

ALASKA RAILROAD CORPORATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

**July 1, 2010
As Amended:
March 25, 2014
As Updated:
March 25, 2019**



**Alaska Railroad Corporation
Disadvantaged Business Enterprise Program**

Policy Statement

The Alaska Railroad Corporation (ARRC) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the United States Department of Transportation (DOT), 49 C.F.R. Part 26. The ARRC has received federal financial assistance from DOT and, as a condition of receiving this assistance, the ARRC has signed an assurance that it will comply with 49 C.F.R. Part 26.

It is the policy of the ARRC to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in Federal Transportation Administration (FTA) and Federal Highway Administration (FHWA) assisted contracts. It is also our policy:

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

The ARRC's Deputy Chief Counsel is designated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the ARRC in its financial agreements with DOT.

The ARRC will disseminate this policy statement to its Board of Directors and all components of the ARRC organization. We will distribute this statement to DBE and non-DBE business organizations that perform work for us on applicable DOT-assisted contracts and will post this DBE Program on the ARRC web site.

Signed: 
Bill O'Leary
ARRC President and CEO

Date: 3/25/19

I. GENERAL REQUIREMENTS

- A. Applicability.** The ARRC is a recipient of federal transit funds awarded under authorizing legislation such as the FAST Act and MAP-21.
- B. Definitions.** The following definitions, along with those set forth in 49 C.F.R. Part 26, apply for purposes of this DBE Program.
1. ADOT&PF - State of Alaska Department of Transportation and Public Facilities.
 2. ARRC - Alaska Railroad Corporation.
 3. AUCP - Alaska Unified Certification Program.
 4. Broker - An individual that arranges for the delivery or provision of materials, supplies, equipment, insurance, or bonding that is necessary for the completion of an ARRC project. A broker of materials certified in a supply category must be responsible for scheduling the delivery of materials and must be fully responsible for ensuring that the materials meet project specifications before any DBE credit will be given under this Program.
 5. Contract - A mutually binding legal relationship or any modification thereto obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them.
 6. Contractor - One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, track, or airport program.
 7. CUF - Commercially Useful Function. Work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction; i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward a DBE goal. If, in the ARRC's judgment, the firm (even though an eligible DBE) does not perform a Commercially Useful Function in the transaction, no credit toward the goal may be awarded.
 8. DBE - Disadvantaged Business Enterprise. A for-profit small business concern:
 - a. that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and
 - b. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

9. DOT - United States 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”), but, for purposes of this Program, excluding the Federal Railroad Administration (“FRA”).
10. DOT-assisted contract - Any contract between a recipient and a contractor (at any tier) funded in whole or in part with FTA (Federal Transportation Administration), FHWA (Federal Highways Administration), or FAA (Federal Aviation Administration) financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
11. GFE - Good Faith Efforts. Efforts to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
12. Manufacturer - An individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the ARRC or a contractor.
13. MOA - Municipality of Anchorage.
14. Race-conscious measure or program - One that is focused specifically on assisting only DBEs, including women-owned DBEs.
15. Race-neutral measure or program - One that is, or can be, used to assist all small businesses. For the purpose of this Program, “race neutral” includes gender-neutrality.
16. Recipient - Any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
17. Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, a firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.
18. SBA - Small Business Administration.

19. Secretary - Secretary of Transportation or his/her designee.
20. Set-aside - A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
21. Small Business - A business concern that:
 - (a) meets the then-current size standards for a small business as established by the Small Business Administration; and
 - (b) is currently registered with the U.S. System for Award Management (SAM).
22. Socially and Economically Disadvantaged Individual - Any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is:
 - a. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; or
 - b. Any individual in the following groups, members of which are presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;

- vi. Women; or
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

C. Nondiscrimination Requirements

The ARRC 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 C.F.R. Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the ARRC will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

D. Record Keeping Requirements

- 1. Reports to DOT

The ARRC's DBELO, in conjunction with the Director, Grants and Asset Management, will report DBE participation to DOT on a semi-annual basis, using DOT's Uniform Report of DBE Awards or Commitments and Payments Form, located at 49 CFR Part 26, Appendix B. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

- 2. Bidders List

The ARRC will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on applicable DOT-assisted contracts. The ARRC will collect this information from the bids received by the ARRC Supply Management Department for applicable DOT-assisted contracts.

E. Federal Financial Assistance Agreement

The ARRC has signed the following assurance to DOT:
The ARRC will 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 ARRC will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The ARRC'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 ARRC of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

The ARRC will also ensure that the following clause is contained in every applicable DOT-assisted contract and subcontract:

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

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

II. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates

Since the ARRC has received a grant for \$250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year, the ARRC will continue to carry out this program until all funds from DOT financial assistance have been expended. The ARRC will provide updates to DOT on significant changes in the program.

B. DBE Liaison Officer

1. Designation. The ARRC has designated the following individual as its DBE Liaison Officer (DBELO):

Tina Sellers Wareham
Deputy Chief Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Telephone: (907) 265-2613

Facsimile: (907) 265-2433
E-mail: sellerswarehamt@akrr.com

The ARRC DBELO is responsible for implementing all aspects of the ARRC's DBE Program and ensuring that the ARRC complies with all provisions of 49 C.F.R. Part 26. The DBELO has direct, independent access to the ARRC's President & Chief Executive Officer (CEO) concerning DBE matters. An organizational chart showing the DBELO's position in the organization is attached as Attachment 1.

2. Duties and Responsibilities.

- a. The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO's duties and responsibilities include the following:
 - i. Gathers and reports statistical data and other information as required by DOT;
 - ii. Reviews solicitations in compliance with the DBE Program requirements;
 - iii. Works with relevant ARRC departments to set overall annual and/or contract specific goals;
 - iv. Ensures that bid notices and requests for proposals are available to DBEs and other businesses in a timely manner;
 - v. Identifies DOT-assisted contracts and procurements so that DBE goals may be included in solicitations (both race-neutral methods and contract-specific goals, if any) and monitors results;
 - vi. Analyzes the ARRC's progress toward goal attainment and identifies ways to improve progress;
 - vii. Participates in pre-bid meetings as required;
 - viii. Advises ARRC President & CEO and Board of Directors regarding DBE matters and achievement on DBE;
 - ix. Provides DBEs and other small businesses with information and assistance in preparing bids and in obtaining bonding and insurance if possible;
 - x. Plans and participates in DBE training programs that may be held from time to time; and
 - xi. Provides outreach to DBEs and community organizations to advise them of opportunities.

C. Other ARRC Personnel Responsible for DBE Program Implementation

1. ARRC Supply Management Department

- a. Ensures required contract assurances are included in all DOT-assisted contracts and subcontracts;
- b. Provides copies of all relevant solicitations to the DBE Liaison Officer for DBE compliance review;
- c. Provides all required bidder information necessary to maintain the Bidders List;
- d. Immediately notifies DBE Liaison Officer of successful bidder;
- e. Upon receipt, provides all prime contractors bidders form and sub-contracting commitment information to the DBE Liaison Officer and Project Manager;
- f. Immediately notifies the DBE Liaison Officer and Project Manager if prime contractors are proposing to terminate or substitute a DBE sub-contractor originally submitted to perform a portion of work on a subcontract;
- g. When applicable, if a bidder does not meet a projected DBE contract goal, provides all GFE documentation, prior to award, to the DBE Liaison Officer. In consultation with the Legal Department and the DBE Liaison Officer determines whether contractor is in compliance with GFEs;
- h. For the purchase of transit vehicles, ensures receipt of compliance certification as required by 49 CFR § 26.49.

2. Legal Department

- a. Advises Supply Management Department on appropriate contract language for applicable DOT-assisted contracts;
- b. Advises the DBE Liaison Officer and Director, Purchasing and Materials in determining contractor compliance with GFEs (where applicable);
- c. Chief Counsel serves as the reconsideration official for bidders who are found to be non-responsive in their GFEs (where applicable).

3. Projects, Maintenance, and Engineering Department

- a. Develops a clear and accurate statement of work/project description of the work to be accomplished, services provided, or goods purchased;
- b. Monitors ARRC projects on which DBEs are used to confirm that the work being performed constitutes a CUF and that the DBE actually performed the work. If a Project Manager finds that a DBE is not serving a CUF or did not actually perform the work, the Project Manager will document the finding in writing and provide it to the DBE Liaison Officer documentation.
- c. Immediately notifies the DBE Liaison Officer and the Supply Management Department if prime contractors are proposing to terminate or substitute a DBE sub-contractor originally submitted to perform a portion of work on a subcontract;

- d. Ensures receipt of verification from prime contractors of prompt payments and return of retainages to subcontractors;

D. DBE Financial Institutions

It is the policy of the ARRC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. To date, no financial institutions owned and controlled by socially and economically disadvantaged individuals have been identified in the community. The ARRC has investigated and will continually investigate whether major financial institutions within Alaska are owned and controlled by socially and economically disadvantaged individuals.

In addition, the ARRC has investigated financial institutions across the United States, which are owned and controlled by socially and economically disadvantaged individuals.

E. Prompt Payment

The ARRC will include the following clause in each relevant 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 thirty (30) days from the receipt of each payment the prime contractor receives from the ARRC. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. This clause applies to both DBE and non-DBE subcontractors.

If a subcontractor feels the prime contractor has not complied with the prompt payment or retainage provisions, the initial attempt to resolve the issue shall occur with the prime contractor. The attempt to resolve the issue shall include at least one written request to the prime contractor, stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed, and signature of a representative of the subcontractor. If the initial attempt to resolve the issue does not result in satisfactory payment for completed work or return of the retainage, the subcontractor may submit a written complaint to the ARRC Project Manager. The written complaint shall include copies of the correspondence with the prime contractor that provides the details stated above. The Project Manager will investigate and provide a written response to the complainant.

F. DBE Directory

The Alaska Unified Certification Program conducts all DBE certifications for the State of Alaska. Applications are processed through the Civil Rights Office of the State of Alaska Department of Transportation and Public Facilities. Alaska's DBE Directory may be found at <http://www.dot.state.ak.us/cvlrts/directory.shtml>. See Attachment 2.

G. Overconcentration

The ARRC has not identified that overconcentration exists in the State of Alaska.

H. Small Business Element

1. The ARRC encourages small businesses to compete for procurement opportunities with the ARRC. To foster that participation, the ARRC includes this Small Business Element in its DBE Program.

2. Small Business Outreach on Small Procurements (less than \$100,000).

a. A small business (as that term is defined in Section I.B of this Plan) interested in doing business with the ARRC may register to be placed on the ARRC's Interested Small Business List. Registration shall be free of charge and shall be available on the ARRC's website at www.alaskarailroad.com. The Interested Small Business List shall be maintained by the ARRC's Supply Management Department and shall reflect the type of goods and/or services provided by each small business on the list.

b. On Small Procurements funded in whole or in part by the FTA, the ARRC Contract Administration Specialist assigned to the procurement shall check to see whether any of the three quotes for the procurement are from a small business listed on the Interested Small Business List. If none of the quotes for the procurement is from a small business registered with the ARRC, the Contract Administration Specialist will contact a small business listed on the Interested Small Business List that offers the type of goods or services called for by the procurement. The small business contacted will be given the opportunity to provide a quote to the ARRC within a time established by the ARRC.

c. If there is more than one small business on the Interested Small Business List providing the same type of goods and/or services as another, the opportunity to provide a quote to the ARRC on Small Procurements shall be rotated equally between or among the registered small businesses providing that type of goods and/or services.

3. Consideration of Contract Unbundling on Procurements over \$100,000.

a. On procurements in excess of \$100,000 that are funded in whole or in part by the FTA, the ARRC will give consideration to the possibility of unbundling the contract in hopes of encouraging participation by small businesses in the procurement.

b. The decision on whether or not a contract may be successfully unbundled shall be made by the Director, Supply Management, the ARRC project manager assigned to the contract, and the Director of the ARRC department sponsoring the procurement. The unbundling decision shall be made before the procurement is issued.

I. Monitoring and Enforcement Mechanisms

The ARRC will employ the following monitoring and enforcement mechanisms:

1. The ARRC will monitor its FTA-funded contracts to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

a. Before any retainage is paid to any prime contractor who committed to using the services of a DBE on the contract, the prime contractor must provide the Project Manager assigned to the contract with:

(i) a description of the work performed by the DBE on the contract; and

(ii) proof of payment to the DBE for the work performed.

b. Upon receipt of the work description and the proof of payment from a prime contractor, the Project Manager shall obtain a certification from the DBE that the work was indeed performed and the DBE actually received payment from the prime contractor.

c. Upon receiving confirmation from the DBE, the ARRC Project Manager shall complete a written certification that he or she:

(1) reviewed the prime contractor's description of work and proof of payment; and

(2) received confirmation from the DBE that the DBE actually performed the work and received payment from the prime contractor. The Project Manager's DBE Certification shall be placed in the contract file maintained by the ARRC's Supply Management Department.

2. The ARRC will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program so that DOT may take the steps provided for in DOT regulations.

3. The ARRC will consider similar actions under its own legal authority, including damages for subcontracting violations.

a. Damages for Subcontracting Violations. When a contractor switches subcontractors (regardless of DBE involvement) without regard to the procedure required by the contract and this DBE Program and the value of the subcontract exceeds one-half of one percent of the contract value, the ARRC has two options, as set forth in Rule 1200.3(e) of the ARRC Procurement Rules:

1. Assess contract damages against the contractor in an amount that does not exceed ten percent of the value of the subcontract in question, which damages may be withheld from contractor payments; or
2. Cancel the contract.

b. Sanctions for Violating DBE Contract Specifications. In accordance with Rule 1800.21 of the ARRC Procurement Rules, the ARRC may suspend a contractor for up to three years for cause. A contractor's failure without good cause to comply with its DBE requirements under this Program shall constitute "cause" for purposes of Rule 1800.21.

See Attachment 3.

III. Overall Goals, Good Faith Efforts, and Counting

A. Set-Asides or Quotas

The ARRC does not use set-asides or quotas in any way in the administration of the DBE Program.

B. Overall Goals

1. The ARRC's overall goal is developed in accordance with 49 C.F.R. § 26.45 (c).
2. Pursuant to DOT's February 2010 amendment to 49 C.F.R. § 26.45, the ARRC will submit its overall goal to DOT every three years. Before establishing the overall goal, the ARRC will consult with relevant minority, women's and general

contractor groups, community organizations, and other officials and organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the ARRC's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, held before submitting the goal methodology to DOT for review pursuant to 49 C.F.R. § 26.45(f). ARRC will document the consultation process in its goal submission.

The ARRC will publish a notice of its proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the ARRC's corporate headquarters in Anchorage for thirty (30) days following the date of the notice, and informing the public that the ARRC and DOT will accept comments on the goal for thirty (30) days from the date of the notice. The notice will be issued via the State of Alaska Online Public Notice System, and published on the ARRC's web site at www.akrr.com. Normally, the ARRC will publish this notice by June 1 of each year. The notice will include an address to which comments may be sent and addresses (including offices and web sites) where the proposal may be reviewed. The ARRC's overall goal submission to DOT will include a summary of any information and comments received during this public participation process and the ARRC's responses.

The ARRC will begin using its overall goal on October 1 of the relevant year, unless instructions otherwise have been received from DOT.

See Attachment 4.

3. In the event that the ARRC does not meet its established overall goal in any fiscal year, the ARRC will:
 - a. Analyze in detail the reasons for the difference between the overall goal and the ARRC's awards and commitments in that fiscal year;
 - b. Establish specific steps and milestones to correct the problems it identifies in the analysis; and
 - c. Retain the analysis and corrective actions for three years and make them available to FTA upon request.

C. Transit Vehicle Manufacturers Goals. The ARRC will require each transit vehicle manufacturers, as a condition of being authorized to bid or propose on FTA-assisted

transit vehicle procurements, to certify that it has complied with the goal setting requirements of 49 C.F.R. § 26.49.

D. Estimated Race-Neutral and Race-Conscious Participation. Following Western States Paving Co. v. United States & Washington State Department of Transportation, 407 F. 3d 983 (9th Cir. 2005) and DOT's Western States Guidance for Public Transportation Providers (71 Fed. Reg. 14775-78)(March 23, 2006), the ARRC switched from a race-conscious DBE program, in which we set contract goals and monitored contractor good faith efforts, to a race-neutral DBE program, in which we set overall DBE goals, but no goals on individual solicitations or contracts. In carrying out its race-neutral program, the ARRC uses the following (among others) race-neutral means to encourage DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate; and
3. Ensuring distribution of the DBE directories relied upon by the ARRC (Municipality and ADOT&PF) through print and electronic means, to the widest feasible population of potential prime contractors.

See Attachment 5.

E. Contract Goals. In accordance with Western States Paving Co. v. United States & Washington State Department of Transportation , 407 F. 3d 983 (9th Cir. 2005) and DOT's Western States Guidance for Public Transportation Providers (71 Fed. Reg. 14775-78)(March 23, 2006), the ARRC will not use contract goals unless and until such time as a disparity study has shown that there is sufficient evidence of discrimination or its effects in the ARRC's relevant geographic area. Should such evidence be found, the ARRC would employ the following procedures for setting contract goals.

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

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

The ARRC will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The ARRC need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular work). The ARRC will express its contract goals as a percentage of the federal share of a DOT-assisted contract.

H. Good Faith Efforts Procedures

1. In accordance with DOT's Western States Guidance for Public Transportation Providers (71 Fed. Reg. 14775-78)(March 23, 2006), the ARRC is not required to implement good faith efforts procedures as long as it maintains only a race-neutral DBE program. Should the ARRC utilize race-conscious measures in its DBE program, the ARRC will comply with the following good faith efforts procedures.
2. The obligation of the bidder/offeror is to make good faith efforts to meet any contract goal the ARRC may have set. The bidder/offeror can demonstrate that it has done so by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts include, but are not limited to:
 - 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 the DBEs to respond to the solicitation. The bidder/offeror must determine with certainty if the 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 goal 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 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; 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, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals 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 goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor 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 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 standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor'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 ARRC or the contractor.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal 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.

The DBE Liaison Officer, Director Supply Management, and the ARRC Legal Department are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient GFEs to be regarded as responsive.

3. Every bidder/offeror responding to a solicitation for which a contract goal has been set is required to meet the goal or demonstrate that it has made good faith efforts to do so. The ARRC treats bidders'/offerors' compliance with this good faith efforts requirement as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidder/offeror to submit the following information on an ARRC DBE Utilization Report:

- a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform;
 - c. The dollar amount of the participation of each DBE firm;
 - d. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - e. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - f. If the contract goal is not met, evidence of good faith efforts.
4. Administrative Reconsideration. Within ten (10) calendar days of being informed by the ARRC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration of the ARRC's decision. Bidders/offerors must make this request in writing to the ARRC's reconsideration official:

Andrew Behrend
Chief Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Telephone: (907) 265-2682
Facsimile: (907) 265-2443

The reconsideration official will have played no role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the individual making the determination on reconsideration to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The ARRC will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the determination upon reconsideration is not administratively appealable to DOT.

5. GFEs When a DBE Is Replaced On a Contract. A prime contractor is required to use the DBE subcontractors to perform the work as itemized on the ARRC DBE Utilization Report submitted before the contract award. The prime contractor shall not thereafter terminate the DBE subcontractor (or an approved substitute DBE firm) and perform the work of the terminated subcontract with its own forces without the prior written consent of the ARRC. The ARRC will provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has “good cause” within the meaning of 49 C.F.R. § 26.53 to terminate the DBE firm.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must immediately notify the ARRC Project Manager of the termination or default and the circumstances surrounding the termination or default. The contractor shall take immediate steps, without further order or direction from the ARRC, to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established by the ARRC for the procurement.

In the event that a contractor violates the requirements of this section, the ARRC will invoke the damages and/or sanctions provisions of this DBE Program, as applicable.

J. Counting DBE Participation

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

IV. CERTIFICATION PROCESS

The ARRC is a participating member of the Alaska Unified Certification Program (AUCP), which is responsible for maintaining the certification program for all DBEs in the State of Alaska. Certifications in Alaska are processed by the State of Alaska Department of Transportation and Public Facilities, Civil Rights Division using the standards set forth in 49 C.F.R. Part 26. For full information about the AUCP's certification process, please visit:

<http://www.dot.state.ak.us/cvlrts/aucp.shtml>

V. COMPLIANCE AND ENFORCEMENT

A. Information, Confidentiality, and Cooperation

1. Confidentiality. The ARRC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law.

Although AS 42.40.220 makes information in the possession of the ARRC public and open to public inspection, the ARRC Board of Directors has implemented an exception to this public records requirement that protects proprietary information submitted to the ARRC by third parties. The ARRC will raise this protection as a defense to any request to the ARRC for confidential information under this program.

Notwithstanding any contrary provisions of state or local law, the AUCP 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.

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

The ARRC will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual payment to DBE subcontractors equals or exceeds the dollar amounts stated in the ARRC Uniform Report of DBE Awards or Commitments and Payments.

3. Reporting to DOT. The ARRC will report DBE participation to DOT on a semi-annual basis, using DOT's Uniform Report of DBE Awards or Commitments and

Payments Form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

B. Complaint Procedures

1. Complaints to ARRC. Any person who believes that the ARRC is not compliance with its federal obligations under this DBE Program may file a complaint with the ARRC DBE Liaison Officer. The complaint must be in writing, signed and dated. The complaint must be filed with the ARRC no later than 180 days after the date that the complainant knew or should have known of the alleged violation. The complaint will be investigated by the DBE Liaison Office and the results of the investigation will be provided to the complainant.

2. Complaints to DOT. Any person who believes that the ARRC has failed to comply with its obligations under 49 C.F.R. Part 26 may file a written complaint with the Office of Civil Rights of the Federal Transit Administration as follows:

Federal Transit Administration, Office of Civil Rights
Attention: Complaint Team
East Building, 5th Floor - TCR
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

The complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of 49 C.F.R. Part 26. The complaint will be processed in accordance with USDOT regulations and procedures.

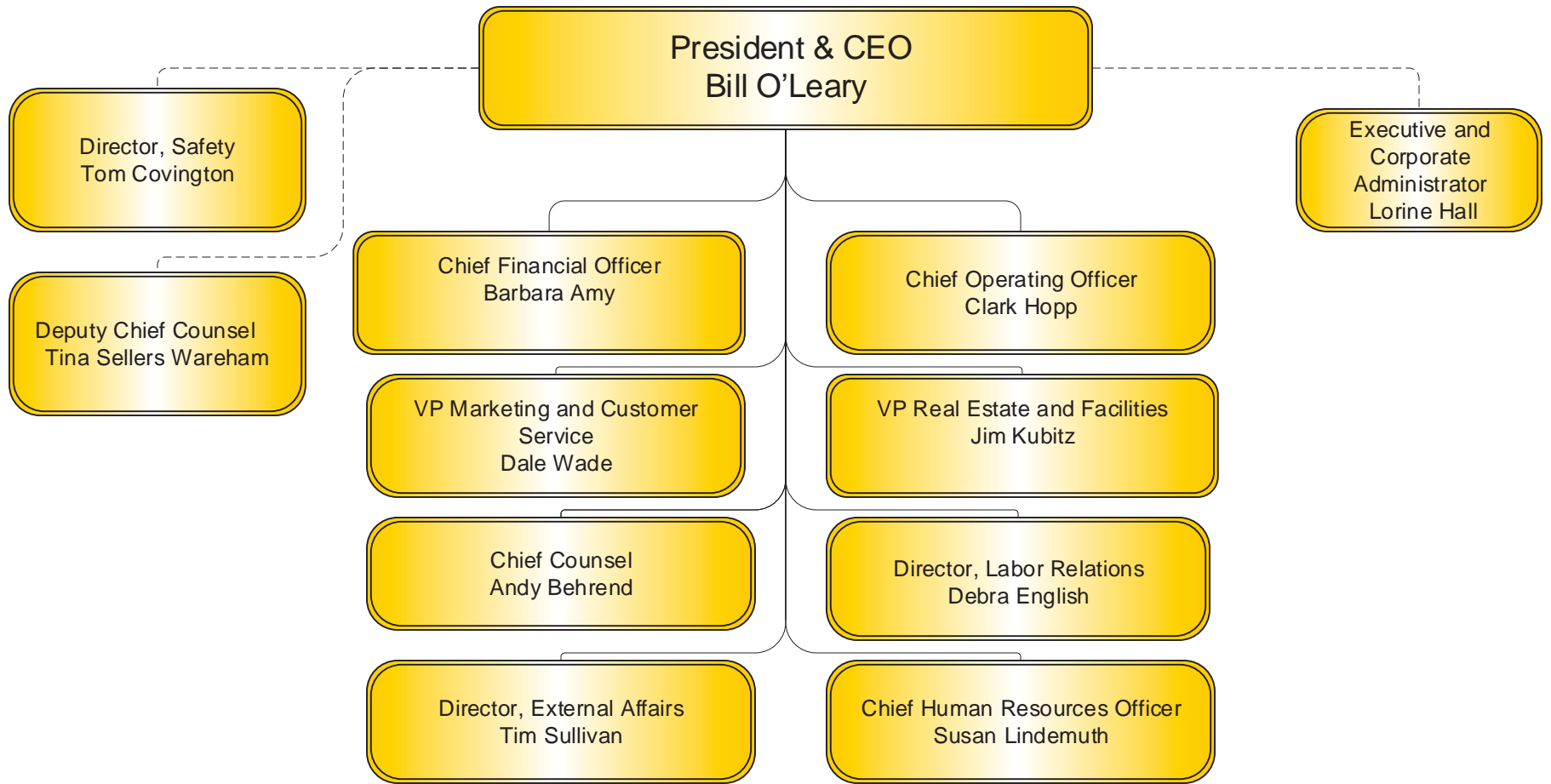
See Attachment 6.

ATTACHMENT 1

Corporate Organizational Chart

The relevant portion of the ARRC's January 1, 2019, organizational chart showing the reporting lines of the DBELO is attached.

Alaska Railroad Corporation Executive Staff January 1, 2019



ATTACHMENT 2

Alaska DBE Directory

The Alaska DBE Directory may be found at

<http://www.dot.state.ak.us/cvlrts/directory.shtml>

ATTACHMENT 3

Monitoring and Enforcement Mechanisms

The ARRC may enforce the DBE requirements of its contracts through mechanisms such as:

1. Damages for Subcontracting Violations. When a contractor switches subcontractors (regardless of DBE involvement) without regard to the procedure required by the contract and this DBE Program and the value of the subcontract exceeds one - half of one percent of the contract value, the ARRC has two options, as set forth in Rule 1200.3(e) of the ARRC Procurement Rules:
 - a. Assess contract damages against the contractor in an amount that does not exceed ten percent of the value of the subcontract in question, which damages may be withheld from contractor payments; or
 - b. Cancel the contract.
2. Sanctions for Violating DBE Contract Specifications. In accordance with Rule 1800.21 of the ARRC Procurement Rules, the ARRC may suspend a contractor for up to three years for cause. A contractor's failure without good cause to comply with its DBE requirements under this Program shall constitute "cause" for purposes of Rule 1800.21.

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

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

ATTACHMENT 4

Goal Calculation

The ARRC's DBE Goal for 2019-2021 was filed with the FTA and attached in TrAMS, as described in the cover letters provided as part of this Attachment 4.

August 1, 2018

Christopher C. MacNeith
Region 10 Civil Rights Officer
FTA, Office of Civil Rights
915 Second Avenue
Seattle, Washington 98174

Re: Alaska Railroad Corporation DBE Goal 2019-2021

Dear Mr. MacNeith:

This is to notify you that the Alaska Railroad Corporation (ARRC) has placed its 2019-2021 Proposed DBE Goal on the FTA's TrAMS submission page. The ARRC's overall goal for 2019-2021 is **3.0%**. This goal is a race neutral goal. The goal is posted on ARRC's website, and ARRC is seeking input from stakeholder groups and the public through a 30-day public comment period and scheduled public meeting.

If you have any questions regarding the ARRC's goal or its calculations, please contact me at 907.265.2613 or at sellerswarehamt@akrr.com.

Very truly yours,



Tina Sellers Wareham
Deputy Chief Counsel

September 28, 2018

Christopher C. MacNeith
Region 10 Civil Rights Officer
FTA, Office of Civil Rights
915 Second Avenue
Seattle, Washington 98174

Re: Alaska Railroad Corporation DBE Goal 2019-2021

Dear Mr. MacNeith:

The Alaska Railroad Corporation (ARRC) has updated its 2019-2021 Proposed DBE Goal Setting Evidence and Methodology document to reflect input received from DBEs and the public following an August 30, 2018 public meeting and comment period that ended September 7, 2018. The attached document updates the ARRC DBE goal package that we uploaded into TrAMS on August 1, 2018.

As you know, the ARRC's overall goal for 2019-2021 is **3.0%**. This goal is a race neutral goal and is posted on ARRC's website.

If you have any questions regarding the ARRC's goal or its calculations, please contact me at 907.265.2613 or at sellerswarehamt@akrr.com.

Very truly yours,



Tina Sellers Wareham
Deputy Chief Counsel

ATTACHMENT 5

Race-Neutral and Race-Conscious Participation

Following Western States Paving Co. v. United States & Washington State Department of Transportation , 407 F. 3d 983 (9th Cir. 2005) and DOT's Western States Guidance for Public Transportation Providers (71 Fed Reg. 14775-78)(March 23, 2006), the ARRC switched from a race-conscious DBE program, in which we set contract goals and monitored contractor good faith efforts, to a race-neutral DBE program, in which we set overall DBE goals, but no goals on individual solicitations or contracts. In carrying out its race-neutral program, the ARRC uses the following (among others) race-neutral means to encourage DBE participation:

- a. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
- b. Carrying out information and communications on program contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate; and
- c. Ensuring distribution of the DBE directories relied upon by the ARRC (Municipality and ADOT&PF) through print and electronic means, to the widest feasible population of potential prime contractors.

ATTACHMENT 6

U.S. Department of Transportation Disadvantaged Business Enterprise Regulations 49 C.F.R. Part 26

The U.S. Department of Transportation DBE regulations, 49 C.F.R. Part 26, may be found in their entirety at:

http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_O2.tpl