



**BIDDEFORD SACO OLD ORCHARD BEACH TRANSIT DBE PROGRAM**  
**POLICY STATEMENT**

**Section 26.1, 26.23 Objectives/Policy Statement**

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

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

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

Chad Heid, Executive Director, has been delegated as the DBE Liaison Officer. In that capacity, Chad Heid 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 BSOOB Transit in its financial assistance agreements with the Department of Transportation.

BSOOB Transit has disseminated this policy statement to the BSOOB Transit Committee and all of the components of our organization. We have made this statement available to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by posting it on our organization's website ([www.BSOOBTransit.org](http://www.BSOOBTransit.org)) and having printed copies available upon request. BSOOB Transit will include this statement in all its RFB and RFP bid packages.

Chad Heid, Executive Director

Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1, 26.23 Objectives**

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

### **Section 26.3 Applicability**

BSOOB Transit is the recipient of federal-aid highway funds authorized under the Fixing America's Surface Transportation Act, (FAST) or Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

BSOOB Transit is the recipient of federal transit funds authorized by the Fixing America's Surface Transportation Act, (FAST), 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**

BSOOB Transit will adopt the definitions contained in Section 26.5 of Part 26 for this program.

*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 49 CFR Part 26.

*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. *3 Department or DOT* means the U.S. Department of Transportation, including the Office of the

*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) Whose 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* mean 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 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 5 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—

(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 refutably 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.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

### **Section 26.7 Non-discrimination Requirements**

BSOOB Transit 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, BSOOB Transit 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**

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

BSOOB Transit will report DBE participation semi-annually to the relevant operating administrations, in our case FTA and Maine DOT using the Uniform Report of DBE Awards or Commitments and Payments, (Form 4630) found in Appendix B to the DBE regulation. Dates of submission are June

1 and December 1 of each calendar year. The BSOOB Transit Finance Manager is responsible for completing and the Executive Director is responsible for approving these semi-annual submissions.

Bidders List: 26.11(c)

BSOOB Transit will utilize Maine DOT's DBE list when it solicits bids on DOT assisted contracts or we will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder 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.

We will collect this information in the following ways:

(1) a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;

(2) a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient.

**Section 26.13 Assurances**

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

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

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

Contract Assurance: 26.13b

BSOOB Transit 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.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since BSOOB Transit has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, 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.

### **Section 26.25 DBE Liaison Officer (DBELO)**

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

Chad Heid, 13 Pomerleau St., Biddeford, ME, 04005 207-282-5408 [cheid@BSOOBTransit.org](mailto:cheid@BSOOBTransit.org)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that BSOOB Transit complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to Chad Heid, Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one to assist in the administration of the program. The duties and responsibilities 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 the Finance Director to set overall annual 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 and identifies ways to improve progress.
6. Analyzes BSOOB Transit's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and BSOOB Transit Committee on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **Section 26.27 DBE Financial Institutions**

It is the policy of BSOOB Transit to investigate the full extent of services offered by financial services 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. We have made the following efforts to identify and use such institutions: BSOOB Transit will work directly with Maine DOT through their directory to ensure we are using good faith efforts to identify eligible DBE designated financial institutions.

To date we have identified the following such institutions: None identified. This will be reviewed every three years for changes in the state directory.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer or through the Maine DOT website.

### **Section 26.29 Prompt Payment Mechanisms**

Prompt Payment: 26.29(a)

BSOOB Transit 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 BSOOB Transit. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of BSOOB Transit. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of BSOOB Transit. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

BSOOB Transit has established within its contractual agreement, that we will routinely check in with any contractor and ask for proof of payment to monitor and enforce that prompt payment and return of retainage is in fact occurring. We will also be in direct contact with Maine DOT to seek their aid as needed.

**Section 26.31 Directory**

BSOOB Transit 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. We revise the Directory annually. We make the Directory available as follows: Request a copy at BSOOB Transit 138 Main Street Saco, ME 04072 and Maine Department of Transportation's website: (<https://www.maine.gov/mdot/civilrights/docs/dbe/WeeklyDBEVendorList.pdf>). The Directory [or a link to the directory] may be found in Attachment 2 to this program document.

**Section 26.33 Overconcentration**

BSOOB Transit has not identified that overconcentration exists in the types of work that DBEs perform

**Section 26.37 Monitoring and Enforcement Mechanisms**

BSOOB Transit 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 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. BSOOB Transit will use all State and Federal legal remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to



DBEs at contract award is actually performed by the DBEs. This will be accomplished by BSOOB Transit will include in all contractual agreements that we will use good faith efforts to monitor and review DBE usage and/or reasoning why DBE's were not used by individuals contracting with us.

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

### **Section 26.39 Fostering Small Business Participation**

BSOOB Transit is committed to encouraging small business participation in bidding contracts for transportation work. Our program structures contracting requirements in a way that facilitates competition by small business concerns. We seek to take all reasonable steps to eliminate obstacles and to encourage small business participation, be they DBE's or small business firms. We make every attempt to ensure that no unnecessary and unjustified bundling of contracts will occur that may preclude small businesses from serving as prime contractors or subcontractors on BSOOB Transit projects.

Activities BSOOB Transit currently enacts:

- Posting DBE program document on organization website.
- Hosting/Setting up public outreach sessions seeking businesses that BSOOB Transit can partner with.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

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

### **Section 26.45 Overall Goals**

In accordance with Section 26.45, BSOOB Transit will submit its triennial overall DBE goal to the relevant Maine DOT operating administration and/or FTA on August 1 of the year specified by FTA.

BSOOB Transit will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

The process generally used by BSOOB Transit to establish overall DBE goals is as follows: See Attachment 4.

Before establishing the overall goal each year, BSOOB Transit will consult with the Maine DOT and their previously established connections to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and BSOOB Transit efforts to establish a level playing field for the participation of DBEs.

Our data sources to complete this process are the following MaineDOT website of Maine DBE vendors and the NAICS business list count for the state of Maine.

<https://www.maine.gov/mdot/civilrights/docs/dbe/WeeklyDBEVendorList.pdf>

<https://www.naics.com/business-lists/counts-by-state/>

We then identify those businesses with a Maine address and further determine if they are useful DBEs for our business need and their proximity to our location, if applicable to the service in question.

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

our principal office for 30 days following the date of the notice, and informing the public that BSOOB Transit and Maine DOT will accept comments on the goals for 45 days from the date of the notice. Examples of local media include Biddeford Saco Old Orchard Beach Courier, Portland Press Herald and BSOOB Transit website. Normally, we will issue this notice by June 1 of each year. The notice must 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 Maine DOT and the FTA will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on August 1 of the specified three years, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

Our goal of 2.06% will end up amounting to +/- \$6500 of service investment. Potential procurements will be surrounding the few opportunities BSOOB Transit does have in Maine with certified DBEs that provide services pertinent to our industry including:

- Dean & Allyn Inc. – Fire Protection Contractor
- Quality Glass Inc.

#### **Section 26.49 Transit Vehicle Manufacturers Goals**

BSOOB Transit 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, BSOOB Transit 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.

#### **Section 26.51 Meeting Overall Goals/Contract Goals Section 26-51(a-c)**

BSOOB Transit will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, BSOOB Transit will:

- Publicize information regarding BSOOB Transit's contracting opportunities online and in print newspapers, trade journals, and other publications to increase awareness of opportunities for small businesses to participate on BSOOB Transit's contracts.
- Enforces prompt payment laws and requirements applicable to prime contractors and subcontractors, including small businesses.
- Collaborates with construction and professional services industry organizations to increase small business participation in BSOOB Transit's contracts.
- Provides easily accessible contracting information on BSOOB Transit's public website.
- Explores opportunities to break larger contracts into smaller contracts.
- Spreads project advertising and bid openings throughout the year to prevent overloading prime contractors and subcontractors, including small businesses.

BSOOB Transit will use contract goals to meet any portion of the overall goal BSOOB Transit 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. We will establish contract goals only on those Maine 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 Maine DOT assisted contract.

### **Section 26.53 Good Faith Efforts Procedures**

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

In the instances where a contract-specific DBE goal is included in a procurement/solicitation, B S O O B T r a n s i t will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

#### **Evaluation of Good Faith Efforts: 26.53(a) & (c)**

The following personnel are responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive

- 1) Chad Heid
- 2) H. Rod Carpenter
- 3) Marianne Walters

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

#### **Information to be Submitted: 26.53(b)**

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

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

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

#### **Administrative Reconsideration: 26.53(d)**

Within 15 days of being informed by BSOOB Transit that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official: Chad Heid, 13 Pomerleau St., Biddeford, ME, 04005. The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder 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 Terminated/Replaced on a Contract with Contract Goals: 26.53(f)**

BSOOB Transit requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without BSOOB Transit's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to BSOOB Transit its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to BSOOB Transit prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise BSOOB Transit of why it objects to the proposed termination. [*Note: the five-day period may be reduced if the matter is one of public necessity e.g., safety.*]

In those instances, where "good cause" exists to terminate a DBE's contract, BSOOB Transit will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, 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.

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

**Sample Bid Specification:**

The State of Maine is designated as "Race Neutral" therefore we are not required to meet single contract goals. We will use good faith efforts to meet our annual goal.

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of BSOOB Transit to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders, including those who qualify as a DBE. A DBE contract goal of 2.06% percent has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

### **Section 26.55 Counting DBE Participation**

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

- 1) The BSOOB Transit shortfall analysis procedure:
  - a. Finance Director runs a report from MUNIS showing dollars spent by vendor.
  - b. DBE vendors are identified from the list generated.
  - c. Total DBE vendor dollars spent are divided by total dollars spent.
  - d. A percentage is generated from this calculation toward DBE annual goals.
- 2) Every six months (May & October each calendar year), BSOOB Transit completes DBE goal reporting per FTA requirements.
- 3) The BSOOB Transit Finance Director executes this semi-annual reporting
- 4) The BSOOB Transit Executive Director approves this semi-annual reporting
- 5) The BSOOB Transit Finance Director submits this semi-annual reporting to TrAMS within 90 days of the close of our fiscal year (June 30 end, September 30 shortfall analysis submission).

## **SUBPARTS D & E – CERTIFICATION**

### **Section 26.61 – 26.73 Certification Process**

BSOOB Transit will work directly with the ME DOT to determine qualified businesses that have been certified. ME DOT is the only certification entity within the State of Maine.

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

Lori Brann, Maine Department of Transportation  
24 Child St.  
Augusta, ME 04330  
207-624-3000  
[Lori.Brann@maine.gov](mailto:Lori.Brann@maine.gov)

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. BSOOB Transit relies on Maine DOT for information, confidentiality, and cooperation. Maine DOT's DBE program states that Maine DOT will safeguard from disclosure to third parties information that may be reasonably be regarded as confidential business information, consistent with Federal law and the Maine Freedom of Information Act, 5M.R.S 791.

Records and correspondence utilized by state agencies in the certification of minority business enterprises and disadvantaged business enterprises, women's business enterprises and disadvantaged business enterprises which pertain to the applicant's financial or tax status, to private contracts made by the applicant, to the applicant's trade secrets or to any other matter customarily regarded as confidential business information shall be confidential and shall not be open for public inspection. Nothing in this section prevents the disclosure of any records, correspondence or other materials to authorized officers and employees of the State Government and Federal Government.

Notwithstanding any contrary provisions of state or local law, we 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

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 BSOOB Transit or Maine 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.

### **SUBPART G – Shortfall Analysis Policy and Corrective Action Plan**

The purpose of this policy is to present the information in the above subparts in an effective way defining BSOOB Transit's execution of shortfall analysis, when needed and corrective actions when the annual DBE goal is not achieved.

The objective is to ensure BSOOB Transit is completing shortfall analysis and corrective action plans in a timely manner. This is mandated by FTA to be within 90 days of the end of our fiscal year. This date would be September 30 of each calendar year as the end of the BSOOB Transit fiscal year is June 30.

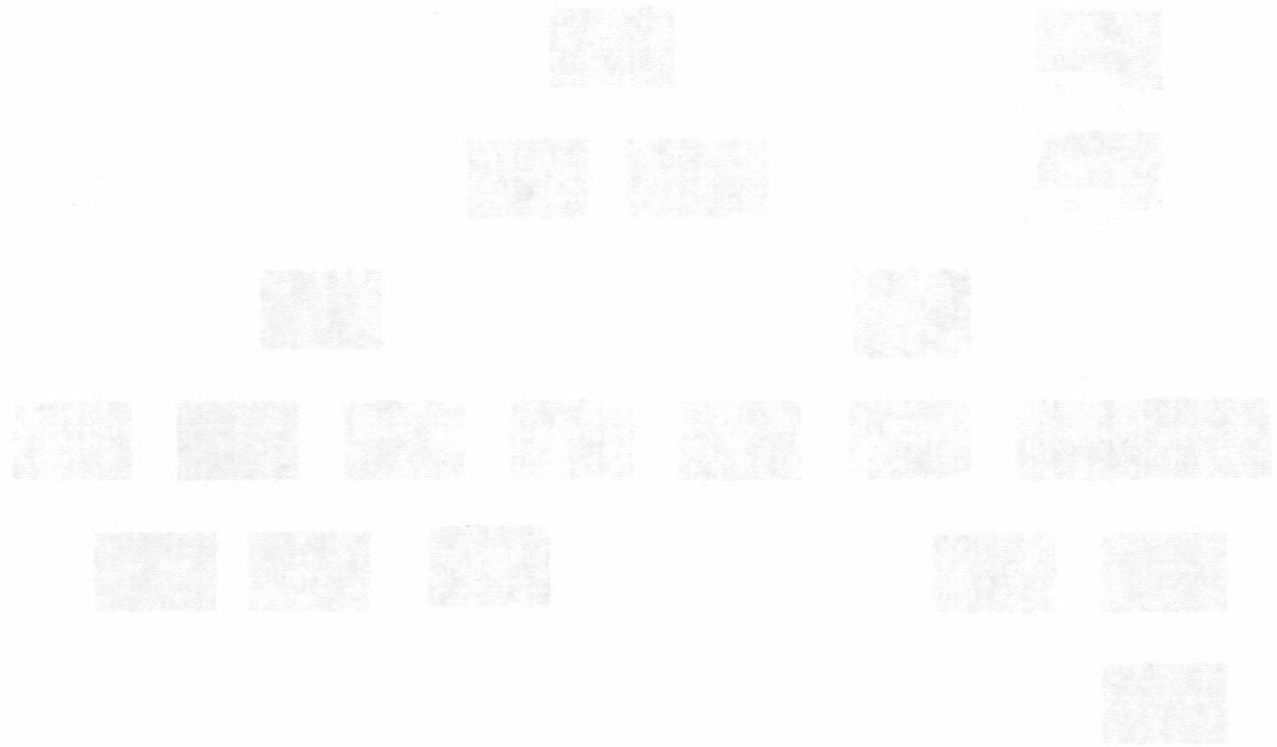
It is the responsibility of the DBELO, which is the Director of External Affairs in the BSOOB Transit organization structure, in conjunction with the Finance Manager, to conduct a shortfall analysis and corrective action plan when BSOOB Transit fails to meet its Triennial DBE goal by the end of the fiscal year.

If the awards and commitments shown BSOOB Transit's Uniform Report of Awards and Commitments and Payments at the end of any fiscal year are less than our overall goal established, shortfall analysis and corrective action plans must be prepared. The reasons for the difference between the overall goals and awards and commitments must be analyzed in detail. Then, steps must be established along with milestones to potentially correct the problem. This will be the case even with the low number of options BSOOB Transit has to partner with in Maine to meet our annual established goal.

Any shortfall analysis must be documented for submission to FTA upon request and for future Triennial review.

## **ATTACHMENTS**

- Attachment 1: Organizational Chart
- Attachment 2: DBE Directory
- Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies
- Attachment 4: Goal Setting Methodology
- Attachment 5: Good Faith Efforts Forms
- Attachment 6: DBE Regulation, 49 CFR Part 26

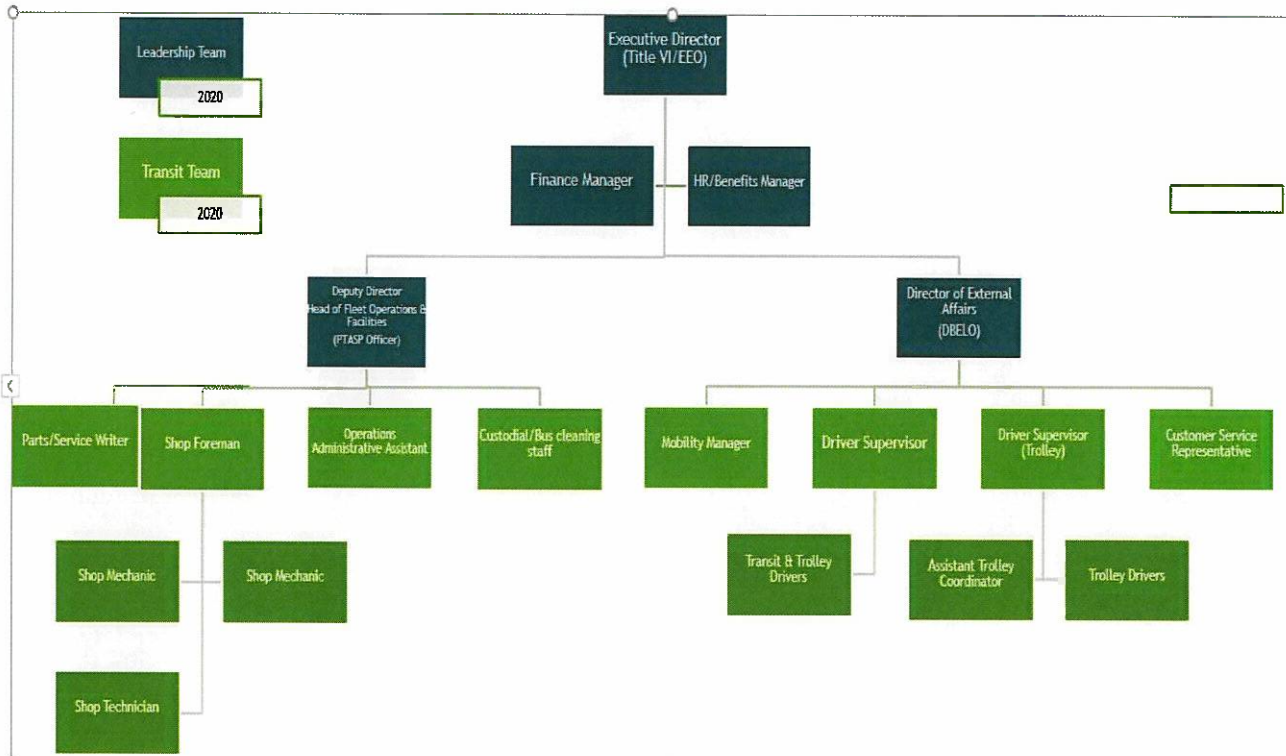


# Attachment 1

## Organizational Chart

### BSOOB Transit Org Chart

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## Attachment 2

### DBE Directory

<https://www.maine.gov/mdot/civilrights/docs/dbe/WeeklyDBEVendorList.pdf>

## **Attachment 3**

### **Monitoring and Enforcement Mechanisms/Legal Remedies**

BSOOB Transit has available several mechanisms to monitor for compliance with the DBE requirements contained in its contracts, including but not limited to, the following:

1. We shall, where necessary, review contract records and monitor work sites to verify the work is actually performed by the DBEs. Written certification of such review and monitoring shall be completed for each contract or project in which DBEs participate.
2. We will keep a running tally of actual DBE attainments, such as payments actually made to DBE firms, for work committed to them at the time of contract award or subsequently. These attainments shall be compared to commitments, and both shall be displayed in reports of DBE participation to the Department.

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

1. Breach of contract action, pursuant to the terms of the contract;
2. 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 steps provided in 26.109, including but not limited to:
  - a. Referral to the Department of Justice for criminal prosecution;
  - b. Referral to the DOT Inspector General;
  - c. Action under suspension and debarment or Program Fraud and Civil Penalties rules;
3. Perform responsibility determinations for future contracts

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

## Attachment 4

### Goal Setting Methodology

## Biddeford Saco Old Orchard Beach Transit

### Goal for DBE Participation FY2019-2021

**DBE Goal: 2.06%**

Title 49: Transportation, of the Code of Federal Regulations, §26.45 requires that the Biddeford Saco Old Orchard Beach Transit set an overall goal for DBE participation in its public transit system.

### BSOOB Transit Methodology for Determining a Base Figure

#### Step 1: Determine the Base Figure

BSOOB Transit has determined that the following represents the total contracting dollar opportunities for the triennial goal period Fiscal Year 2019, 2020, and 2021. This data was utilized to establish the total funding percentage and the assigned weight per project.

	NAICS Code	Description of Work	Amount of DOT funds on project:	% of total DOT funds (weight)
1)	561621, 334310	Surveillance / Security/Fare	\$240,000.00	6.5%
2)	541310, 238220	Facilities - Bus Washer Addition	\$75,000.00	2.0%
3)	541430,541613,541810,541820,541830,541870	Social Media Marketing	\$6,500.00	0.2%
4)	541430,541613,541810,541820,541830,541870	Advertising	\$72,442.00	2.0%
5)	236210, 236220	Facilities	\$48,772.00	1.3%
6)	424720	Fuel	\$599,249.00	16.3%
7)	524126	Insurance	\$403,124.00	10.9%
8)	541211	Professional Services	\$220,602.00	6.0%
9)	423510, 423120, 424720, 423420, 424690, 811111, 424120, 444130, 326212, 488410, 423450, 423440, 532490, 424320, 444110, 811122	Supplies	\$511,970.00	13.9%
10)	611430	Training	\$16,294.00	0.4%
11)	336340, 336350, 336330	Engine Repairs	\$1,491,300.00	40.5%

<b>Total FTA-Assisted Contract Funds</b>	<b>\$3,685,253.00</b>	<b>100.00%</b>
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There are seventeen (17) certified and available DBEs for the contracting categories established above. The market area for DBEs was determined to be statewide, since the substantial majority of contractors and subcontractors that BSOOB Transit could use are located in Maine and their services are not restricted to any particular subdivisions of the state.

Based on a review of the 2019 County Business Patterns - Maine, and Maine DOT's DBE list, there are no DBE firms in Maine that specialize in transit services or that provide the full range of services needed by BSOOB Transit. However, there are firms that offer support services that can be used BSOOB Transit.

The table below represents the number of DBEs and of all firms available to perform work on the identified contracting opportunities as well as relative availability:

	<b>NAICS Code</b>	<b>Description of Work</b>	<b>Number of DBEs available to perform this work</b>	<b>Number of all firms available (including DBEs)</b>	<b>Relative Availability</b>
1)	561621, 334310	Surveillance / Security/Fare	0	647	0.0000
2)	541310, 238220	Facilities - Bus Washer Addition	2	302	0.0066
3)	541430,541613,541810, 541820,541830,541870	Social Media Marketing	1	261	0.0038
4)	541430,541613,541810, 541820,541830,541870	Advertising	1	261	0.0038
5)	236210, 236220	Facilities	3	781	0.0038
6)	424720	Fuel	0	9	0.0000
7)	524210, 524126	Insurance	7	2,677	0.0026
8)	541211, 541110	Professional Services	0	643	0.0000
9)	423510, 423120, 424720, 423420, 424690, 811111, 424120, 444130, 326212, 488410, 423450, 423440, 532490, 424320, 444110, 811122	Supplies	0	339	0.0000
10)	611430	Training	0	39	0.0000
11)	336340, 336350, 336330	Engine Repairs	0	3	0.0000
	<b>Combined Totals</b>		<b>17</b>	<b>5,962</b>	<b>0.0028</b>

The overall availability of DBEs is 0.28%, obtained by dividing the total number of Maine state firms ready, willing, and able to bid for the types of anticipated work BSOOB will require (5,962) into the total number of DBE firms ready, willing, and able to bid for the types of work BSOOB will fund (17).

The formula proper is:  $17/5,962 = .0028$  or 0.28%

## Step 2: Adjustments to Base Figure

BSOOB has applied various weights per project for the triennial period based on dollar value. Applying these weights to the availability of DBEs provides a rounded, weighted base figure as reflected below.

	NAICS Code	Description of Work	Weight	Availability of DBEs	Weighted Base Figure
1)	561621, 334310	Surveillance / Security/Fare	0.06512	x	0.0000
2)	541310, 238220	Facilities - Bus Washer Addition	0.02035	x	0.0066
3)	541430,541613,541810, 541820,541830,541870	Social Media Marketing	0.00176	x	0.0038
4)	541430,541613,541810, 541820,541830,541870	Advertising	0.01966	x	0.0038
5)	236210, 236220	Facilities	0.01323	x	0.0038
6)	424720	Fuel	0.16261	x	0.0000
7)	524210, 524126	Insurance	0.10939	x	0.0026
8)	541211, 541110	Professional Services	0.05986	x	0.0000
9)	423510, 423120, 424720, 423420, 424690, 811111, 424120, 444130, 326212, 488410, 423450, 423440, 532490, 424320, 444110, 811122	Supplies	0.13892	x	0.0000
10)	611430	Training	0.00442	x	0.0000
11)	336340, 336350, 336330	Engine Repairs	0.40467	x	0.0000
<b>TOTAL</b>			100.00%	<b>Total</b>	<b>0.0206</b>
				Expressed as a % (*100)	<b>2.06%</b>

<b>Rounded, Weighted Base Figure:</b>	<b>2.06%</b>
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**Historical Data on BSOOB Transit bids.** Bidders that submitted either prime or subcontract bids on FTA-funded work for the past two years:

**The Trades Center – for facilities enhancements**

**Expression of DBE Goal**

The DBE goal for BSOOB Transit will be expressed as a percentage of all FTA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) the agency will spend in FTA assisted contracts over the three forthcoming fiscal years.

**Public Participation Plan**

**DBE Goal for Fiscal Years 2019-21**

In accordance with 49 CFR Part 26, BSOOB Transit's overall goal for FY 2019 through FY 2021 for Disadvantaged Business Enterprise (DBE) participation will be 2.06% for participation in U.S. Department of Transportation, Federal Transit Administration (FTA) assisted contracts. The proposed goal and its rationale are available for public inspection during normal business hours at BSOOB Transit's headquarters, located at 13 Pomerleau St., Biddeford, at our customer service office located at the Saco Transportation Center, 138 Main St. Saco and on our website [www.BSOOBTransit.org](http://www.BSOOBTransit.org). BSOOB Transit will accept public comment on the proposed goal for a period of 45 days from the date of this notice.

Comments may be directed to:

Chad Heid, Executive Director  
Biddeford Saco Old Orchard Beach Transit  
13 Pomerleau St.  
Biddeford, ME 04005  
207-282-5408  
[cheid@BSOOBTransit.org](mailto:cheid@BSOOBTransit.org)

Office of Civil Rights  
Federal Transit Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
888-446-4511

**Public Participation**

BSOOB Transit published our current goal information in these publications: Biddeford Saco Old Orchard Beach Courier, BSOOB Transit website.

Toward our revised DBE goal, BSOOB Transit will be consulting with the following local organizations no later than December 31, 2020:

- York County Community Action
- Biddeford Saco Chamber of Commerce
- Old Orchard Beach Chamber of Commerce

We will document a summary of comments and responses from these organizations upon completion as well as any changes that were made based on feedback received.

**Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation**

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

Activities BSOOB Transit performs toward race-neutral facilitation:

- Posting DBE program document on organization website
- Hosting/Setting up public outreach sessions seeking businesses that BSOOB Transit can partner with

We estimate that, in meeting our overall goal of 2.06%, we will obtain 5 % from race-neutral participation and 95% through race-conscious measures.

With so few DBE options locally, BSOOB Transit must actively seek out DBE involvement when opportunity presents itself.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 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 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.

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

**Attachment 5**

**Good Faith Efforts Forms**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

*[Forms 1 and 2 should be provided as part of the solicitation documents.]*

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

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

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

Name of bidder's firm: \_\_\_\_\_

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

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)



**FORM 2: LETTER OF INTENT**

Name of bidder's firm: \_\_\_\_\_

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

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

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

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

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

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

Description of work to be performed by DBE firm:

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The bidder 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 affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
(Signature) (Title)

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

(Page submitted for each DBE subcontractor.)

## **Attachment 6**

### **DBE Regulation 49 CFR Part 26**

Please follow this link for details regarding official DBE Regulations

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-regulations>