



**The City of Pocatello
Public Transit Department
DBE Plan
FY 2015**

Pocatello City Council approved May 7, 2015
FTA reviewed

RECIPIENT INFORMATION

RECIPIENT: City of Pocatello, Public Transit Department
[\dba](#) **Pocatello Regional Transit**
Urban Transit Agency (population under 200,000)

SUBMITTAL DATE: May 31, 2015

EXPIRATION YEAR: 2018

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General Requirements

I. Objectives / Policy Statement (§§26.1,26.23)

The City of Pocatello, dba Pocatello Regional Transit (PRT), has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

PRT receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, PRT has signed certification and assurances that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is 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.

The City of Pocatello Public Transit Director has been delegated as the DBE Liaison Officer. In that capacity the director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by PRT in its financial assistance agreements with the Department of Transportation.

PRT has disseminated this policy statement to the Mayor and City Council members and all pertinent employees.

Brian C Blad, Mayor

Date: _____

I. Applicability (§26.3)

PRT 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

II. Definitions of Terms (§26.5)

The terms used in this program are defined in 49 CFR §26.5.

III. Nondiscrimination (§26.7)

PRT 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, PRT 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.

IV. Record Keeping Requirements (§26.11)

We will report DBE participation to DOT as follows:

We will report DBE participation semiannually in TEAM.

These reports will reflect payments actually made to DBEs upon the completion of the DOT assisted contracts.

V. Federal Financial Assistance Agreement Assurance (§26.13)

Assurance (§26.13a)

PRT has signed the following assurance, applicable to all DOT assisted contracts and their administration:

PRT 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 PRT of its failure to

carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/ or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance (§26.13b)

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

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

Administrative Requirements

VI. DBE Program Updates (§26.21)

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.

VII. DBE Liaison Officer (DBELO) (§26.25)

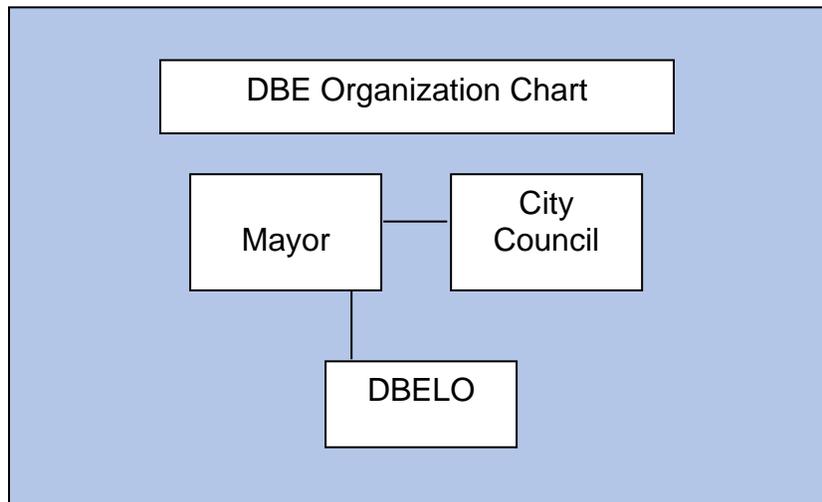
We have designated the following individual as our DBE Liaison Officer:

David Hunt
P.O. Box 4169
Pocatello, Idaho 83205
(208) 232-5057
dhunt@pocatello.us

In that capacity, the director is responsible for implementing all aspects of the DBE program and ensuring that PRT complies with all provisions of 49 CFR Part 26. PRT is a Small Urban/Rural Transit provider that operates fixed route and complementary paratransit services in Pocatello/Chubbuck, and demand-response services in rural Idaho Transportation District 5. The DBELO will handle all aspects of the DBE Plan.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate employees. Duties and responsibilities include the following and may be assigned by the DBELO:

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 employees 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) and monitors results.
6. Analyzes PRT'S Progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Determines contractor compliance with good faith efforts.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.



VIII. DBE Financial Institutions (§26.27)

PRT is a department of the City of Pocatello and uses the Financial Institution of the City.

IX. Prompt Payment (§26.29)

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

X. Directory (§26.31)

PRT uses the State of Idaho DBE directory that identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE.

XI. Overconcentration (§26.33)

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

XII. Business Development Programs (§26.35)

PRT has not established a business development program.

XIII. Monitoring and Enforcement Mechanisms (§26.37)

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. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Goals, Good Faith, and Counting

XIV. Quotas (§26.43)

We do not use quotas in any way in the administration of this DBE program.

XV. Overall Goals (§26.45)

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

In accordance with Section 26.45(f) PRT will submit its overall goal to DOT on August 1 every three (3) years. Before establishing the overall goal each year, PRT will consult with the Bannock Transportation Planning Organization (MPO for PRT) to analyze the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and PRT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, PRT 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 5815 S 5th, Pocatello, ID for 30 days following the date of the notice, and informing the public that PRT and DOT will accept comments on the goals for 30 days from the date of the notice. Normally, this notice will be issued by June 1st prior to the submittal date. This notice will include the mailing and e-mail addresses to which comments may be sent, as well as an internet link where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process, along without responses.

We will begin using our overall goal on October 1 of each year, 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.

PRT'S overall goal for FY 2015 is 1% of the Federal financial assistance we will expend in DOT assisted contracts.

PRT anticipates that FY 2015 DOT-assisted contracts will total \$532,135, so the goal is to spend \$ 5,321 with DBEs during this fiscal year.

Method

The following is a summary of the method we used to calculate this goal:

- *The method used to calculate the relative availability of DBEs ("base figure") for "Step 1" of the process was to divide the number of DBEs listed in the State of Idaho DBE Directory by all available firms in Idaho.*
- *The DBE Director was used as the data source to derive the numerator and the 2012 NAICS provided the denominator in the calculation, 70 DBEs in the Directory and 42,899 total firms in the 2012 NAICS for Idaho.*
- *The relative availability percentage that was arrived at was less than 1%.*

- *While we were considering making adjustments to the base figure under Step Two, it was determined that past experience and participation does not suggest that such an adjustment is necessary. Therefore no adjustment was made. PRT is a small urban provider in southeastern Idaho in a rural setting and the need for adjustments is unlikely. We are assuming that the Step One percentage is as accurate as possible.*

Process

PRT submits its overall goal to DOT on August 1 of each year.

Before establishing the overall goal each year, PRT consults with, minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, and the effects of discrimination on opportunities for DBEs, to evaluate PRT'S efforts to establish a level playing field for the participation of DBEs.

Following this consultation, PRT publishes a notice of the proposed overall goal, 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 our office and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice includes addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT, or, if the goal is established on a project basis, by the time of the first solicitation for a DOT assisted contract for the project.

XVI. Transit Vehicle Manufacturers (§26.49)

PRT 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, PRT 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.

XVII. Breakout of Estimated Race-Neutral and Race-Conscious Participation (§26.51)

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

All bid solicitations shall be race-neutral. All contracts shall be race neutral. Race-conscious references shall be limited to general language required under Title VI of the Civil Rights Act. Prevailing demographic and cultural conditions in the region do not warrant targeted outreach beyond the standard non-discrimination provisions.

We estimate that, in meeting our overall goal of 1%, we will obtain a combined total of 1% from race-neutral and race-conscious measures. As of this update, the facility construction project is complete. Reasonable effort to solicit known DBE providers resulted in contracting one firm on the design team for LEED consultation. LEED certification is ongoing, but the estimated value of the DBE participation is anticipated to be less than one percent.

XVIII. Contract Goals (§26.51)

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

We will express our contract goals as a percentage of the total amount of a DOT - assisted contract.

XIX. Good Faith Efforts (§26.53)

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 following personnel are 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: David G. Hunt, Transportation Director.

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

Information to be submitted

PRT treats bidder/offeror's compliance with good faith efforts requirements as a matter of 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 participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration

Within 30 days of being informed by PRT that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder / offerors should make this request in writing to the following reconsideration official: David Hunt, P.O. Box 4169, Pocatello, Idaho 83205. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/ offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

We 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. 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

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [Name of Recipient] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror 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/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Counting DBE Participation (§26.55)

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

Certification Standards

XX. Certification (§§26.61 - 26.73)

PRT does not certify DBEs at this time, however, if PRT should begin, we will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

Certification Procedures

XXI. Unified Certification Program (§§26.81)

The State of Idaho has a uniform and organized Disadvantaged Business Enterprise Directory. We get a copy of the DBE Directory on a quarterly basis. It is reviewed at that time. PRT participates under the Section 5311 DBE Program.

Certification Appeals

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

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590

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

XXII. Information Collection and Reporting (§26.109)

Bidders List

Pocatello Regional Transit 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's list approach to calculating overall goals. The bidders 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:

A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts; We will also require a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient.

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

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

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.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law [refer to Idaho Code]. 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.