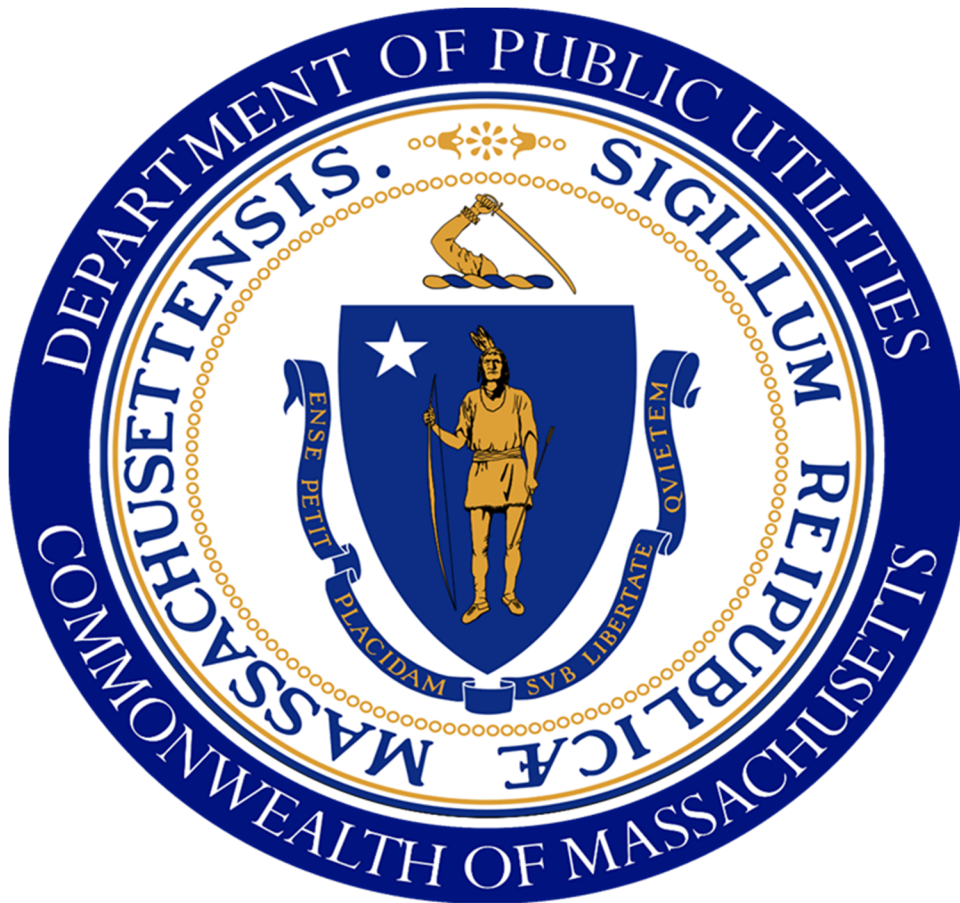


Massachusetts Department of Public Utilities



Disadvantaged Business Enterprise Program

(Revised August 2024)

Table of Contents

Policy Statement	1
Subpart A – General Requirement	2
Subpart B – Administration Requirements	4
Subpart C – Goals, Good Faith Efforts, and Counting	8
Subpart D – Certification Standards	12
Subpart E – Certification Process	13
Subpart F – Compliance and Enforcement	14

Attachments

Attachment 1: DPU Organizational Chart
Attachment 2: DBE Directory
Attachment 3: Monitoring and Enforcement
Attachment 4: Overall Goal Calculation
Attachment 5: DBE Utilization Form 1 and Form 2 for Demonstration of Good Faith Efforts
Attachment 6: Regulations – 49 C.F.R. Part 26

Policy Statement

The Massachusetts Department of Public Utilities (“DPU”) Rail Transit Safety Division (“Division”) established a Disadvantaged Business Enterprise (“DBE”) program in accordance with requirements of the U.S. Department of Transportation (“DOT”) regulation 49 C.F.R. Part 26 (“Part 26”). The DPU receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the DPU signed an assurance that it will comply with Part 26.


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

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create equal opportunities for DBEs to 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 Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Robert Hanson, Director of the Division, is designated as the DBE Liaison Officer (“DBELO”). The DBELO 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 the DPU in its financial assistance agreements with the DOT.

The DPU disseminated this policy statement to its Commissioners, the Chief Financial Officer, and all Division personnel via email. The policy statement has also been distributed to DBE and non-DBE business communities that perform work for the DPU on DOT-assisted contracts. The policy statement was distributed by email to current vendors working on Federal Transit Administration (“FTA”)-funded projects and through posting it on the Division’s webpage at <https://www.mass.gov/info-details/view-the-rail-transit-safety-divisions-dbe-plan>



James M. Van Nostrand,
DPU Commission Chair

7/31/2024

Date

SUBPART A - General Requirements

Section 26.1 Objectives

The objectives are outlined in the Policy Statement.

Section 26.3 Applicability

The DPU 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.

Section 26.5 Definitions

The DPU adopts the definitions contained in 49 C.F.R. Part 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The DPU will not 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 C.F.R. Part 26 ("Part 26") on the basis of race, color, sex, or national origin.

In administering its DBE program, the DPU 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.

Section 26.11 Record Keeping Requirements

The DPU will report DBE participation on a semi-annual basis to the FTA, using the Uniform Report of DBE Commitments, Awards, and Payments.

Bidders List: 26.11(c)

The DPU will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The DPU will use Massachusetts' COMMBUYS procurement system to record and gather this information. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

The recipient shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 C.F.R. Part 26. The

recipient shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 C.F.R. Part 26 and as approved by DOT, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the DPU of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 C.F.R. 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.).

The DPU does not currently have any subrecipients in its FTA program, but should that change, this language will appear in financial assistance agreements with sub-recipients.

Assurance: 26.13(b)

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

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The DPU receives grants from FTA for planning, capital, or operating the State Safety Oversight Program for Rail Fixed Guideway Public Transportation Systems pursuant to 49 C.F.R. § 674. The DPU will continue to carry out this DBE program until all funds from DOT financial assistance have been expended. The DPU will provide DOT with updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement can be found on Page 1.

Section 26.25 DBE Liaison Officer (DBELO)

The DPU designates the following individual as our DBE Liaison Officer:

Robert Hanson
Director, Rail Transit Safety Division
Department of Public Utilities
One South Station, 3rd Floor, Boston, MA 02110
Email: robert.hanson@Mass.Gov
Phone: 617-305-3550

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the DPU complies with all provision of Part 26. The DBELO has direct, independent access to the Chair of the DPU Commission concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program plan.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO additionally uses internal resources to assist in the administration of the program as noted below. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT;
2. Reviews third-party contracts and purchase requisitions for compliance with this program;
3. Works with all divisions, as relevant, to set overall and contract goals;
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment);
6. Analyzes DPU's progress toward attainment and identifies ways to improve progress;

7. Advises the CEO/governing body on DBE matters and achievement.
8. Participates in pre-bid meetings when held; and
9. Provides outreach to DBEs and community organizations to advise them of opportunities and training programs.

The DBELO is assisted with administering the program through the assistance of the following:

- DPU's Chief Financial Officer
 - Provides input to and reviews overall goal and contract goals with the DBELO to ensure compliance with Federal requirements;
 - Provides financial and data information to assist in setting goals and developing reports on attainment; and
 - Provides information on FTA grant status.
- DPU's Procurement Officer
 - Includes required DBE clauses in FTA-funded procurements;
 - Includes DBE goals in solicitations when provided by the DBELO; and
 - Review bids/proposals to ensure compliance with DBE requirements.

Section 26.27 DBE Financial Institutions

It is the policy of the DPU 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. The DPU searched the Federal Reserve's listing of Minority Depository Institutions listing and has identified three banks, located in the greater Boston area:

- OneUnited Bank – Boston, MA;
- Leader Bank National Assn. – Arlington, MA; and
- East West Bank – Quincy, MA.

This information, along with the information regarding use of DBE Financial Institutions, has been provided to the DPU's Chief Financial Officer to determine if the agency can use their services. Additionally, the DPU includes the information on these institutions on the Division's webpages on the DPU's website encouraging their use. Additional information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

The DPU will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contract receives from the DPU. Because the DPU does not hold retainage on its FTA-funded prime contracts, prime contractors are prohibited from withholding retainage from any of its subcontractors on these contracts. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of the DPU. This clause applies to both DBE and non-DBE subcontracts. The DPU will monitor payments through its invoice approval process. If the

DPU notes prime contractor non-compliance with prompt payment requirements, no future payments will be made until any issues of noncompliance have been addressed.

Section 26.31 Directory

The DPU will use the Massachusetts Department of Transportation's ("MassDOT") Massachusetts Unified Certification Program, which maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory can be found at <https://www.mass.gov/unified-certification-program-ucp>.

Section 26.33 Overconcentration

The DPU has not identified that overconcentration exists in the types of work that DBEs may perform.

Section 26.35 Business Development Programs

The DPU has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The DPU will take the following monitoring and enforcement mechanisms to ensure compliance with Part 26.

1. The DPU will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Part 26.109.
2. The DPU will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to the DPU in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. The DPU will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by reviewing invoices submitted by reviewing subcontracts to ensure that appropriate requirements such as: inclusion of a non-discrimination clause, correct prompt payment language, a scope of work that matches that provided at contract award and aligns with the DBE's North American Industry Classification System ("NAICS") codes, inclusion of a dollar amount that matches that provided at contract award, and non-inclusion of restrictive clauses. Additionally, the DPU will conduct commercially useful function reviews to ensure that DBEs named on projects are actually performing and being paid promptly and fully.
4. The DPU will audit actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Element

While the number of FTA-funded procurements that the DPU awards is small, the following will be undertaken to foster small business participation:

- Working with area stakeholders to publicize opportunities as they are advertised. Many small businesses do not have marketing staff and ensuring that they become aware of opportunities can assist them in forming or receiving placement on a team.
- Working with area stakeholders and businesses that have expressed interest in DPU opportunities to ensure that they understand how to register in, and navigate COMMBUYS, the Massachusetts state government procurement portal.
- Working with the state procurement office and FTA to ensure that full and open competition is achieved, while understanding that conflicts of interest in the State Safety Oversight Program pursuant to 49 C.F.R. § 674 can present challenges. The DPU has an oversight role for the Massachusetts Bay Transportation Authority (“MBTA”). The DPU is also obligated, under federal and state law, to avoid conflicts of interest with businesses that perform work for the MBTA (e.g., a contractor may not work for both the DPU and the MBTA). Conflicts of interest for firms that contract with the MBTA must be carefully evaluated.
- Partnering with area stakeholders to provide information and resources to small businesses to help them competitively bid. During its initial goal-setting exercise, the DPU’s DBELO has formed contacts with regional organizations that have a goal of assisting small businesses. The DPU expects that additional and continued contact with these organizations will provide the DPU access to and information about additional resources to assist small businesses.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f), the DPU will submit its overall goal to DOT on August 1 every three years beginning on August 1, 2021. Before establishing the overall goal each year, the DPU will consult with local minority/woman and non-minority/women business organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the DPU's efforts to establish an equal field for the participation of DBEs.

Following this consultation, the DPU will post the goal and the information provided during the consultation on its website. The DPU's overall goal submission to DOT will include a summary of information and comments received during this public participation process and the DPU's responses.

The DPU will begin working toward its overall goal on October 1 of each year, unless the DPU receives other instructions from DOT. If the DPU establishes a goal on a project basis, the DPU will begin working toward its goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

Because the DPU receives funds for FTA's State Safety Oversight Program, the DPU does not anticipate purchasing transit vehicles. If that changes, the DPU 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.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program.

Section 26.51(d-g) Contract Goals

The DPU will use contract goals to meet any portion of the overall goal that it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting

any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

The DPU will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures Demonstration of good faith efforts

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

The 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 responsible.

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

Information to be submitted (26.53(b))

The DPU treats bidders'/offerors' compliance with good faith efforts requirements as a matter of their responsibility.

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

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

Attachment 4 includes the forms that the DPU will include with its solicitations that contain a DBE goal.

Administrative reconsideration (26.53(d))

Within 10 days of receiving notice from the DPU that it has not documented sufficient good faith efforts to utilize DBEs, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the DPU's General Counsel. Currently, the contact information for the General Counsel is David Lyons, One South Station, Boston, MA 02110; 617-305-3500; david.b.lyons@mass.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 to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The DPU 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.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

If a prime contract intends to terminate, substitute, or not use a DBE that was named at award in relation to a contract with a goal, the DPU will require the prime to notify the DBE in writing (with a cc to the DBELO) and provide the DBE five days to respond. Only after that process can the prime contractor request a substitution. If approved, the DPU 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.

In this situation, the DPU will require the prime contractor to obtain the DPU's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

Section 26.55 Counting DBE Participation

The DPU will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

The DPU is not a certifying member of the Massachusetts Unified Certification Program (“Mass UCP”). The DPU requires that any DBE used for attainment on the DPU’s contracts and/or semi-annual reports are correctly certified in the Mass UCP directory located at: <https://www.mass.gov/unified-certification-program-ucp>.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The DPU is not a certifying member of the Mass UCP. The DPU requires that any DBE used for attainment on our contracts and/or semi-annual reports are correctly certified in the Mass UCP directory located at:

<https://www.mass.gov/unified-certification-program-ucp>.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

The DPU will safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The DPU may withhold from public disclosure information that may reasonably be regarded as confidential business information consistent with Massachusetts General Law, Chapter 4 § 7(26)(h).

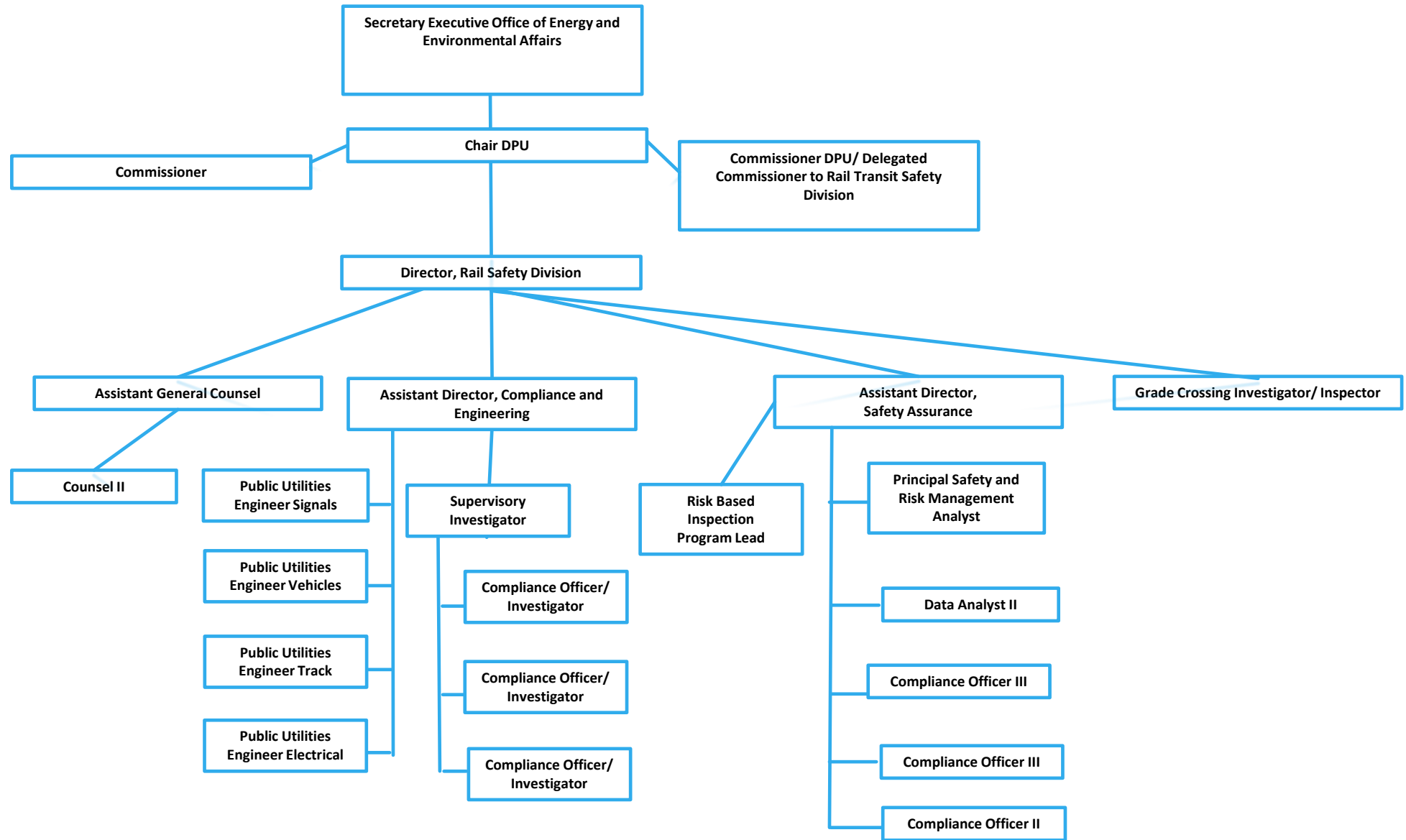
Notwithstanding any contrary provisions of state or local law, the DPU will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The DPU will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the DPU or DOT. This reporting requirement also extends to any certified DBE subcontractor.

As part of the commercially useful function reviews, the DPU 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.

Attachment 1:
DPU Organizational Chart



Rail Transit Safety Division Organizational Chart

Current as of April 30, 2024

Attachment 2: DBE Directory

The current directory of DBE firms in the Massachusetts Unified Certification Program can be found at: <https://www.mass.gov/unified-certification-program-ucp>.

Attachment 3:

Monitoring and Enforcement Mechanisms

The DPU may use the following remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract; and
- Withholding of invoice approval and payments.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

- Suspension or debarment proceedings pursuant to 49 C.F.R. Part 26;
- Enforcement action pursuant to 49 C.F.R. Part 31; and
- Prosecution pursuant to 18 U.S.C. § 1001.

Attachment 4:

Overall Disadvantaged Business Enterprise Goal Setting Methodology for Federal Fiscal Years (FFYs) 2025-2027

The Massachusetts Department of Public Utilities (“DPU”) Rail Transit Safety Division (“Division”) establishes an overall goal of 4.24 percent for Disadvantaged Business Enterprise (“DBE”) participation for Federal Fiscal Years (“FFY”) 2025-2027. The overall combined DBE goal is projected to be achieved through 4 percent race/gender-conscious means and 1 percent race/gender-neutral means. The goal includes Federal Transit Administration (“FTA”) funded projects and is based upon 49 C.F.R. Part 26 “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs” and the U.S. Department of Transportation’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise Program.”

The following sources of information were utilized in the development of the triennial goal:

- Projected federally funded projects by NAICS codes;
- Dollar value of all projected federally funded projects;
- The DPU market area consisting of the Commonwealth of Massachusetts;
- The Census Bureau's County Business Patterns (“CBP”) database (<http://www.census.gov/econ/cbp/>);
and
- State Unified Certification Program (“UCP”) DBE Directory for the Commonwealth of Massachusetts.

I. Background

The DPU is the designated State Safety Oversight Agency for the Commonwealth of Massachusetts pursuant to 220 CMR 151. The DPU is a direct recipient of FTA funds through 49 U.S.C. § 5329 - (“MAP 21”) State Safety Oversight Formula Grant Program.

The DPU uses a combination of in-house staff and third-party project management consultants to provide oversight, investigations, and conduct analysis for State Safety Oversight of the MBTA and related DBE program and other compliance requirements.

The DPU has projected three (3) project types to be awarded in federal fiscal year 2025, upon which this goal methodology is based, as listed in **Table 1**.

Table 1: Mass DPU – List of Projects for Federal Fiscal Year –2025

	PROJECT	AMOUNT
1	Rail Safety Application Development	\$379,000
2	Equipment and Materials	\$25,500
3	Consultants	\$139,000
	TOTALS	\$543,500

The proposed project list for the federal fiscal year is provided by the Division and grouped by NAICS code, description/activity, and dollar amount. The projected activities are for management consultants, software development services, clothing, radio equipment, and engineering consultants. The NAICS codes and project activities are listed in **Table 2**. These projects will be directly solicited, awarded, and administered by the DPU.

Table 2: Project/Activity Listing by NAICS Code Description

NAICS Code	NAICS Code Description Projects/Activities	Estimated Project Cost
315210 ¹	Clothing	\$13,500
423690	Radio Equipment	\$12,000
541330	Engineering Consultants	\$25,000
541511	Software Development	\$379,000
541611	Management Consultants	\$114,000
	TOTALS	\$543,500

¹ Also included in this category are businesses listed under 2017 NAISC code 448190, which is utilized by the MassDOT UCP.

II. Methodology Used to Calculate Overall Goal

Step 1 – Determining Availability of Ready, Willing, and Able DBEs

The available pool of ready, willing, and able firms to participate in the DPU’s FTA-funded contracting opportunities is analyzed based on the specific NAICS codes and descriptions. The data sources used to derive the relative availability of DBEs in DPU’s market area is the Census Bureau County Business Patterns (CBP) database

(<https://data.census.gov/table?q=CBP2022.CB2200CBP>), selecting data from 2022 (the most recent year available) and the UCP DBE Directory of the Commonwealth of Massachusetts as of July 2024.

The market area utilized for analysis was the Commonwealth of Massachusetts. This was selected based on the DPU’s span of oversight for statewide rail, a review of the location of firms currently under contract to the DPU, and the type of FTA-funded work projected (primarily consulting with no construction). Information from those sources is displayed in **Tables 3 and 4**.

Table 3: Number of All Firms - Census Bureau County Business Patterns Database - By NAICS Code

Number of Total Firms	NAICS Code	Description
267	315210	Clothing
269	423690	Radio Equipment
1482	541330	Engineering Consultants
1815	541511	Software Development
1755	541611	Management Consultants
5588	Total Firms from Census Data Business Patterns Database	

Table 4: Number of DBE Firms – Commonwealth of Massachusetts Unified Certification Program DBE Directory

Number of Total Firms	NAICS Code	Description
4	315210	Clothing
7	423690	Radio Equipment
130	541330	Engineering Consultants
74	541511	Software Development
159	541611	Management Consultants
374	Total Firms from MA Unified Certification Program DBE Directory	

Based upon the above total number for all firms and DBE firms, the unweighted relative DBE availability is calculated as follows:

$$\text{Unweighted base figure} = \frac{374 \text{ (Ready, Willing and Able DBEs)}}{5588 \text{ (Total Firms Ready, Willing and Able)}} = 6.69\%$$

Given the substantial increase in the unweighted base figure from that utilized in the 2022-2024 plan (4.1 percent), additional review of the firms included on the UCP DBE Directory indicated that many of those included would not and could not provide the services required to fulfill DPU contracts given the highly specialized nature of rail transit safety, particularly within NAISC codes 541511 and 541611. As such, firms with stated specializations in no way related to potential contracts with the DPU were removed from the pool of ready, willing, and able DBEs. This included the removal of firms with stated specialties in aviation, financial services, healthcare, marketing, real estate and property development, construction materials, energy industries, food service, and architecture. The revised number of DBE firms is displayed below in **Table 5**.

Table 5: Revised Number of DBE Firms – Commonwealth of Massachusetts Unified Certification Program DBE Directory

Number of Total Firms (Revised)	NAICS Code	Description
4	315210	Clothing
7	423690	Radio Equipment
120	541330	Engineering Consultants
74	541511	Software Development
117	541611	Management Consultants
322	Total Firms from MA Unified Certification Program DBE Directory	

The revised unweighted base figure calculation is as follows:

$$\text{Revised Unweighted base figure} = \frac{322 \text{ (Ready, Willing, and Able DBEs)}}{5588 \text{ (Total Firms Ready, Willing, and Able)}} = 5.76\%$$

Step 1 Base Figure Weighting – Weighting can help ensure that the Step 1 Base Figure is as accurate as possible. To establish the “Weighted Base Goal,” the availability of DBEs in each NAICS code is computed and used to determine DBE contractible dollars. The total DBE contractible dollars are then divided by the total projected contracting dollars to determine the weighted base DBE goal, expressed as a percentage, as shown in **Table 6**.

Table 6 – Calculation of Mass DPU’s Weighted DBE Goal for Federal Fiscal Years 2025-2027

NAICS Code	NAICS Code Description	Estimated Contract Value	Number of Firms		DBE %	DBE Dollars
			DBE	Total		
315210	Clothing	\$13,500	4	267	1.50%	\$202.25
423690	Radio Equipment	\$12,000	7	269	2.60%	\$312.27
541330	Engineering Consultant	\$25,000	120	1482	8.10%	\$2,024.29
541511	Software Development	\$379,000	74	1815	4.08%	\$15,452.34
541611	Management Consultant	\$114,000	117	1755	6.67%	\$7,600.00

Total Project Dollars: \$23,052.34

Total DBE Dollars: \$543,500.00

Weighted Base Goal: 4.24%

The Division elects to adopt the weighted base goal of 4.24 percent.

Step 2 – Adjusting the Base Figure

Once the DBE base figure has been calculated, 49 C.F.R. Part 26.45(d) requires that “all of the evidence available” in a jurisdiction must be examined to determine what adjustment, if any, is needed to the base figure to arrive at an overall goal.

The regulations further state that there are several types of evidence that must be considered when adjusting the base figure. The following summarizes the DPU’s review of each item noted:

- *The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.*
 - Because of the limited amount of contracted work performed during FFYs 2022-2024, despite good faith efforts, the DPU did not utilize

DBE firms. Therefore, there is no relevant past participation data to use as an adjustment factor.

- *Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.*
 - No new disparity studies were conducted for the DPU's jurisdiction. As such, the analysis of the studies previously listed still applies and adjustments were not made based on these studies for the reasons stated below:
 - **Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance Disparity Study published on December 22, 2017.** The focus of this study was construction and design-related contracts and not specifically relatable to the type of work that the DPU Rail Transit Safety Division performs. Additionally, the data that supported this study primarily covered the period from 2010-2014.
 - **2020 City of Boston Disparity Study, published in February 2021.** This study was narrowly focused on the City of Boston and, based on an examination of Appendix E of the study, did not include the NAICS codes or industry types that have been identified as relatable to the DPU's FTA-funded opportunities.
- *If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.*
 - Because the DPU's base figure is not that of another recipient, no adjustment was made for this factor. However, the DPU reviewed MassDOT's FTA DBE goal once the base figure was developed. While MassDOT projects include types of FTA-funded contracting opportunities for which the DPU will not contract, MassDOT's overall goal of 5.4 percent is within the range of the DPU's proposed goal of 4.24 percent.
- *Available evidence from related fields that affect the opportunities for DBEs to form, grow and compete, such as statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program and data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.*

- No additional information or analysis was found relating to these to subjects that would lead the DPU to adjust its goal. However, information contained in the 2020 Boston disparity study will be used to inform our efforts in achieving the objectives of the DBE Program.

Step 3 – Determining the Race/Gender-Neutral and Race/Gender-Conscious Split

DBE Program guidelines at 49 C.F.R. Part 26.51(a) states, “*You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.*”

The DPU does not have a past participation history for DBE attainment. The DPU examined available information from other Massachusetts recipients. The attainment in Mass DOT’s latest FTA goal submission (FFY 2022-2024) noted that an annual median of 3.4 percent of its DBE goal was attained through race/gender-neutral methods. The DPU also reviewed the MBTA’s latest goal submission of 5.4 percent, where it projected that 5 percent out of its overall goal would be met race-neutrally. Considering this information, the DPU projects to achieve 3 percent through race/gender neutral measures and 1.24 percent through race/gender conscious measures.

Based on recommendations from the 2020 Boston Disparity Study, actions that the DPU will undertake to attain the race/gender neutral portion of its goal will include:

- Providing information directly to DBE firms with applicable NAICS codes on opportunities with the DPU,
- Providing information to DBE firms on how to use the COMMBUYS system to identify opportunities to bid on as a prime and subconsultant, and
- Partnering with local entities such as Mass DOT and the MBTA to conduct and participate in outreach and capacity-building sessions.

III. Consultation and Publication of the Overall Goal

DBE Regulations 49 C.F.R. Part 26.45 requires that: “*In establishing an overall goal, you must provide for consultation and publication. This includes: Consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations*

which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.”

The DPU’s proposed goal has been posted on the agency’s website. Prior to finalizing its goal, the DPU solicited responses via email from minority and women-owned business groups and non-minority and women-owned business groups regarding the following topics:

- The availability of disadvantaged businesses and non-disadvantaged businesses in our area geographically and subject matter-related;
- The effects of discrimination on opportunities for disadvantaged businesses; and
- What the organization recommend that the DPU do to establish a level playing field for the participation of disadvantaged businesses.

The DPU contacted to following organizations for their input:

- Women’s Transportation Seminar
- Massachusetts Minority Contractors Association
- Construction Industries of Massachusetts
- Conference of Minority Transportation Officials
- Associated Builders & Contractors, Inc.
- Massachusetts Minority Business Development Agency Business Center
- US Haitian Chamber of Commerce
- Builders of Color Coalition
- Black Economic Council
- American Council of Engineering Companies
- Massachusetts Electrical Contractors Association
- North Shore Latino Business Association
- Greater Boston Chamber of Commerce
- Center for Women & Enterprise – Eastern Massachusetts
- Women Entrepreneurs Boston
- Greater New England Minority Supplier Development Council
- Massachusetts Supplier Diversity Office
- MBTA Advisory Board
- Transportation for Massachusetts

The American Council of Engineering Companies of Massachusetts invited the DPU to speak at a Transportation Agencies Liaison Committee meeting on July 17, 2024. In attendance were approximately 40 engineering consultants, including representatives from multiple DBEs. The DPU spoke about our program review process and formulating our goals. The group expressed interest in forming a working group to continue exploring how the DPU can foster involvement with engineering DBEs.

Attachment 5:

Forms 1 & 2 for Demonstration of Good Faith Efforts

The following forms will be provided as part of DPU-issued solicitation packets.

DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) UTILIZATION (FORM 1)

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

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

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

Name of bidder/offeror’s firm: _____

State Registration Number: _____

By: _____
(Signature) (Title)

**DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) UTILIZATION
(FORM 2: Letter of Intent)**

Submit a completed form for each DBE subcontractor.

Name of Bidder/Offeror’s Firm: _____

Street Address: _____

City, State, and Zip Code: _____

Telephone: _____

Email Address: _____

Name DBE Firm: _____

Street Address: _____

City, State, and Zip Code: _____

Telephone: _____

Email Address: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By: _____
(Signature)

(Title)

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

Attachment 6: Regulations – 49 C.F.R. Part 26

The current regulation can be accessed at:

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