0) Instrument Approach Procedure Study – Preliminary Engineering - \$150,000 – FY18
9. Middlebury (6B0) Airport Lighting/Obst. Study – Preliminary Engineering - \$150,000 – FY18
10. Newport (KEFK) Fuel Farm – Construction - \$150,000 – FY18
11. Newport (KEFK) Solar Hz Beacon – Design/Construct - Construction - \$375,000– FY18
12. Rutland (KRUT) SRE Plow/Sweeper Vehicle – Equipment - \$160,000 – FY18
13. Rutland (KRUT) SREB Extension – Preliminary Engineering - \$120,000 – FY18
14. Rutland (KRUT) SREB Extension – Construction - \$480,000 – FY18
15. Rutland (KRUT) Fencing – Construction/PE - \$300,000 – FY18
16. Rutland (KRUT) Terminal/SREB Area Layout – Preliminary Engineering - \$300,000 – FY18
17. W.H. Morse (KDDH) Fuel farm – Preliminary Engineering - \$33,000 – FY18
18. W.H. Morse (KDDH) Fuel farm – Construction - \$167,000 – FY18
19. W.H. Morse (KDDH) Apron Reconstruction – Preliminary Engineering - \$120,000 – FY18
20. W.H. Morse (KDDH) Apron Reconstruction – Construction - \$1,000,000 – FY18
21. Statewide Pavement MX – Construction - \$300,000 – FY18

Contracts FY19

22. E.F. Knapp (KMPV) Hangar Construction – Preliminary Engineering - \$80,000 - FY19
23. E.F. Knapp (KMPV) Hangar Construction – Construction - \$150,000 - FY19
24. Franklin Co. (KFSSO) RW Recon W/600'-400'Ext./obs removal/vault/seg circle/PAPI – Preliminary Engineering - \$300,000 – FY19
25. Franklin Co. (KFSSO) RW Recon W/600'-400'Ext./obs removal/vault/seg circle/PAPI – Construction - \$3,850,000 – FY19

26. Caledonia Co. (KCDA) Taxiway Reconstruction/Fix Parallel – Preliminary Engineering - \$160,000 – FY19
27. Caledonia Co. (KCDA) Taxiway Reconstruction/Fix Parallel – Construction - \$1,600,000 – FY19
28. Caledonia Co. (KCDA) Runway Reconstruction/RSA Improvement – Preliminary Engineering - \$340,000 – FY19
29. Caledonia Co. (KCDA) Runway Reconstruction/RSA Improvement – Construction - \$7,000,000 – FY19
30. Morrisville (KMVL) RSA/600' RW ext./RW improvements – Preliminary Engineering - \$150,000 – FY19
31. Morrisville (KMVL) RSA/600' RW ext./RW improvements – Construction - \$900,000 – FY19
32. Morrisville (KMVL) Fuel Farm – Preliminary Engineering - \$50,000 – FY19
33. Morrisville (KMVL) Fuel Farm – Construction - \$400,000 – FY19
34. Newport (KEFK) Obs. Study/EA – Preliminary Engineering - \$220,000 – FY19
35. Newport (KEFK) Fuel Farm – Construction - \$50,000 – FY19
36. Newport (KEFK) SRE – Equipment - \$400,000 – FY19
37. Rutland (KRUT) Hazard Beacon Solar Replacement – Construction - \$530,000 – FY19
38. Rutland (KRUT) SRE Plow/Sweeper Vehicle – Equipment - \$167,000 – FY19
39. Rutland (KRUT) Fencing – Construction/PE - \$300,000 – FY19
40. W.H. Morse (KDDH) Fuel farm – Preliminary Engineering - \$33,000 – FY19
41. W.H. Morse (KDDH) Fuel farm – Construction - \$167,000 – FY19
42. Statewide Fencing – Construction - \$270,000 – FY19

Contracts FY20

43. E.F. Knapp (KMPV) Hangar Construction – Construction - \$150,000 – FY20
44. Franklin Co. (KFSO) Fuel Farm – Preliminary Engineering - \$50,000 – FY20
45. Franklin Co. (KFSO) Fuel Farm – Construction - \$400,000 – FY20
46. Hartness (KVSF) RSA Construction/obs removal (15 acres) – Preliminary Engineering - \$400,000 – FY20
47. Hartness (KVSF) RSA Construction/obs removal (15 acres) – Construction - \$5,000,000 – FY20
48. Hartness (KVSF) 5-23 Reconstruction – Preliminary Engineering - \$200,000 – FY20
49. Hartness (KVSF) 5-23 Reconstruction – Construction - \$1,200,000 – FY20
50. Hartness (KVSF) Hangar/Apron Area Improvements – Preliminary Engineering - \$350,000 – FY20
51. Middlebury (6B0) Airport Lighting Construction – Preliminary Engineering - \$150,000 – FY20
52. Middlebury (6B0) Airport Lighting Construction – Construction - \$750,000 – FY20
53. Morrisville (KMVL) Parallel TW/Apron – Preliminary Engineering - \$400,000 – FY20
54. Morrisville (KMVL) Parallel TW/Apron – Construction - \$4,000,000 – FY20
55. Newport (KEFK) RW 5-23 Rehabilitation/Obs. Removal – Preliminary Engineering - \$150,000 – FY20
56. Newport (KEFK) RW 5-23 Rehabilitation/Obs. Removal – Construction - \$1,500,000 – FY20
57. Rutland (KRUT) ARFF Upgrade – Preliminary Engineering - \$200,000 – FY20
58. Rutland (KRUT) SRE Plow/Sweeper Vehicle – Equipment - \$30,000 – FY20
59. Rutland (KRUT) Master Plan Update – Preliminary Engineering - \$110,000 – FY20
60. Rutland (KRUT) Fencing – Construction/PE - \$300,000 – FY20
61. Rutland (KRUT) Obstruction Analysis/EA – Preliminary Engineering - \$300,000 – FY20
62. W.H. Morse (KDDH) Fuel farm – Preliminary Engineering - \$33,000 – FY20
63. W.H. Morse (KDDH) Fuel farm – Construction - \$117,000 – FY20
64. Statewide Pavement MX – Construction - \$300,000 – FY20

Total Three Year Projected Preliminary Engineering and Construction Costs: \$ 40,174,500

Market Area: State of Vermont

Step 1: Base Figure for the Relative Availability of DBEs:

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (“base figure”) for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. VTTrans employed the use of our DBE directory and Census Bureau Data (Example #1) for calculating a base figure. We obtained our data and calculated the relative availability percentage in the following manner:

- We determined the number of ready, willing and able DBEs in our market from our DBE directory. Then, using the Census Bureau's County Business Pattern (CBP) database, we determined the number of all ready, willing and able businesses available in our market that perform work in the same North American Industry Classification System (NAICS) codes.
- For the purpose of setting an overall DBE goal for funds received from FAA, it was determined that our market or service area was Statewide. Data from the CBP database was filtered for the State of Vermont, and for the following twenty (20) NAICS code categories, which were determined to be applicable for contracting opportunities on our Aviation Capital Improvement Program:

NAICS Code Number:

NAICS Code Description:

236210	Industrial building construction
236220	Commercial and institutional building construction
237110	Water and sewer line and related structures construction
237130	Power and communication line and related structures construction
237310	Highway, street, and bridge construction
237990	Other heavy and civil engineering construction
238-ALL	Specialty trade contractors
541310	Architectural services
541330	Engineering services
541340	Drafting services
541350	Building inspection services
541370	Surveying, mapping (exc. geophysical) services
541430	Graphic design services
541512	Computer systems design services
541519	Other computer related services
541611	Admin & gen management consulting services
541613	Marketing consulting services
541618	Other management consulting services
541620	Environmental consulting services
541990	Other professional, scientific, and technical services, including planning

- The CBP database identified a total of 2,698 businesses ready, willing and able to perform work in the above-listed 20 NAICS code categories in Vermont. A total of 151 certified DBEs are listed in our directory that are ready, willing and able to perform work in these same 20 NAICS code categories. We divided the number of DBEs by the number of all businesses, to determine the relative availability of DBEs in our marketplace:

Ready, willing and able DBEs (151)
All ready, willing and able businesses (2698)

Relative Availability of DBEs in the Marketplace (151 of 2698)

5.6%

Step 2: Adjustment to Base Figure:

As specified in Section 26.45, once the relative availability of ready, willing and able DBEs in our marketplace has been determined, it is necessary to examine additional evidence and, if appropriate, make adjustments to the base figure, to ensure that our goal truly and accurately reflects the level of DBE participation we would expect absent the effects of discrimination. Accordingly, VTrans has gone beyond the formulaic measurement of current availability in Step 1, to consider and account for other evidence of conditions affecting DBEs, including past participation and trends, capacity limits, and the impact of other specific factors requiring the narrow tailoring of the DBE program.

To arrive at the proposed overall goal of 1.75%, the Step 1 Base Figure of 5.6% was adjusted downward, based on the following data and criteria:

Past DBE Participation and Capacity Limits of DBEs:

- **Current capacity of DBEs and ACDBEs to perform work in our FAA-assisted contracting program, as measured by the volume of work DBEs and ACDBEs have performed in recent years:** VTrans has analyzed data reflecting DBE participation and trends on FAA-funded projects in recent years. For the past five years, the median DBE goal attainment is 1.57%:

<u>Federal Fiscal Year</u>	<u>DBE Goal Attainment</u>
FY 2013	0.08%
FY 2015	1.10%
FY 2016	1.57%
FY 2014	1.81%
FY 2012	<u>9.32%</u>
Five Year Median:	1.57%

Using the approach approved by USDOT's General Counsel, we have averaged our 5 Year Past Participation Median Figure of 1.57% with our Step One Base Figure of 5.6% to arrive at an average of 3.59%:

Five Year Median Figure:	1.57%
Step One Base Figure:	5.6%
Average:	3.59%

During the past three year period (FY 2014 – FY 2016), DBEs have remained active in VTrans' AIP Program, performing work as subcontractors and sub-consultants in a diverse range of work categories, including survey, airport markings and runway layout, environmental consulting, materials and supplies, and construction inspection. Unfortunately, however, the DBEs that are available and actively working in our region lack the capacity and expertise to perform much of the work that has been contracted and awarded in the past three years and is projected to be contracted and awarded over the next three years (FY 2018 to FY 2020). Despite the good faith efforts of VTrans and its prime contractors and consultants, the average DBE attainment of FAA-funded projects for the past three years is 1.49%. Recent attainment levels support a downward adjustment to 1.75%, as do our DBE participation trends, particularly as measured by dollar volume. As FAA funding has increased in recent years, VTrans DBEs have not demonstrated a comparable growth in capacity, as evidenced by the significant decline in the dollar volume of DBE participation. Within the past three years, DBE participation, as measured by dollar volume, has decreased 62%, from \$116,300 in FY 2014 to a low of \$44,032 in FY 2016.

<u>Federal Fiscal Year</u>	<u>DBE Participation By Dollar Volume</u>
FY 2014	\$116,300
FY 2015	\$71,391
FY 2016	\$44,032

This significant decline in DBE participation as measured by dollar volume is believed to be primarily because our currently certified DBEs lack the capacity and expertise to work on the size and type of the contracts being awarded in the AIP program. This has been particularly evident in the lack of DBE primes. The number of VTrans DBEs actively bidding and winning prime contracts has always been modest, and the number has significantly declined in the past several years, based upon the size and complexity of the work being undertaken.

Location and Actual Availability of DBEs:

The Step 1 Base Figure of 5.6% was calculated by identifying 151 DBEs in the VTrans DBE Program that are certified to perform work in the 20 NAICS code categories that we have determined are applicable for contracting opportunities in our AIP. These 151 DBEs were then compared to the total number of firms (2,698) in Vermont that are available to perform work in the 20 NAICS code categories according to the U.S. Census Bureau's County Business Pattern's database, which served as the denominator. However, using 151 as our numerator and treating all 151 DBEs as "ready, willing and able" to work on our projects in Vermont is arguably a flawed analysis, since more than 75% of the 151 DBEs are not based in Vermont or truly "ready, willing and able" to work on our projects, compared to the 2,698 firms that are all located in Vermont. Only 33 of the 151 DBE firms (21.8%) are home-based in Vermont, and more than 60% of the remaining 118 firms are located at least 500 miles away from Vermont, with a very low likelihood of bidding or working on projects in Vermont, due to mobilization expense, etc. If we recalculated our relative availability of DBEs to those based in a geographic proximity of 500 miles from Vermont, it would produce a much lower Step 1 Base Figure of 2.97% (80 of 2,698 total firms).

Other Step 2 Adjustment Factors:

VTrans has considered several other potential Step 2 adjustments to the base figure before concluding the analysis:

- **Disparity Studies:** There has been no known disparity study performed in Vermont, New Hampshire, or Maine for any public agency or private sector company.
- **Statistical Disparities in the Ability of DBEs to Get the Financing, Bonding, and Insurance Required to Participate in the VTrans DBE Program:** VTrans has not collected and analyzed this data related to airport contracts. VTrans offers training, mentoring, and one-on-one business coaching to its DBEs through the VTrans Business Development Program, and partners with the Small Business Administration and other agencies to promote accessible financing, bonding, and insurance to all certified DBEs. This has not been identified as a barrier to contracting and procurement opportunities for DBEs in Vermont.
- **Data on Employment, Self-Employment, Education, Training and Union Apprenticeship Programs, to the Extent They Relate to the Opportunities for DBEs to Perform in the VTrans DBE Program:** VTrans has not collected and analyzed this data related to airport contracts. Through the VTrans Business Development Program, DBEs are assessed for training needs, and VTrans funds DBE training to remove barriers, build capacity, and enhance critical business skills.

Based on all the additional data, evidence and criteria affecting DBE participation levels, as described above, VTrans has adjusted the Step 1 Base Figure of 5.6%, to arrive at the proposed overall goal of 1.75% for FY 2016 – FY 2018.

Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.
26.51(b) (1-9)

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

- Providing technical assistance and other services to DBEs, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions;
- Administering a business development program, the Vermont Business Development Program (VBDP), for certified DBEs that provides one-on-one business counseling and needs assessments, business and marketing plan development, and training and networking opportunities.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Producing and distributing free How To Do Business with the Agency of Transportation Guide and other resource materials;
- Providing formal and informal training and presentations to DBEs and other contractors.
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities, including the weekly use of Constant Contact to provide information and links on all new Invitations to Bid and RFP's;
- Conducting periodic user surveys and needs assessments to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info;
- Producing and distributing an electronic newsletter that showcases successful DBEs, introduces new DBEs, provides a calendar of events, and many web links to contracting and business development resources.
- Ensuring distribution of our DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including mail distribution to all potential prime bidders, and widespread distribution at conferences, expos, and seminars;
- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women's Economic Opportunity Conference, matchmaker events, etc.;
- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links;
- Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant

projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;

- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with the VT Agency of Transportation;
- Networking with local, state and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral network with technical assistance and service providers;
- Coordinating with other state DBE Liaison Officers, to ensure certification reciprocity and to maximize interstate contracting opportunities; and
- Assisting DBEs to establish prequalification status.

In addition to the above-described race-neutral means that VTrans already employs to increase DBE participation, we propose implementing and expanding our efforts in the following ways:

- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low. We propose working within our organization and with the transportation industry to identify new and/or emerging businesses, with a particular focus on areas which will be critical to the industry in the next decade. We will then actively pursue the creation of businesses that can perform and develop expertise in these emerging areas.
- Providing more one-on-one business counseling services to our DBEs;
- Ensuring that our prime contractors consider the use of DBEs in all possible work categories, by providing quick reference guides detailing the expertise and capacities of our DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities; and
- Providing more effective outreach with minority businesses.

The recipient estimates that in meeting its overall goal 1.75%, it will obtain .75% from RN participation and 1.0% through RC measures. This breakout is based on the following:

- DBE participation on FAA-assisted projects has significantly declined in recent years, with a five year median of 1.57%, and an average DBE attainment of 1.49% for the past three years. As the VTrans AIP has increased dramatically in recent years, the level of DBE participation has not kept pace, due in large part to the lack of capacity and expertise of the DBEs that were previously active in the program. By mandating DBE participation through project specific goals, particularly on the larger construction projects, VTrans can assure an appropriate level of DBE participation is obtained during the FY 2018 - 2020 three year cycle.
- During the FY 2018 – 2020 three year cycle, VTrans will do extensive outreach and training to ensure that DBEs learn of all FAA-assisted contracting opportunities, and to encourage DBE participation in all business development, matchmaking and networking events.

The recipient will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement

procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Public Participation

Consultation: Section 26.45(g) (1)

VTrans has availed itself of a variety of techniques to comply with the goal setting provisions for participation by disadvantaged business enterprises (DBEs) and airport concessionaire DBEs (ACDBEs) in its FAA-assisted contracting program, as required by Section 26.45 of the DBE Regulations.

VTrans has solicited ideas and suggestions for developing and implementing overall goals by inviting input from the women, minority, and general contracting community. In keeping with our past process, we have utilized a collaborative and inclusive approach to formulating a goal setting methodology, which has included a series of open meetings as well as scheduled, direct, and interactive exchanges with industry and community groups, and prime and DBE contractors and consultants.

Information concerning the purpose and elements of the DBE Program were widely disseminated in writing, and through a series of presentations and public meetings involving a diverse range of individuals and organizations, including our currently certified DBEs, our non-DBE contractors and consultants, the Associated General Contractors - Vermont Chapter, the American Council of Engineering Consultants, the Vermont Commission on Women, the U.S. Small Business Administration, the Vermont Public Transportation Association, the Vermont Procurement Technical Assistance Center, the Vermont Agency of Commerce and Community Development, the Vermont Women's Business Center, the Vermont Small Business Development Centers, the Vermont Partnership for Fairness and Diversity, the Vermont Community Action Agencies, the Vermont Department of Labor, the Micro Business Development Program, the Women's Small Business Program, Vermont Works for Women (formerly Northern New England Tradeswomen), the Vermont Refugee Resettlement Program, Vermont Chambers of Commerce, Vermont Regional Planning Commissions, the Vermont League of Cities and Towns, the University of Vermont Transportation Research Center, regional planning commissions, transit providers and various towns and municipalities.

Feedback from these individuals and organizations included information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and ACDBEs, and the scope and effectiveness of VTrans' efforts to establish a level playing field for the participation of DBEs and ACDBEs.

The overall goal for each of our USDOT-assisted contracting programs is established through an ongoing dialogue with all our stakeholders and represents an informed consent by stakeholder groups.

In accordance with the requirements of 49 CFR Part 26, Section 26.45 VTrans will publish the goal in various media to solicit public comment, per the following proposed Public Notice:

PUBLIC NOTICE

**Vermont Agency of Transportation
Disadvantaged Business Enterprise (DBE)
Overall Annual Goal on FAA-Funded Projects
For Fiscal Years October 1, 2018 through September 30, 2020**

Pursuant to US Department of Transportation regulations contained in 49 Code of Federal Regulations, Part 26, and 49 Code of Federal Regulations, Part 23, all state transportation agencies receiving Department of Transportation financial assistance must establish overall percentage goals for the dollar value of work to be awarded disadvantaged businesses. This action has been deemed necessary in order to provide these businesses with a level playing field to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. The Vermont Agency of Transportation is a recipient of US Department of Transportation financial assistance, and hereby establishes the following goal in accordance with these regulations:

In FY 2018 – FY 2020, the Vermont Agency of Transportation intends to expend 1.75% of the federal financial assistance received from the Federal Aviation Administration with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs) and airport concession DBEs (ACDBEs). The Vermont Agency of Transportation estimates that, in meeting our overall goal of 1.75%, we will obtain .75% from race-neutral participation and 1.0% through race-conscious measures.

Individuals who are interested in becoming a certified disadvantaged business enterprise in Vermont should contact:

Vermont Agency of Transportation
Office of Civil Rights & Labor Compliance
One National Life Drive
Montpelier, VT 05633-5001
Telephone: (802) 828-2644

A description of the methodology used in establishing this goal **can be viewed for 30 days** following the date of this notice during normal business hours at the above address. It is also available for viewing on our website: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center/program-goals>

Comments pertaining to this overall goal will be accepted at the above referenced address for a period of forty-five days beginning on the date of publication of this notice. Comments will also be accepted by the FAA Office of Civil Rights DBE Program, Western-Pacific Regional Office, P.O. Box 92007, AWP-9, Los Angeles, CA 90009-2007. Attention: Thomas Knox, FAA DBE & ACDBE Program Compliance Specialist, New England (ANE) Region.

Additional information about our DBE Program, including our current DBE Registry, certification application, resource guides and links to other small business resources can be obtained by visiting the DBE page of our website at: <http://vtrans.vermont.gov/civil-rights/doing-business/dbe-center>

All firms, both DBE and non-DBE, are invited to contact the Vermont Agency of Transportation for information regarding bidding opportunities on federally funded projects.

Dated July 21, 2017 at Montpelier, Vermont

Contract Goals

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

The recipient will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBE's to perform the particular type of work).

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
Vermont Unified Certification Program Agreement

Reference: Subpart E of 49 CFR part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

Introduction: The Vermont Agency of Transportation (VTrans) is the largest direct recipient of funds from the United States Department of Transportation (USDOT) in Vermont. VTrans shall act as the lead agency and shall perform Disadvantaged Business Enterprise (DBE) Program certifications in accordance with this Unified Certification Program (UCP). All entities including towns and municipalities, public transit providers and airports that receive funds, both directly and indirectly, from USDOT are required to abide by the terms and conditions of this UCP.

Purpose: The purpose of this UCP is to develop standardized procedures for certification of businesses as Disadvantaged Business Enterprises, also known as “DBEs”. The UCP is an agreement required by USDOT standardizing the process for certification of DBEs among those entities within the State of Vermont that receive USDOT funds either directly or indirectly.

Recipients are those entities that receive funds directly from a USDOT agency – FHWA, FAA, or FTA. All participating recipients are required to be part of this agreement by signature. Although subrecipients (those that receive funds indirectly from a USDOT agency) are not required to sign this UCP agreement, they are legally bound to follow UCP certification actions.

This UCP shall follow all certification procedures and standards as required by 49 CFR, Part 23 and 26 and shall cooperate fully with oversight, review and monitoring activities of USDOT and its operating administrations. The UCP shall implement all USDOT directives and guidance concerning certification matters.

Operational Viability: VTrans shall commit the appropriate resources and expertise to ensure the requirements of this agreement are implemented timely.

Reciprocity: This UCP complies with the certification and non-discrimination requirements of 49 CFR, Parts 23 and 26. Recipients may use only UCP’s that comply with the certification and non-discrimination requirements of 49 CFR, Part 23 and 26.

This UCP will not process an application for certification from a firm having its principal place of business outside Vermont if the firm is not certificated by the UCP in the state where it maintains its principal place of business. Upon verification of information and documents, out-of-state certifications may be accepted. VTrans reserves the option to require additional documentation to meet Vermont’s certification requirements.

Applicability: Participation in the UCP applies to any entity that receives FHWA, FAA, or FTA funds. Other than VTrans, other entities primarily affected are towns and municipalities, public transit providers, and the Burlington International Airport.

This UCP shall make all certification decisions on behalf of all USDOT recipients in Vermont with respect to participation in the DOT DBE program. Certification decisions by the UCP shall be binding on all DOT recipients within the State of Vermont. All recipients in Vermont will honor “one-stop” shopping to applicants for certification, such that an applicant is required to apply only once for a DBE certification.

Terms: VTrans will independently perform the certification of DBE firms as described in specific sections of 49 CFR Parts 23 and 26 on behalf of the UCP. The VTrans DBE Liaison Officer shall manage the UCP and shall serve as the certifying official for all DBE program applicants. The VTrans DBE Liaison Officer shall also ensure that all program recipients’ EEO obligations are met.

VTrans will maintain a unified DBE directory containing, for all firms certified by the UCP, the information required by 49 CFR Part 26.31, and make it available to the public electronically, on the VTrans website, as well as in print. VTrans shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made. VTrans shall be responsible for maintaining the information contained in the DBE directory and implementing the appropriate measures to ensure the integrity of the data is preserved.

David Dill, Secretary, Vermont Agency of Transportation

Christopher Cole, General Manager, Chittenden County Transportation Authority

Brian R. Searles, Director of Aviation, Burlington International Airport

Dan Bradley, Transportation Planner, Department of Public Works, City of Burlington

Jim Moulton, Executive Director, Addison County Transit Resources

Lawrence Dreier, Executive Director, Marble Valley Regional Transit District

Randall Schoonmaker, Executive Director, Deerfield Valley Transit Association