

Puerto Rico Integrated Transportation Authority 2022

It is the policy of the Puerto Rico Integrated Transportation Authority (PRITA) to effectuate a Disadvantage Business Enterprise Program (DBE) and related statues, regulations, and directives, as amended in order to comply with 49 CFR of the Government of the USA.

Disadvantage Business Enterprise (DBE) Program

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

I. INTRODUCTION

The Puerto Rico Integrated Transportation Authority of the Commonwealth of Puerto Rico (PRITA) Disadvantaged Business Enterprise Program (DBE) applies to PRITA / FTA projects and the following funding sources: (a) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V. of the Transportation Equity Act for the 21st Century (TEA - 21), Pub. L. 105-178, (b) 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, III and V of the TEA - 21; Pub. L. 105-178 or (c) Airport funds authorized by 49 U.S.C. 471010, et seq. The DBE Program does not apply to contracts in which USDOT financial assistance does not participate.

On February 2, 1999, new regulations codified at 49 CFR Part 26 were published in the Federal Register to amend 49 CFR Part 23. The new regulations codified at 49 CFR Part 26 are effective as of March 4, 1999, thereby, requiring each primary recipient (PRHTA) of specified federal aid to develop, and implement a DBE Program consistent with 49 CFR Part 26 as a condition to receiving federal aid funding. The regulations make clear that the 10 percent statutory goal is an "aspiration" goal contained in ISTEA and TEA-21 that applies to the Department of Transportation on a national level, not to individual recipients. Thus, the national 10 percent goal is not tied to recipients' goal-setting decisions. Recipients set three (3) years overall goals based on what will achieve a level playing field in their own programs without regard to the national goal. The regulations require primary recipients to establish triennial overall goals based on the availability of DBEs ready, willing and able to participate in public works construction; requires primary recipients to use race-neutral means to achieve annual DBE participation goals, and mandate size limits on certified DBEs.

II. POLICY

Section 26.1, 26.23 & 26.3 -Objectives, Policy Statement, & Applicability

The Puerto Rico Integrated Transportation Authority of the Commonwealth of Puerto Rico (PRITA) acting through the Secretary of Transportation hereby expresses its commitment to support the policy of providing the fullest possible participation of firms owned and controlled by socially and economically disadvantaged individuals in programs and projects receiving federal assistance under the DOT programs. It is the policy of PRITA that no person shall be excluded from participation, denied the benefits of, or otherwise discriminated against in relation with the award and performance of any contract covered by this Program, on the grounds of race, color, sex, or national origin. In this regard, PRITA is committed to a program of providing equal opportunity and affirmative action to disadvantaged business enterprises and small businesses as defined under DOT's Regulation. Implementation of the DBE Program by PRITA is a legal obligation and failure to carry out its terms shall be treated as a violation whereby sanctions may be imposed as provided under 49 CFR Part 26. In administering the DBE Program, PRITA shall not use criteria or methods that would have the effect of defeating or substantially impairing accomplishments of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

PRITA's DBE Policy Statement will be circulated through the Department among its personnel in the different levels of supervision as well as local governmental units, business organizations, the DBE and non-DBE business communities that perform work for us on DOT- assisted contracts and to the general public. This Policy Statement shall be published through the appropriate media and fully incorporated into the procurement process. From time-to-time PRITA shall receive interpretations from USDOT, which shall be binding on PRITA, sub- recipients, and contractors.

The purpose of the program is to implement the provision of 49 CFR Part 26, other pertinent regulations, and source legislation. These objectives are:

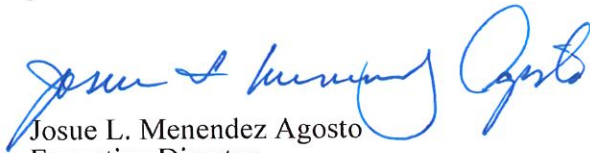
- a. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in the USDOT's highway, transit, and airport financial assistance programs;
- b. To create a level playing field on which DBEs and other small businesses can compete fairly for USDOT- assisted contracts;

- c. To ensure that USDOT's DBE program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR Part 26 - are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs and other small businesses in USDOT-assisted contracts;
- f. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- g. To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs and other small businesses.

PRITA shall work to establish a level playing field for DBE contractors to compete for federally assisted highway construction and transportation projects as prime contractors, subcontractors and consultants. It is intended to provide opportunities to DBEs so they can graduate from the DBE program and perform as prime or as subcontractors without DBE program assistance.

Mr. Jose Luis Rodriguez Macias is the Acting Liaison Officer, that has been delegated as the responsible staff member in managing all matters concerning the DBE Program. He is the designated person responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the PRITA in its financial assistance agreements with the Department of Transportation.

As the Executive Director of the Puerto Rico Integrated Transportation Authority, I have distributed this Policy Statement to DBE and non-DBEs business communities that perform work for us on DOT-assisted contracts, through the general media to the public, and to all department key personnel and bureaus.


Josue L. Menendez Agosto
Executive Director
Puerto Rico Integrated Transportation
Authority

Date 1V-21-2022

RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

The Commonwealth of Puerto Rico presents a unique situation when compared to the situation in the Continental United States, in the treatment of equal opportunity and affirmative action to disadvantage business enterprises. The almost homogenous characteristic of the population of individuals of Hispanic origin will require the development of innovative programs to achieve the purpose and intents of affirmative action and equal opportunity to DBE's. Unlike the majority of the States, most of the DOT assisted contracts in Puerto Rico are awarded to firms that are owned and controlled by individuals who by definition would be considered socially and economically disadvantaged.

Section 26.5 - Definition of Terms

The terms used in this program have the meanings defined in 49 CFR 26.5, and the followings;

III. DEFINITIONS

1. **AFFILIATION** - has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when either directly or indirectly one concern controls or has the power to control the other; or a third party or parties controls or has the power to control both; or an identity of interest between or among parties exists that affiliation may be found. In determining whether affiliations exist, 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 statutory cap on the participation of firms in the DBE program.
2. **ALASKA NATIVE** - a citizen of the United States who is a person of one fourth (1/4) 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.

3. **ALASKA NATIVE CORPORATION (ANC)** - 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 USC 1601, et seq.)
4. **AFFIRMATIVE ACTION** - means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged business enterprises fully in contracts and programs funded by the DOT.
5. **APPLICANT** - means one who submits an application, request or plan to be approved by an official or by a primary recipient as a condition to eligibility for assistance; and "application" means such an application, request or plan.
6. **COMMERCIALY USEFUL FUNCTION (CUF)** - means that a DBE is responsible for execution of a distinct element of the work of a contract or subcontract and carries out its responsibilities by actually performing, managing and supervising the work involved, or provides professional services.
7. **COMPLIANCE** - means that a recipient has correctly implemented the requirements of 49 CFR Part 26.
8. **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.
9. **CONTRACT GOAL** - means the percentage of DBE participation established by - PRITA, if required, for a USDOT-Assisted Contract.
10. **CONTRACTOR**- means one who participates, through a contract or subcontract (at my tier), in a USDOT-assisted highway, transit, or airport program.
11. **CONSULTANT** – means an individual, firm or partnership who contracts with the PRITA to provide services for engineering, management, business management, surveying, environmental, hazardous materials, subsurface utility engineering, and other services which require a rigorous, logical, science-based approach for data acquisition to be used in the development of highway construction plans.
12. **DEPARTMENT-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).

13. **DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS/ PRHTA-** means the Department of Transportation and Public Works Puerto Rico Highway and Transportation Authority.
14. **DISADVANTAGED BUSINESS ENTERPRISE/ DBE** - means a for-profit small business concern 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 whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.
15. **FOSTERING OF SMALL BUSINESS ENTERPRISES** - means facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles for their participation as prime contractors or subcontractors.
16. **USDOT-ASSISTED CONTRACT** - means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loans guarantees, except a contract solely for the purchase of land.
17. **GOOD FAITH EFFORTS** - means efforts to achieve a DBE goal or other requirement of the DBE Program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
18. **JOINT-VENTURE** - means an association of a DBE firm and one or more other from to carry out a single business enterprise for profit for which purpose they combine properties, capital, efforts, skills and knowledge; in which the DBE is responsible for a distinct, clearly defined portion; whose share in capital contribution, control, management, risk and profit are commensurate with its ownership interest.
19. **LESSEE** - means a business or person that leases or is negotiating to lease, property from a recipient on the recipient's or Department's facility for the purpose of operating a transportation related activity or for the provision of goods or services to the facility or the public on the facility.
20. **LOSP - LIASON OUTREACH AND SERVICES PROGRAM** - Cooperative Agreements with chambers of commerce and trade associations to provide liaison

services between the USDOT, its grantees, recipients, contractors, subcontractors and minority-owned and disadvantaged business enterprises.

21. **NAICS - North American Industrial Classification System** - replaces the Standard Industrial Classification Code (SIC) designation which best describe the primary business of a firm. Until further notice or amended, the Standard Industrial Classification (SIC) from 1997 is still applicable for determining classification of a small business concern.
22. **NONCOMPLIANCE** - means that a recipient has not correctly implemented the requirements of 49 CFR Part 26.
23. **OEOPB** - means Office of Equal Opportunity Program Bureau
24. **OFFEROR** - means an individual, firm, or partnership who submits a proposal for consideration for Design Consultant services.
25. **PRITA**- means Puerto Rico Integrated Transportation Authority
26. **PRITA EXECUTIVE DIRECTOR**- means the Executive Director of the Puerto Rico Integrated Transportation Authority
27. **PRPA**- means Puerto Rico Ports Authority
28. **PRPA EXECUTIVE DIRECTOR**- means the Executive Director of the Puerto Rico Ports Authority
29. **PRHTA EXECUTIVE DIRECTOR** - means the Executive Director of the Puerto Rico Highway and Transportation Authority.
30. **PRHTA** means the Puerto Rico Highway and Transportation Authority.
31. **OPERATING ADMINISTRATION (OA)** - means any of the following parts of USDOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The "Administrator" of any OA includes his or her designees.
32. **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.
33. **PRIMARY INDUSTRY CLASSIFICATION** - means the six digit North American Industry Classification Systems (NAICS) Code designation which best describes the primary business of a firm. The NAICS Code designations are described in the North American Industry Classification Systems Manual.

34. **PRIMARY RECIPIENT** - means a recipient to which USDOT financial assistance is given and passes some or all of it on to another recipient.
35. **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.
36. **PROGRAM** - means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which this part applies.
35. **PROPOSAL** - means a proposition compiled and developed in response to an RFP.
36. **PRESIDENT AND GENERAL MANAGER** - means the Executive Director of the Puerto Rico Integrated Transportation Authority.
37. **PRITA** - means Puerto Rico Integrated Transportation Authority.
38. **PRSTC** - means Puerto Rico Safety Traffic Commission.
39. **PRSTC: EXECUTIVE DIRECTOR** - means Puerto Rico Safety Traffic Commission Executive Director.
40. **RACE-CONSCIOUS MEASURE** - means a program that is focused specifically on assisting DBEs.
41. **RACE-NEUTRAL MEASURE** - means a program that is, or can be, used to assist all small businesses. For purposes of this part, race-neutral includes gender-neutrality.
42. **RECIPIENT**- means any entity, public or private, to which USDOT 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.
43. **REGULAR DEALER** - means a firm that own, operate, or maintain a store, warehouse or other establishment in which the materials, supplies, articles or equipment, of the general character described by the specifications and required under the contract, are bought, kept in stock and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages as its principal business and under its own name in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealer's own distribution equipment shall be by a long-term lease agreement and not

on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not regular dealers.

44. **REQUEST FOR PROPOSAL (RFP)** - means all documents, including those attached or incorporated by reference, used for soliciting proposals.
45. **SECRETARY**- means the Secretary of the U. S. Department of Transportation or his/her designee.
46. **SET-ASIDE** - means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
47. **SECRETARY DTPW** - means Secretary of the Puerto Rico Department of Transportation and Public Works.
48. **SMALL BUSINESS ADMINISTRATION (SBA)** - means the United States Small Business Administration.
49. **SMALL BUSINESS CONCERN** - means with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration Regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).
50. **SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL** - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - a) Individual whom the PRITA finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged;
 - 1) **Black Americans**, which includes persons having origins in any of the Black racial groups of Africa;

- 2) **Hispanic Americans** which include persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - 3) **Native Americans**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - 4) **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;
 - 5) **Subcontinent Asian Americans**, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;
 - 6) **Women and Any** additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
50. **STATE GOAL**- means the determination, calculated every (3) three years a percentage, of the level of DBE participation on assisted contracts, expecting absentee the effects of discrimination.
51. **TRANSIT VEHICLE MANUFACTURER (TMV)** - is a manufacturer of vehicles used by PRITA for the primary purpose of public mass transportation (e.g., buses, railcars, vans). The term does not apply to firms, which rehabilitate old vehicles, or to manufacturers of locomotives or ferryboats. It refers to distributors of, or dealers in transit vehicles with respect to the requirements of Section 26.49 of 49 CFR Part 26.
52. **TREN URBANO (TUO)-means** the TREN URBANO Office in charge of the direction and administration of the turnkey project.
53. **UNIFIED CERTIFICATION PROCESS (UCP)** - means an entity that provides a one- stop shopping service to applicants seeking DBE certification and must comply with all provisions of this rule concerning certification and nondiscrimination. The PRHTA certification is being used by all the municipalities of the Commonwealth as well as all agencies who receive federal aid funds.

Section 26.7 -Nondiscrimination

PRITA 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.

PRITA will not, directly or through contractual or other arrangements, set 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

PRITA will maintain all records documenting its compliance with the requirements of this program in accordance with applicable record retention requirements for the PRITA's financial assistance agreement.

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

PRITA, will report DBE participation to the relevant operating administration DOT and FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

The DBE Uniform Semi-Annual Reports will report the FTA portion of applicable awards only.

Revenue contract dollars and rolling stock will not be counted as awards or payments towards DBE attainment. Dates of submission are June 1 and December 1 of each calendar year. The DBELO is responsible for completing with support from the Finance and Procurement departments, and the PRITA President is responsible for approving these semi-annual submissions.

26.11(c) Bidders List:

PRITA, 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, and type of business. The collection of this information will be part of the contract clauses that will require such information.

We will collect this information in the following way:

Directory

PRITA maintains a directory identifying all firms eligible to participate as DBEs. The Directory lists the firm name, address, telephone, and fax number, date of most recent certification, NAICS numbers, and type of work the firm has been certified to perform as a DBE, contact person, E-mail, and any other relevant information. The Directory hard copy is distributed yearly and revised copies made available at the end of December. It is available through Puerto Rico Department of Transportation's web page (www.DTOP.gov.pr) and up-dated electronically every time a firm is newly certified, certification is officially removed, expired or out of the market.

Additionally, PRITA has established working relationships with the following organizations: Small Business Administration, Associated General Contractors of Puerto Rico, Manufacturer Association, Women Affairs Commission, Chamber of Commerce, Professional Engineers and Surveyors Association, Professional Architects Association, and Minority Business Development Agency-U.S. Department of Commerce. They can access our Directory through our web page (www.DTOP.gov.pr)

Section 26.13 Assurances

PRITA will ensure that the following assurances, applicable to all DOT-assisted contracts and their administration, will be included in all contracts and agreements:

Section 26.13a Federal Financial Assistance Agreement Assurance

PRITA 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.*).

Section 26.13.b 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

Section 26.21 DBE Program Updates

Since the Puerto Rico Integrated Transportation Authority 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 Liaison Officer (DBELO)

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

Jose Luis Rodriguez
Macias
jlrodriguez@ati.pr.gov
(787) 721-8787 X-53002

The DBE Liaison Officer of PRITA shall have direct, independent access to the Chief Executive Officer concerning DBE program matters. The Liaison Officer is responsible for the required duties of the DBE Program. The Liaison Officer will have the full cooperation of all Bureau Heads and Staff, which are involved in any programs which are affected by 49 CPR Part 26. The Liaison Officer shall be responsible for implementing all aspects of the DBE program; and must have adequate staff

and if necessary, a dully dedicated professional consultant assigned to the DBE Program on a full-time basis, to administer the program in compliance with the federal regulations codified at 49 CFR Part 26. The DBE Liaison Officer's duties and responsibilities include the following, but not limited to:

- Gathers and reports statistical data and other information as required by DOT/FTA/FHWA.
- Review third party contracts and purchase requisitions for compliance with the DBE program requirements.
- Work with PRITA to implement compliance with their overall triennial goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- Analyzes progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings to explain and monitor compliance with the DBE Program requirements.
- Advise on DBE matters and achievements.
- Chairs the DBE Advisory Committee, if implemented.
- Participates with legal counsel and consultant to evaluate and/or determine contractor compliance with good faith efforts.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding, insurance and other supportive services regarding DBE matters.
- Plans and participates in DBE Training seminars.
- Provides outreach to DBEs and community organizations to advise them of contract/subcontract opportunities.
- Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process.
- Maintain an updated directory of certified DBEs.
- Investigates and facilitates the resolution of project related disputes involving DBEs.
- Maintain copies of bids, plans, blueprints and specifications for interested DBE's perusal.

ADMINISTRATIVE REQUIREMENTS

Section 26.27 Financial Institutions - DBE Financial Institutions

In the Commonwealth of Puerto Rico, most of the banks and financial institutions are owned, operated and controlled by individuals that are by definition socially and economically disadvantaged. These banks are used extensively by both minority and non-minority business enterprises doing business with PRITA on Federal and non-Federally assisted contracts. Additionally, PRITA utilizes Puerto Rico's own Government Development Bank (minority owned) for major commonwealth funding/state projects. PRITA shall continue to identify financial institutions owned and controlled by socially and economically disadvantaged individuals. PRITA shall make every reasonable effort to encourage prime contractors and subcontractors to utilize such institutions. Information on the availability of such institutions can be obtained by calling (787) 721-8787 PRITA's Office of External Resources Office.

PRITA, when possible, will encourage the use of financial institutions owned and controlled by socially and economically disadvantaged individuals in the community. Extra efforts will be made to encourage prime contractors on FIA-assisted contracts to make use of these institutions. We will also re-evaluate the availability of DBE financial institutions every 18 months.

Section 26.29 (a) Prompt Payment Clause

PRITA 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 fifteen (15) calendar days from the receipt of each payment the prime contract receives from PRITA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the PRITA. This clause applies to both DBE and non-DBE subcontracts.

Section 26.29 (b) Retainage:

The prime contractor agrees to return retainage payments to each subcontractor within fifteen (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 PRITA. This clause applies to both DBE and non-DBE subcontracts.

COMPLIANCE PROCEDURES AND PENALTIES:

Whenever PRITA believes that the contractor or any subcontractor or supplier on a USDOT-assisted contract may not be operating in compliance with the terms, conditions or requirements of this DBE Program, including but not limited to, encouraging fronting, brokering or the circumstance of a DBE not performing a commercially useful function as defined, PRITA will conduct an investigation. If it is found that the contractor or any subcontractor or supplier is not in compliance with the DBE Program or these Special Provisions, the non-compliant party will be notified in writing by PRITA. A compliance conference to discuss the area(s) of non-compliance may be held between PRITA and the non-compliant party or parties. In the event that the non-compliant party or parties fails or refuses to perform in compliance with the DBE Program or these Special Provisions, a "Notice of Non-Compliance" will be transmitted. If the non-compliant party or parties corrects the deficiencies, the "Notice of Non-Compliance" will be rescinded and the party or parties will be notified as to compliance. If the deficiencies are not corrected, PRITA will initiate administrative action against the non-compliant party or parties, which may include but not be limited to;

1. Deduct 10% from the amount contractor announced on the Certification of DBE Utilization it would pay the DBE firm.
2. Deduct the amount of work not accomplished by DBEs from the money due or to become due to the contractor.
3. Initiation of appropriate debarment or decertification proceedings.
4. Termination of the contract
5. Referral of any unlawful actions to the appropriate enforcement agencies.
6. Other actions as appropriate, at the discretion of PRITA.

Contractor Reporting Requirements

Section 26.9 (c) Monitoring and Enforcement

PRITA will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made

available for inspection upon request by any authorized representative of the PRITA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

PRITA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This will be made through monthly payment certifications from time of contract award. Prime contractors/consultants will be required to submit monthly certification of subcontract payment reports to the project administrator detailing payments and changes to DBE participation and subcontracts and provide appropriate documentation to verify such payments. PRITA prepared a form to track down payments performed to subcontractors at project site. Interim audits 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 to ensure that DBE commitments are being met.

PRITA 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. PRHTA also will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

49 CFR Part 26 lists the regulations, provisions, and contract remedies available to PRHTA in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

Section 26.31 Directory

PRITA 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. This list is made and published by the PRHTA, they revise the Directory *annually and is* available as follows: *Dtop.gov.pr* or in the Office of Civil Rights of the PRHTA.

Section 26.33 - Over-Concentration

If PRITA identifies an over-concentration of DBEs in a particular trade/sub trade area, it will take necessary steps to implement a program designed to address the issue of over-concentration. At the present, PRITA has not identified over concentration in any particular trade or sub trade.

Section 26.35 Business Development Program The Puerto Rico Integrated Transportation Authority has not established a Business Development Program. However, PRITA will evaluate the necessity of the development of this program during the three years of term cover by this DBE Program.

Section 26.37 Monitoring and Enforcement Mechanisms

The PRITA 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. Attachment lists the regulation, provisions, and contract 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.
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 Small Business Participation

The regulatory requirement of 49 CFR, 26.39 Fostering Small Business is incorporated as part of the contract requirements under the DBE Program and DBE Program Contract Provision. It is still the intent of PRITA to keep making good faith efforts to facilitate race gender neutral participation on proposed federal projects as part of its good faith implementation of the DBE program. PRITA is taking steps to foster competition by small business concerns with the approval of DOT and FHWA/FTA to eliminate obstacles to their participation including, but not limited to:

- (1) Eliminating unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors;
- (2) In multi-year design build contracts (e.g., mega projects), requiring bidders on the prime contract to specify elements of the contract or specific subcontract that meet a size that small business, including DBEs, can reasonably perform.

- (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- (4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- (5) Implementing the overall goal wholly through race/gender-neutral measures, ensuring that a reasonable numbers of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

Section 26.43 - Quotas

PRITA will not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Appendix F PRITA DBE Update Report. This section of the program will be updated when the methodology changes and corresponds to the submission of the triennial goal.

In accordance with Section 26.45(f) PRITA will submit its overall goal to DOT on August every three years. Before establishing the overall goal for a three-year period, PRITA in collaboration with the Civil Rights Office of the Puerto Rico Department of Transportation and Public Works will consult with the Small Business Administration of Puerto Rico to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and PRITA efforts to establish a level playing field for the participation of DBEs.

The Civil Rights Office of the Department of Transportation and Public Works is in charge of scheduled island wide public activities that involve the public participation of general women's,

general contractor's groups and the community that may have interest in the DBE Program. This activity is made with the collaboration of the Small Business Administration of Puerto Rico and the Civil Rights Office of PRDOT. Ms. Annie Del Moral is the Civil Rights Officer that coordinates this activity and serves as the general informant of the DBE Program.

PRITA as a recipient of USDOT funds is mandated by USDOT to establish a triennial goal for the utilization of DBEs on USDOT-assisted contracts. PRITA overall goal is expressed as a percentage of all Federal-aid total payments going to prime contractors and subcontractors performing USDOT-assisted contracts that is paid to DBEs. This state goal is based on demonstrable evidence of the availability of ready, willing and able DBEs relative to the universe of all businesses participating on PRITA USDOT-assisted contracts. The USDOT requires a two-step process for setting the state DBE goal. The first step is to establish a base figure for the relative availability of DBEs. The second step is to adjust the base figure in order to determine the state DBE goal.

Step One: Base Figure:

To establish the base figure, PRITA has gathered US Census Bureau data relevant to projected projects to ascertain the number of available firms in the selected Municipalities. Only DBE's which are currently certified with the Puerto Rico Highway Transportation Authority (PRHTA) will be counted as available DBE.

Step Two: Adjustments

An overall base figure will be determined by weighting DBE availability in these categories of work determined by the amount of contract dollars going to each category of work on past USDOT assisted contracts.

In adjusting the base figure, PRITA will consider, at a minimum, the following:

- Past utilization of DBEs on USDOT-assisted contracts;
- Any future changes in the volume and distribution of contract dollars by category of work;
- Potential DBE contractors who may not qualify for re-certification;

- And other factors as referenced by 49 CFR Part 26.45(d).

PRITA will establish its DBE goal on a three-year basis. The goal will be submitted for USDOT approval by August 1. PRITA will publish a notice announcing that the proposed goal and its rationale will be available for review during normal business hours at PRITA External Resources Office for 30 days following the date of the notice. This notice shall inform the public that PRITA and USDOT will accept comments on the state goal for 45 days from the date of the notice. The notice will include the addresses to which comments may be sent. This information will be published in El Nuevo Día Puerto Rico main newspaper and in the PRDOT website. [e.g., newspapers, available minority- focus media, trade publications, websites.] Normally, we will issue this notice by June 1 or each year. The address to which comments may be sent is PRITA DBE Liaison Officer, P.O. Box 41267, San Juan, Puerto Rico 00940.

PRITA will request approval of its proposed DBE goal to allow time for compliance with the public participation requirements of 49 CFR Part 26.45(g) and detailed in Section XI of the DBE Program.

Copy of the methodology, worksheets used to develop the goal, summary and responses to comments received, and proof of publication of the overall goal will be submitted to the FTA's Civil Rights Office.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on the PRITA Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the triennial goal, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments.
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Submit the plan to *FTA* within 90 days of the end of the affected fiscal year.

The vast majority of contractors doing work for PRITA agencies for both federal-aid and nonfederal-aid projects are minority contractors. This is due to our homogeneous situation as Hispanics, in which almost all of the firms seeking contracts with PRITA will classify under that definition. For the purpose of determining compliance with DBE utilization/participation requirements, no distinction will be made between firms certified as DBE and WBE.

Overall goals are based on a projection of the number and types of federal contracts awarded by the applicant and a projection of the number and the relative availability of DBEs likely to compete for contracts. Following a three-year review, a new goal will be set.

The Commonwealth of Puerto Rico presents a unique situation when compared to the situation in the Continental United States, in the treatment of equal opportunity and affirmative action to disadvantaged business enterprises. As previously stated, the almost homogeneous characteristic of the population of individuals of Hispanic origin will require the development of innovative programs to achieve the purpose and intents of the US DOT's DBE program. Unlike the majority of States, most of the DOT-assisted contracts in Puerto Rico are awarded to firms that are owned and controlled by individuals who by definition would be considered socially and economically disadvantaged. With the new rule, it is anticipated that overall goals attainments for the DBE program will be reviewed every three (3) years rather than annually. The DBE Program in Puerto Rico should be one of (1) maintaining the level of DBE participation, (2) exploring areas in which the program intent is not being reached, and (3) upgrading the capabilities of DBEs.

Based on the unique situation in Puerto Rico, PRITA expects to meet most if not all of its overall DBE goal through race-neutral means. This may involve the redesign of the PRITA contracting processes to encourage small business participation on providing assistance in obtaining bonding and financing; providing technical assistance; providing assistance to start-up firms and assisting DBEs in utilizing emerging technology. If the on-going review of PRITA projects reveals that DBE utilization for the three-year period will fall substantially below its overall annual projected goal, then PRITA may utilize race conscious measures.

Section 26.47(a)(b) Failure to Meet Overall Goal

PRITA acknowledges that it must make every good faith effort to meet its overall goal for each year within the established three-year period.

- (a) PRITA cannot be penalized, or found in non-compliance if the DBE Program falls short of reaching the overall goal, unless there is failure to administer the program in good faith.
- (b) Noncompliance can be found if there is no approved DBE program or overall goal, or if there is failure to implement the program in good faith.

Section 26.47(c) Shortfall Analysis

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

The objective is to ensure PRITA 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 PRITA fiscal year is June 30.

It is the responsibility of the DBELO in conjunction with the Finance Manager, to conduct a shortfall analysis and corrective action plan when PRITA fails to meet its Triennial DBE goal by the end of the fiscal year.

If the awards and commitments shown in PRITA'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 collective 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.

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

Section 26.49 Transit Vehicle Manufacturers Goals

PRITA 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, PRITA 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.

As an FTA recipient, PRITA is required to report transit vehicle manufacturer (TVM) awards within 30 days of making the award. The report must include the name of the successful bidder and the total dollar amount of the contract. PRITA will use the online Transit Vehicle Award Reporting Form to report the required information. The process for completing the report is as follows:

1. Procurement staff must notify the DBELO within ten (10) days of making a transit vehicle manufacturer award.
2. The DBELO will complete the online Transit Vehicle Award report at the following link <https://www.surveymonkey.com/r/vehicleawardreportsurvey> within five (5) days of receiving the notice of award from procurement.

Section 26.51 Meeting Overall Goals/Contract Goals

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

Race-neutral Measures Implementation

Race-neutral measures shall be employed, prior to implementing race conscious measures, which may include but is not being limited to:

- Certification of applicant firms regardless of race, color, sex, and national origin;
- Arranging solicitations, timeframes for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation by making contracts more accessible to small businesses, by means such as those provided under §49 CFR 26.39;
- Provide assistance in overcoming limitations such as inability to obtain bonding or financing;
- Providing technical assistance and other services;
- Carrying out information and communication programs on contracting procedures and specific contract opportunities;

- Develop and improve immediate and long- term business management, record keeping and financial and accounting responsibility;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of work, handle increasingly significant projects and achieve self-sufficiency;
- Ensure distribution of the DBE directory through print and electronic means to the widest feasible audience of potential prime contractors;
- Providing at pre-bid meetings the distribution of information to facilitate both DBE and small businesses with services & opportunities.

The Commonwealth of Puerto Rico presents a unique situation when compared to the Continental United States in the treatment of equal opportunity and affirmative action programs in that PRITA will meet its overall goal by using race-neutral means of facilitating DBE participation. In meeting our overall goal of 10%, we will attempt to obtain 100% DBE participation from race- neutral participation and 0% through race-conscious measures. However, if after implementing race neutral contracting measures for at least one year PRITA determines that DBE utilization will fail substantially below the overall 10% goal, then PRITA shall implement race conscious measures the second year to meet the overall goal. PRITA will adjust the estimated breakout of race-neutral participation as needed to reflect actual DBE participation in accordance with 49 CFR Part 26.51 (f).

For reporting purposes race-neutral DBE participation includes, but is not necessarily limited to the following:

- DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation on a prime contract exceeding any contract goals, if implemented;
- and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The annual goal shall be a performance standard for measuring progress toward the achievement of the anticipated level of DBE participation and a partial means for assessing compliance with the Department's regulations.

Under 49 CFR Part 26, the principal race-conscious tool available for recipients is setting individual contract goals. Under these regulations, PRITA will not institute a race-conscious quota program for USDOT-assisted contracts. Additionally, Puerto Rico law precludes the use of set-asides. Procedures to implement other connective action deemed appropriate to remediate egregious instances of discrimination shall be established, as permitted by law. If PRITA has reason to believe the Authority will not meet its overall annual goal, contract specific goals may be established by PRITA.

Project/Individual Contract Goal Setting

Individual contract goals will be used only, if race neutral measures prove unsuccessful toward achieving our overall annual goal. To that end, contract goals will only be used for contracts that have subcontracting opportunities. Items to be considered in establishing individual contract goals will include, but not limited to: category of work, location of the work, and the availability of DBEs to perform that particular work. To be responsive, prime construction contractors, or prime design or other consultants bidding/submitting proposals for which DBE contract goals have been established must either meet or exceed the goals or show Good Faith Efforts to meet the goals. Each individual contract goal established for any particular contract/project shall be coordinated with the Office of External Resources and the Office of General Services of PRITA.

PRITA will use contract goals to meet any portion of the overall goal PRITA 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.

Section 26.53 (a), (c) & (d) Good Faith Efforts

If needed, PRITA will set individual contract goals. The basic obligation of bidders is to make Good Faith Efforts (GFE) to meet the goal pursuant to 49 CFR Part 26. This obligation can

be satisfied by: documenting that the bidder has obtained commitments for sufficient DBE participation to meet the goal, or documenting that the bidder has made good faith efforts to meet the goal even though the bidder did not obtain enough DBE participation.

When the PRITA sets an individual contract goal, if applicable, a completed Certification of DBE Utilization shall be required at the time of the bid submittal. The Bid Evaluation Committee (BEC) shall make sure that all required DBE participation information is complete and accurate before recommending award of the contract. If it is determined that the apparent successful bidder has failed to meet the minimum DBE participation requirements as evidenced by review of the Certification of DBE Utilization before award of contract, the BEC before award of contract, will provide the bidder/proposer the opportunity for administrative reconsideration. As part of this reconsideration, the bidder/proposer will provide written documentation or argument concerning issue of whether it met the goal or made good faith efforts to do so.

The Bid Evaluation Committee is composed by:

Miguel Ramirez, Puerto Rico Integrated Transportation Authority
(787) 294-05500
Luis Raúl Torres, Puerto Rico Ports Authority (787) 729-8715
Yomarie Pacheco, Puerto Rico Highway Authority (787) 721-8787

The information contained in the Certification of DBE Utilization must be complete, detailed, accurate, and in final form at the time it is submitted to the PRHTA for approval. This form will be evaluated prior to the award of the contract. Failure to submit this document in proper form and accuracy shall be cause for not awarding the contract. All bidders are required to list on the Certification of DBE Utilization the following information:

- a. The names of DBE subcontractors and suppliers that will participate in the contract;
- b. A description of the item and work that each DBE will perform;
- c. The real dollar value of the subcontract participation of each DBE firm listed; and
- d. Written documentation of the bidder's/offeror's commitment to use DBE (CDBEU) subcontractor's suppliers whose participation it's submitted to meet the good faith efforts.

In race conscious measures, all bidders/proposers will be required to adequately document good faith efforts in accordance with Appendix A of 49 CPR Part 26. If the decision is made to

reject the good faith effort, the bidder has the right to request administrative reconsideration within five days of notification. If the bidder requests administrative reconsideration, the bidder can choose to submit a written narrative supporting its good faith effort submittal or to appear in person.

Administrative Reconsideration:

Within five (5) working days of being informed by the PRITA that it is not 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: Monica Torres Marrero, Esq., phone (787) 721-8787 email: motorres@dtop.pr.gov. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with 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.

If the apparent low bidder or successful contractors, or consultants cannot meet the established DBE contract goal, if applicable, or fail to show good faith efforts towards overall goal and proposes a reduced DBE goal, then the bidder/offeror shall document and submit its justification for not meeting the goal and its documented demonstration of good faith efforts at the time of the bid opening. This justification is a documented demonstration of good faith efforts by the bidder/offeror, which must, in the end, show that the contractor/consultant had actively and aggressively sought out DBEs to participate in the project. Mere proforma efforts are not the necessary and reasonable steps that indicate good faith efforts. PRITA will consider the quality, quantity, and intensity of the different kinds of efforts that were made in trying to obtain DBE participation sufficient to meet the DBE contract goal as set forth in Appendix A to and 49 CFR PART 26.

The following is a list of types of actions in which the PRITA will consider as part of the bidder's/offeror's Good Faith Efforts to obtain DBE participation. This list is not intended to be a

mandatory checklist, nor is it intended to be exclusive or exhaustive, as other factors or types of efforts may be relevant in appropriate cases. This demonstration should include, but not be limited to, the following:

- a. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder/offeror must solicit this interest within sufficient time to allow DBEs to respond to the solicitation. The bidder/offeror must determine with certainty if DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. Negotiating in good faith with interested DBEs. It is the bidder's/offeror's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors, sub-consultants and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting or sub-consulting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors or sub-consultants, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals, if applicable, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract DBE goal, if applicable, as long as such costs are reasonable. Also, the ability or desire of the prime contractor or consultant to perform the work of a contract with its own organization does not relieve the bidder/offeror of the responsibility to make good faith efforts. Prime contractors or consultants are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's or consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's or consultant's efforts to meet the project goal.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient, contractor or consultant.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

Effectively using the services of available minority/women community organizations; minority/women contractor's groups; local, state, federal, private, non-profit minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. DBE prime contractors are required to meet goals and make good faith efforts on the same basis as non-DBE prime contractors. DBEs can count toward goals the work that they commit to performing with their own forces. DBE prime contractors will be expected to make the same outreach efforts as other bidders and to document good faith efforts in situations where they do not fully meet contract goals.

The Prime contractor may not terminate a listed DBE firm for convenience and then perform the work with its own forces without PRITA's written consent. When a contractor is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to find another DBE subcontractor to substitute for the original DBE or make good faith efforts to do so to the extent need to meet the contract goal established by PRITA. Examples of actions which may not be acceptable as reasons for failure to meet the DBE goal:

- a. DBE unable to provide performance and/or payment bonds.
- b. Rejection of reasonable DBE bid based solely on price.
- c. DBE would not agree to perform all or most of the work of the contract.
- d. Union versus non-union status.
- e. Prime contractor normally would perform all or most of the work of the contract.
- f. Solicitation by mail or telephone only.

If PRITA lets a master contract for "design-build" or "turnkey" contract or similar legally binding instrument to a contractor or consultant who in turn lets subsequent subcontracts for the work

of the project, PRITA may establish a DBE contract goal for the project. The master contractor or consultant then establishes DBE contract goals, as appropriate, for the subcontracts it lets. PRITA shall maintain oversight of the master contractor's or consultant's activities to ensure that they are conducted consistent with the requirements of PRITA, DBE Program and 49 CFR Part 26.

PRITA requires that the successful bidder/offeror, or subsequently the prime contractor or consultant, not terminate for convenience a DBE subcontractor or sub-consultant listed in the Certification of DBE Utilization, or an approved substitute DBE firm, and then propose to perform the work of the terminated subcontract with its own forces or those of an affiliate, without PRITA prior written consent.

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 PRITA 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 6% 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.

[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found at Attachment can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended

for use in both no construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.]

Section 26.55 Counting DBE Participation

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

SUBPARTS D & E- CERTIFICATION

Section 26.61-26.73 Burdens of Proof

PRITA will rely on PRHTA's use of certifications standards of Subpart D of 49 CFR Part 26 and the certification procedures of Subpart E of 49 CFR 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 certifications decisions based on the facts as a whole.

CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Process

The PRITA, adopting the PRHTA (leading member of a Unified Certification Program (UCP) approved by the US on May 22, 2003) participates in an Unified Certification for the regulations codified at 49 CFR Part 26. All recipients in Puerto Rico must sign an agreement establishing the UCP and submitting the agreement to the Secretary of the Department of Transportation (USODOT) for approval. Currently, PRHTA is responsible for recertification process and directory for all USODOT recipients in the Government of Puerto Rico.

The PRHTA Unified Certification Program consists of three (3) certifying Agencies of the Commonwealth of Puerto Rico that have signed an agreement, form part of the process and perform DBE certification for the Island of Puerto Rico. There is an agreement between the PRHTA, Puerto Rico Metropolitan Bus Authority and Ports Authority and all other Island municipalities included, that are required to participate in the DBE program 49 CFR Part 26. All agencies and municipalities receiving federal financial assistance from the federal DOT have signed a letter stating their support for the PRHTA UCP. Those letters of support were submitted as part of the PRHTA submission to the Federal DOT for UCP approval. The agreement specifies that the UCP will follow all certification procedures and standards of this part, on the same basis as the PRHTA; that the UCP shall cooperate fully with oversight, review

and monitoring activities of USDOT and its operating administrations; and that the UCP shall implement USDOT directives and guidance concerning certification matters. The agreement commits the PRHTA and other recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part.

The UCP makes all certifications on behalf of all USDOT recipients in Puerto Rico with respect to participation in the USDOT DBE Program. Certification decisions by the UCP shall be binding on all USDOT recipients. The UCP provides "one-stop shopping" to applicants for certification, in which an applicant is required to apply only once for a DBE certification and will be honored by all recipients in the Commonwealth of Puerto Rico. The UCP is not required to process an application for certification from a firm having its principal place of business outside Puerto Rico if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application. An UCP may accept the certification of any other UCP or USDOT recipient as long as it complies with regulation requirements and is certified in his home state.

The UCP certifying entities are responsible for certifying and maintaining a centralized DBE database directory that is regulated by 49 CFR Part 26. The PRHTA has agreed to serve as the host for maintaining the UCP DBE Database directory for all firms certified by the UCP (including those from other states certified under the provisions of this section), as the information required by section 26.31 of the federal regulations. PRHTA makes the UCP DBE directory available to the public electronically, on the Internet, as well as in print. The UCP DBE Directory electronic version is updated on a monthly basis, by including new additions, deletions and changes as soon as they are made sharing the information with other states. A hard copy Directory shall be available on a yearly basis.

Section 26.83, 26.91 Certification Procedures

The PRHTA will ensure that only firms certified as eligible DBEs under this section participate as DBEs in PRHTA DBE Program. The PRHTA will determine the eligibility of firms as DBEs consistent with the standards of subpart D of 49 CFR Part 26. The PRHTA will take the following steps in determining whether a DBE firm meets the defined certification standards:

- Perform an on-site visit to the offices of the firm. The PRHTA must interview the principal officers of the firm and review their resumes and/or work histories. It must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation or adjacent local areas. The PRHTA may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- If the firm is a corporation, analyze the ownership of stock in the firm;
- Analyze the bonding and financial capacity of the firm;
- Determine the work history of the firm, including contracts it has received and work it has completed;
- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- Require potential DBEs to complete and submit an appropriate application form. The PRHTA will make sure the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths.
- The PRHTA will review all information on the form prior to making a decision about the eligibility of the firm. It will prohibit the release of personal financial information associated with determining net worth and related certification eligibility issues.

Section 26.83 Recertification Section

We will review the eligibility of DBE's that we certified under former part 23, to make sure that they meet the standards of Subpart D of part 26. We will complete this review no later than three years from the most recent certification date of each firm. If the DBE fails to provide information required for the recertification in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR Part 26.

No Change Affidavits and Notices of Change

PRITA will require all DBEs to inform, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the DBE's application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit (Appendix E) meeting the requirements of 26.83(j). The text of this affidavit is the following:

"I swear (or affirm) that there have been no changes in the circumstances of (name of DBE firm) affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no materials changes in the information provided with (name of DBE)'s application for certification, except for any changes about which you have provided written notice to the [Name Recipient] under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$22.41 million."

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts. We will notify all currently certified DBE firms of these obligations in writing at least 60 days before the certification expires. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fail to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Section 26.86 Certification Denials

When PRITA denies a request by a firm, which is not currently certified with Puerto Rico's DBE Program to be certified as a DBE, PRITA will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial.

Section 26.87 Decertification and Removal Procedures

Any person may file a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. PRITA is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not

continue to be certified. Confidentiality of the complainant's identity must be protected as provided in 49 CFR 26. PRITA will then, review its records concerning the firm, any material provided by the firm and the complainant and any other available information and may request additional information from the firm or conduct any other investigation that it deems necessary.

If the determination is, based on the review, that there is reasonable cause to believe that the firm is ineligible, then PRITA must provide written notice to the firm that PRITA proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If PRITA determines that such reasonable cause does not exist, then it must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Status of the Firm during Proceeding:

A firm remains an eligible DBE during the pendency of the PRITA's proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the notice with the decision and the reason for ineligibility as a DBE.

Section 26.89 Certification Appeals

Any firm or complainant may appeal PRITA's decision in a certification matter to USDOT. Such appeal may within 90 days of the written determination be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building 7th floor
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).

Prior to an appeal to USDOT any firm or complainant may informally appeal directly to PRHTA within 30 days. This informal administrative process does not replace the appealing to USDOT under 49 CFR Part 26.89.

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. PRITA will utilize the DBE list provided by the Department of Transportation and Public Works Transportation Unified Certification Program (UCP). The PRDOT UCP acts as a statewide clearinghouse for DBE notification and certification. PRITA will also coordinate and share information on potential DBEs with other FTA recipients in Puerto Rico area who have DBE programs.

PRITA 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, PRITA 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

PRITA will require prime contractors to maintain records and documentation of payments to DBEs during the performance of the contract and three (3) years after its completion. These records will be available for inspection upon request by any authorized representative of USDOT and PRITA. Although not stipulated in the regulation, the DBELO periodically visits project sites, audits and monitors useful function and proper procedures in payments to DBEs, to ensure that the contractor is paying DBEs the actual amounts stipulated on the Certification of DBE Utilization.

REPORTING TO USDOT

PRITA will continue to provide data about the DBE Program as directed by PRDOT operating administrations. Participation Reports will be furnished on a quarterly basis.

PUBLIC PARTICIPATION PROCESS

PRITA will consult with minority, women and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and PRITA's efforts to establish a level playing field for the participation of DBEs.

Upon submission of the proposed PRITA DBE Plan and DOT approval of the proposed overall goal PRITA will publish a notice announcing its proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at PRITA for 30 days following the date of the notice, and informing the public that PRITA and USDOT will accept comments for 45 days from the date of the notice. The notice will state the address of PRITA and USDOT where comments may be sent. The notice will be published in general circulation media and available minority-focused media and trade association publications.

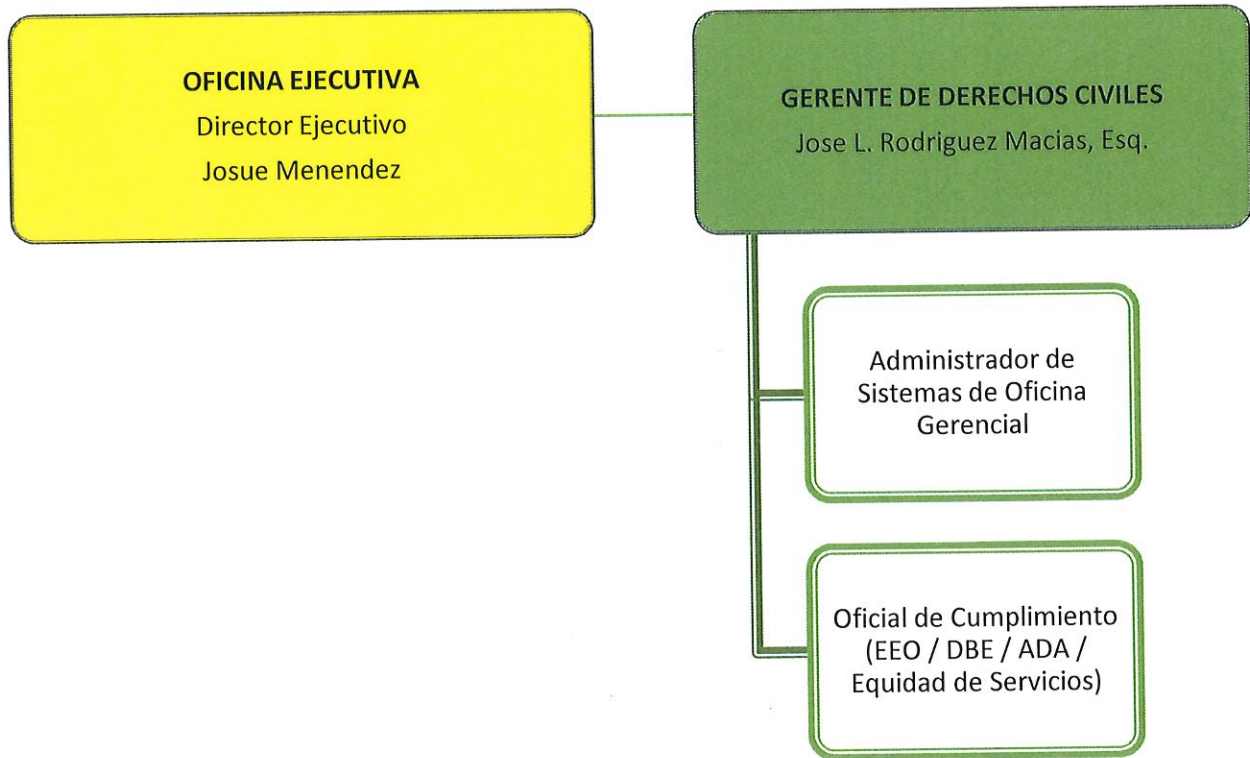
ATTACHMENTS

- APPENDIX 1- ORGANIZATIONAL CHART
- APPENDIX 2- OVERALL GOAL CALCULATION
- APPENDIX 3- BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE-CONSCIOUS PARTICIPATION

- APPENDIX 4- FORM 1 & 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS
- APPENDIX 5- CERTIFICATION APPLICATION FORMS
- APPENDIX 6- PROCEDURES FOR REMOVAL OF DBE'S ELIGIBILITY
- APPENDIX 7- REGULATIONS: 49 CRF PART 26



Attachment 1 Organizational Chart



Attachment 2
Overall Goal Calculation
Amount of Goal

The Puerto Rico Integrated Transportation Authority (PRITA) Disadvantaged Business Program (DBE) has prepared this submission to the Federal Transit Authority (FTA) to describe the methodology used to establish the goals mandated by Regulation 49 CFR Part 26 for its federally assisted contracts. The overall goals projected for 2022-2023 and 2024 have been established at 34% utilizing the methods described in 49 CFR part 26.

Methodology used to Calculate Overall Goal

Step 1: 26.45 (C)

In establishing the goals for PRITA, it is required that the goal setting process begin with a base figure for the relative availability of DBE's. The goal is based on evidence of the availability of certified and willing DBE firms that can participate in FTA-Assisted contracts. The goal reflects the level of DBE participation that is expected, minus the effect of discrimination. PRITA has chosen the bidder's list methodology to calculate its overall DBE annual goal and determine the relative availability of DBEs.

The general market area in the island of Puerto Rico, Vieques and Culebra have no geographical boundaries that preclude firms to perform work, as they can move easily from one place to the other to meet the necessities and working conditions. Distribution of federally assisted contracts and projects that are procured to the market follow our Capital Improvement Programs (CIP, which delineate the construction projects within the next four (4) years in the local market. Any firm may participate in federally funded projects if they comply with state and federal regulations.

While PRITA is a new agency and has a limited history of procurement and bidding of contracts, it has created the following analysis, based on the Puerto Rico Ports Authority's (PRPA) history in order to illustrate the methods to be followed in establishing its overall goal.

The following is an analysis of PRPA's federally assisted contract bidder's list records for the fiscal years 2012/13. It includes firms that have expressed an interest in participating or have marketed, solicited and/or received contracts or subcontracts awards and purchase orders in which the total value is above the small purchase threshold of \$25,000.00. Available records for PRITA projects and/or procurements during the fiscal year were also reviewed to reassess the overall base figure of the relative availability of ready, willing, and able DBEs within the market. PRPA projects derive most of their DBE participation through subcontracting and it is essential that all DBE and Non-DBE firms that participated to be included. PRITA reviewed the bidders list for 2012-13 and it shows that 76 participants presented quotes: either as a prime contractor or a subcontractor on federally funded construction projects. Consequently, the total number of all participating firms soliciting and/or receiving awards and purchase orders for federally assisted

contracts-subcontracts was Seventy-Six (76). Of those, ten (10) were DBE certified, who were ready and actively pursuing contract opportunities during the fiscal year.

We have divided the number of DBE bidders (10 ready, willing and able) by the number of all businesses relative to our overall bid tabulation (76) to derive a base figure for the overall annual DBE goal Participation:

$$\text{Base figure} = \frac{\text{Ready, Willing and Able DBE's (10)} \\ \text{(numerator)}}{\text{All firms -ready, willing and able (76)} \\ \text{(denominator)}}$$

The above mathematical operation When that number is divided, as shown above, the overall base figure for our overall goal equals 13 percent (13%).

$$\frac{10 \text{ DBEs}}{76 \text{ firms}} = 13\% \text{ Overall Annual DBE Participation}$$

Step 2: 26.45 (d)

In harmony with 49 CFR Part 26, step two of the calculation process should examine the evidence to determine if adjustments are needed in the base figure to arrive at an overall goal. The evidence that is available to be considered to determine if an adjustment is needed is the capacity of DBEs by the past volume of work performed during years 2012 to 2013.

PRPA arranged the DBE participation values for the last five years from low to high: 0%, 0%, 13%, 56% and 77% and took the middle percentage participation (56%) to obtain the median past participation percentage. By adding together, the Step one percentage (13%) and the median goal participation percentage (56%) divided by 2 to obtain an adjustment of 34= 34% to the Step One Base Figure. Thus, the adjusted figure is 34%.

Year Total PRPA Race-Neutral DBE Utilization:

FFY	DBE % Goal	Contract Awards	DBE Expenditures	DBE % Achievements
2010	18%	10,381,344.00	1,365,469.00	13%
2011	18%	6,388,738.00	3,605,629.00	56%
2012	18%	5,521,317.00	4,271,185.00	77%
2013	18%	0	0	0%
2014	18%	0	0	0%

PRPA has no evidence of discrimination on the part of contractors and does have evidence of continuing good faith efforts.

There are no mayor projects in the immediate forecast for federally assisted contracts in which PRITA can reasonably expect a significant increase in the level of subcontracting opportunities for DBEs. Numerous businesses are now pursuing certification due to increase in interest in participating in upcoming federal projects. Nevertheless, the overall economic ambiance (banking-loans) is limited, thus the forecast on upcoming projects has additional constraints.

That data used within this analysis shows that from the overall 76 firm participation in federally assisted programs, 10 were DBEs. Based on the US Census, that majority of the residents in Puerto Rico are Hispanic (98.9%). Although we must comply with regulations, the program does not require for companies to be certified to qualify for participation in Federally assisted programs. Once you meet the regulatory requirements and comply with the DBE Special Provision, as included within the contract documents, including a commitment with good faith efforts, requirements are met.

Personal Net worth proves to be the main constraint in firms declining certification. Although Hispanics fall within the spectrum of minorities and Puerto Rico is 98.9 % Hispanic, PRITA expects more contractors to be certified as DBE. Per 49 CFR Part 26, supra, step two of the calculation process should examine the data to determine if adjustments are necessary in the base figure to reach an overall goal. The current overall percentage is appropriate, when considering past performance and overall ethnic reality. WE have evaluated all available data within our jurisdiction and have concluded that, at this time, no adjustments are necessary. Our proposed overall goal of 34% is reachable through race neutral participation, although economical constraints may pose concern. Should variables within the data deem adjustments, PRITA will refurbish its overall calculation and present ulterior processes to FTA in accordance with such changes.

Public Participation

PRITA will publisj a notice, in English and Spanish, of the proposed DBE goals, thus informing the public of the same within the fiscal years. The information will be available for inspection during regula business hours at the External Resources Office, for 30 days following the date of notice. The notice includes acceptance of comments on the goals for a period of 45 days from the date of publication. PRTA will forward any comments regarding the DBE gals to FTA.

Attachment 3
Breakout of Estimated Race-Neutral & Race Conscious Participation

PRITA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. PRITA uses the following race-neutral means to increase DBE participation: Approximately all participation and/or possible bidders within our procurement processes are Hispanic, as defines by 49 CFR part 26. Based on our three-year analysis, PRITA forecasts that the projected overall goal will be achieved through 100% race neutral means. Since the population of Puerto Rico is 98.9% Hispanic, most businesses that participate are considered minority business enterprises. For that reason, PRITA has chosen to continue its policy of 100% race gender-neutral contracting methods to attain our DBE goals, unless our goals are not met.

Race gender-conscious DBE participation will also remain at zero percent (0%) unless its determined that race gender neutral means are not effective in achieving our annual goal. We will keep encouraging prime contractors to subcontract portions of work that are normally performed by their own workforce to debe-certified firms to procure good faith efforts and as included within contractual DBE Special Provisions.

However, if after implementing race neutral contracting measures PRITA concludes that DBE utilization will fall substantially below the projected overall goal, PRITA shall implement Race Conscious means to meet the overall goal. In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, we will adjust the estimated breakout of race-neutral and race conscious participation, as needed, in accordance with 49 CFR Pat 26.51 (f).

For reporting purposes, race neutral DBE participation includes, but is not limited to:

- DBE participation through a prime contract that a DBE obtains through customary competitive procurement processes
- DBE participation through a subcontract on a prime contract as an additional good faith effort
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The annual goal shall be a performance standard for measuring progress towards the achievement of the anticipated level of DBE participation and a partial means for accessing compliance with regulations. PRITA will maintain data separately of DBE achievements in those contracts with and without contract goals, respectively.

Attachment 4
Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

_____ The bidder/offeror is committed to a minimum of .10 % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of .10%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(signature)

_____ (title)

Date: _____

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____
(signature)

(title)

*** If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void. Copy of this document shall be presented to every DBE contractor ***



**Attachment 5
Certification Application Forms**

**CERTIFICATION OF ELIGIBILITY UNDER PRITA'S DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM**

I, _____, in my capacity as described below, do hereby certify as follows:

I am the duly elected and qualified to execute and deliver this Certification in such capacity for _____ of _____ and:

The Company is an applicant to PRITA, pursuant to the DBE Program; and

On behalf of the Company, I have reviewed the DBE Policy adopted by PRITA pursuant to the DBE Program; and

I hereby certify that each owner of the Company whose ownership and control are relied upon for DBE eligibility is socially and economically disadvantaged, as defined in Section VI, Part D (a) of the DBE Policy, a copy of which is attached as Exhibit A.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate to the County of _____, BOARD, effective as of the ____ day of _____, _____.

COMPANY: _____

BY: _____

TITLE: _____

STATE OF _____)

CITY OF _____) SS

On this _____ day of _____, 20__, before me appeared _____, who, being sworn, acknowledged that the signature appearing above is the free act and deed of said person.

Notary Public

Attachment 6

Procedures for Removal of DBE's Eligibility

Ineligibility complaints

Any person may file with PRITA, a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected.

PRITA will review its records concerning the firm, any material provided by the firm and the complainant, and any other available information. Additional information may be requested by the PRITA from the firm.

If PRITA determines, based upon its review, that there is reasonable cause to believe that the firm is ineligible, PRITA shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination.

If PRITA determines that such reasonable cause does not exist, it shall notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Recipient-initiated proceedings

If, based on notification by the firm of a change in its circumstances or through other information that becomes available, PRITA determines that there is reasonable cause to believe that a currently certified firm is ineligible, PRITA shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

FTA directive to initiate proceeding

If the concerned operating administration determines that information in the certification records of PRITA, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm PRITA certified does not meet the eligibility criteria of this part, the concerned operating administration may direct PRITA to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide PRITA and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

PRITA must immediately commence and prosecute a proceeding to remove eligibility as provided in the Recipient-initiated proceeding section above.

When PRITA notifies a firm that there is reasonable cause to remove its eligibility, PRITA must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

In such a proceeding, PRITA bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

PRITA must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT, PRITA must provide a transcript of the hearing to DOT and, on request, to the firm. PRITA must retain the original record of the hearing and may charge the firm only for the cost of copying the record.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, PRITA shall bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

Separation of functions

PRITA must ensure that the decision in a proceeding to remove a firm's eligibility is made by office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

Grounds for decision The BOARD shall not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. The BOARD may base such a decision only on one or more of the following:

- Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- Information or evidence not available to PRITA at the time the firm was certified;
- Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- A change in the certification standards or requirements of FTA since you certified the firm;
or
- A documented finding that your determination to certify the firm was factually erroneous.

Notice of decision

Following the decision, PRITA shall provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the PRITA's determination and of the availability of an appeal to the Department of Transportation. PRITA shall send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

If PRITA decertifies a DBE firm that is certified by the Small Business Administration (SBA), PRITA shall notify the SBA in writing. The notification must include the reason for denial.

Status of firm during proceeding

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility by PRITA. The firm does not become ineligible until the issuance of the notice provided for above.

Effects of removal of eligibility

When the BOARD removes a firm's eligibility, the BOARD shall take the following action:

- When a prime contractor has made a commitment to using the ineligible firm, or PRITA has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the decertification notice is issued, the ineligible firm does not count toward the contract goal or overall goal. PRITA shall direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- If a prime contractor has executed a subcontract with the firm before PRITA has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where PRITA lets a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility is issued shall not count toward the overall goal, but may count toward the contract goal.
- Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, PRITA may continue to count its participation on that contract toward overall and contract goals.

Availability of appeal

When PRITA makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department of Transportation under §26.89.