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**Jefferson Transit Authority**  
**Resolution No. 20-11**  
**Disadvantaged Business Enterprise (DBE) Policy Amendment**

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*A RESOLUTION of the Board of Directors of the Jefferson County Public Transportation Benefit Area, hereinafter called the "Authority", to review and update the DBE Policy.*

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**WHEREAS**, Jefferson Transit Authority receives more than \$250,000 in financial assistance from the Federal Transit Administration and has established a DBE Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26; and

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**WHEREAS**, Jefferson Transit Authority amends its DBE program as attached;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of the Jefferson Transit Authority that the following DBE Program update will be submitted to Washington Department of Transportation and will be included in the 2020-2023 DBE Program.

**CERTIFICATION**

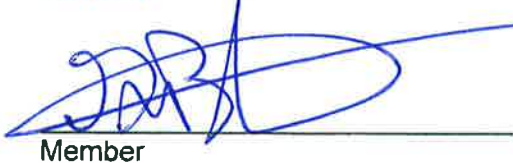
The undersigned duly qualified Clerk of the Board, acting on behalf of the Jefferson County Public Transportation Benefit Area, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Jefferson Transit Authority Board held on June 16, 2020.

  
Chair

*excused*  
Vice Chair

  
Member

*excused*  
Member

  
Member

Attest:  
  
Clerk of the Board

<i>Title:</i> <b>Disadvantaged Business Enterprise (DBE) Policy &amp; Program</b>	<i>Resolution:</i> <b>20-11: DBE Policy &amp; Program</b>
<i>Authors:</i> <b>Jayne Brooke</b>	<i>Effective Date:</i> <b>June 16, 2020</b>

**Jefferson Transit Authority**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**POLICY AND PROGRAM**



**Effective: June, 16, 2020**

## Jefferson Transit Authority DBE Policy

### POLICY STATEMENT

#### Objectives/Policy Statement

Jefferson Transit Authority, hereinafter referred to as JTA, has established a Disadvantaged Business Enterprise (DBE) policy in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Jefferson Transit has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Jefferson Transit has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Jefferson Transit 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 only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
4. To help remove barriers to the participation of DBEs in DOT-assisted contracts;

The Grants & Procurement Coordinator has been delegated as the DBE Liaison Officer, and in that capacity is responsible for implementing all aspects of the DBE policy. Implementation of the DBE policy is accorded the same priority as compliance with all other legal obligations incurred by Jefferson Transit in its financial assistance agreements with the Department of Transportation.

JTA has adopted this policy statement, which is disseminated to all departments and employees.

  
Jefferson Transit General Manager

Date 7.1.2020

## **SUBPART A – GENERAL REQUIREMENTS**

### **Objectives**

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

### **Applicability**

Jefferson Transit 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.

### **Definitions**

The terms used in this program have definitions contained in 49 CFR 26.5 for this program.

### **Non-discrimination Requirements**

Jefferson 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 policy, Jefferson 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.

### **Record Keeping Requirements**

#### **Reporting to WSDOT**

JTA will report DBE participation as follows:

We will report DBE participation on a quarterly basis to WSDOT. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### **Bidders List:**

Jefferson Transit Authority will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. 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; options include, but are not limited to:

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

A notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the JTA.

### **Federal Financial Assistance Agreement**

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

#### Assurance:

Jefferson Transit Authority 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 Jefferson Transit 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

We 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**

### **DBE Policy Updates**

Since Jefferson Transit has received a grant of more than \$250,000 in FTA funds in a federal fiscal year, we will continue to carry out this policy until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

### **Policy Statement**

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

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

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

## JTA DBE Program 2020-2023

Grants & Procurement Coordinator  
63 4 Corners Road  
Port Townsend, WA 98368  
(360) 385-3020 x 110  
jbrooke@jeffersontransit.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE policy and ensuring that Jefferson Transit complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this policy.

The DBELO is responsible for developing, implementing and monitoring the DBE policy, in coordination with other appropriate officials. The DBELO will devote a portion of their time to this policy to assist in the administration of the policy. 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 policy.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Analyzes Jefferson Transit Authority's good faith effort to achieve DBE participation and identifies ways to improve progress.
5. Advises the General Manager\governing body on DBE matters.
6. Participates in pre-bid meetings.
7. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
8. Participates in DBE training seminars.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.
10. Maintains Jefferson Transit's updated directory on certified DBEs.

### **DBE Financial Institutions**

It is the policy of Jefferson Transit 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. We have made the following efforts to identify and use such institutions: Jefferson Transit has surveyed banking, savings and loan, the Chamber of Commerce and Economic Development Council to determine their knowledge of any DBE institutions. JTA has not identified any DBE financial institutions in the community.

As information on the availability of such institutions becomes known, it may be obtained from the DBE Liaison Officer.

### **Prompt Payment Mechanisms**

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

### **Directory**

## JTA DBE Program 2020-2023

Jefferson Transit will rely on the Washington State Office of Minority and Women Business Enterprises (OMWBE) to perform DBE certification work, and to maintain the Directory. Jefferson Transit will keep an electronic version of the current DBE Directory issued by OMWBE on file. This directory will be utilized in the development of mailing lists for RFPs. In addition the directory will be used to provide assistance to potential bidders in the identification of available DBE subcontractors.

The internet address for accessing the OMWBE's Directory is  
<http://www.omwbe.wa.gov/biznetwas/mainmenu.asp>

The OMWBE directory lists all firms eligible to participate as DBEs, 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.

JTA shall review this policy document, at least once every three years. For information contact the:

Grants & Procurement Coordinator  
63 4 Corners Road  
Port Townsend, WA 98368  
(360) 385-4777

### **Overconcentration**

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

### **Business Development Programs**

At this time Jefferson Transit does not have a business development program or mentor program.

### **Monitoring and Enforcement Mechanisms**

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

In order to ensure compliance with DBE requirements in its contracts, Jefferson Transit's project managers and representatives at job sites will monitor on an ongoing basis that work committed to being performed by DBEs is actually performed by the DBEs named in a contractor's bid or proposal. A clause will be included in all contracts requiring that the contractor cannot substitute subcontractors without Jefferson Transit concurrence. In addition, if a DBE subcontractor is unable to perform the work contracted for, the prime contractor must either replace such subcontractor with another DBE or show Jefferson Transit that good faith efforts to do so have been made.

The Jefferson Transit representative at the site will report monthly to the DBE Liaison Officer observations that DBE subcontractors actually are performing the amount and type of work committed. The report will be in writing, email is sufficient. The Contractor shall report DBE participation on a monthly basis in the form of a pay activity request. This mechanism will provide for a running tally of actual DBE attainment (e.g., the payment actually made to DBE firms), including a means of comparing these attainments to commitments. The JTA staff will verify with the DBE at minimum on a quarterly basis the contract amount and payment to the DBE reported by the contractor. These verification forms, for example, request information to confirm scope of services, contract amount and starting date of the DBE contract. DBE subcontractors must complete and return verification forms to the JTA. Appropriate follow-up is conducted to ensure that responses are received. Where no response is received, follow-up notices are issued. JTA shall not release the contractor's retainage until all DBE subcontractors' participation information is reported and the appropriate forms submitted to JTA.

If a prime contractor is found not to be in compliance with its DBE commitment it shall be so notified by Jefferson Transit and directed to cure the problem within an appropriate time period. Failure by the prime contractor to comply may result in monetary penalties and partial or total termination for default with re-solicitation costs to be borne by the prime contractor or its bond. In addition, Jefferson Transit may consider a contractor's non-compliance with its stated contract goal or good faith efforts when evaluating contractor responsibility in future bids or proposals.

We will bring to the attention of the Washington State Office of Minority and Women's Business Enterprises and the Federal Transit Administration any false, fraudulent or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension or debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We will also assist the WA State OMWBE in the consideration of similar action under local legal authorities.

**Small Business Participation**

Small Business Definition: The Small Business Administration's (SBA) definition and size standards (as it may be amended from time to time) defines a small business:

“... a small business concern is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period.”

Good Faith Implementation - To actively implement the small business program Jefferson Transit will partner and collaborate with business organizations such as the Jefferson County Chamber of Commerce and Small Business Administration to help form initiatives that encourage greater awareness about contracts for participation of small businesses.

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

**Set-asides or Quotas**

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

**A. Goals**

Jefferson Transit's goal for 2020 – 2023 is to make a good faith effort to seek out and utilize DBEs with our WSDOT consolidated grant awarded funds-exclusive of FTA funds to be used for the purchase of transit vehicles. JTA will strive to meet a goal of 1.81% of the federal financial assistance we expend.

**Good Faith Efforts & Procedures**

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the 1.81% goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.



## JTA DBE Program 2020-2023

JTA 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/offeror.

### Information to be submitted (26.53(b))

Jefferson Transit treats bidder/offers' 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 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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

### Administrative reconsideration

Within 10 days of being informed by Jefferson Transit 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:

Grants & Procurement Coordinator  
63 4 Corners Road  
Port Townsend, WA 98368  
(360) 385-4777

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

Jefferson Transit 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 DBE goal. JTA 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 written 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 requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Jefferson 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/offerors, including those who qualify as a DBE. A DBE contract goal of 10% 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: (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**

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

**SUBPART D – CERTIFICATION STANDARDS**

**Certification Process**

Jefferson Transit Authority will use the certification standards of Subpart D 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.

In Washington State a central "one-stop-shop" has been created to perform certification and recertification functions. The Washington State Office of Minority and Women Business Enterprises (OMWBE) has legislative authority to perform all minority, women and disadvantaged business enterprise certifications for all public agencies in the State. For DBE certifications the office is required to utilize certification procedures that meet all federal requirements as defined in 49 CFR Part 26 and as amended to ensure eligibility of certified firms for Department of Transportation projects.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Unified Certification Programs**

The State of Washington Office of Minority and Women's Business Enterprises has a unified certification program. This agency also conducts certifications, re-certifications, and desertification.

### **Procedures for Certification Decisions**

#### **Challenge**

A third party may challenge a firm's presumed eligibility or a firm's certification as a DBE. Jefferson Transit shall immediately review the information received and determine if grounds exist to pursue the challenge. If the challenge appears to have merit, Jefferson Transit will notify the Washington State Office of Minority and Women's Business Enterprises who will have the authority to investigate and resolve the challenge in accordance with the certification requirements of 49 CFR Part 26 and as amended. Jefferson Transit will provide all available information for investigation and identify the third party challenger. The challenged party shall submit rebutting information to the OMWBE for their consideration. Jefferson Transit shall actively participate with the OMWBE, if needed, until the investigation is concluded and a determination has been finalized.

#### **Decertification**

In addition to the performance of the certification function for all public agencies in the State of Washington, the OMWBE is responsible for decertification if a DBE no longer qualifies for the program under 49 CFR Part 26 and SBA small business criteria. Jefferson Transit will cooperate with the OMWBE as needed to assist in the decertification process. Once decertified a DBE contractor will no longer be counted towards the agency's overall annual goals.

### **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 7<sup>th</sup> Street, SW  
Room 2104  
Washington, D.C. 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).

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

### **Information, Confidentiality, Cooperation**

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.

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

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

**ATTACHMENTS**

- Attachment 1            Goal Calculation
- Attachment 2            Organizational Chart
- See online                DBE Directory of Certified Firms (online at  
<http://www.omwbe.wa.gov/biznetwas/mainmenu.asp> )

**Attachment 1**

**Goal Calculation**

**Amount of Goal**

Jefferson Transit's goal for is the following: 1.81% of the federal financial assistance we will expend in DOT-assisted contracts. *Exclusive of FTA funds to be used for the purchase of transit vehicles.*

**Methodology used to Calculate Goal**

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs (1541)}}{\text{All firms ready, willing and able (84,910)}}$$

The data source or demonstrable evidence used to derive the numerator was: Washington State OMWBE

The data source or demonstrable evidence used to derive the denominator was: Census Data 2019, adjusted to the 2019 Economic Census as reported by Washington State Department of Revenue.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal is 1.81%.

Attachment 2

ORGANIZATIONAL CHART

