

Town of Cary (GoCary) DBE PROGRAM



TOWN OF CARY, NORTH CAROLINA



**Town of Cary, North Carolina
Disadvantaged Business Enterprise (DBE) Program
(Town of Cary referred to as the "TOWN")**



DBE Program Policy Statement

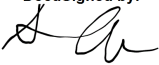
The TOWN has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The TOWN has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance,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

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

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

TeLeishia Holloway has been delegated as the DBE Liaison Officer (DBELO). In this capacity, TeLeishia Holloway 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 TOWN in its financial assistance agreements with the Department of Transportation.

The TOWN has disseminated this policy statement to the TOWN Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by posting the statement on the TOWN website and the NC E-Procurement system, and by requiring our service contractor to distribute this statement to vendors with whom they do business.

DocuSigned by:

3725753AD0DA427...

Signature of Sean R. Stegall, Town Manager

5/31/2022

Date

Subpart A – General Requirements

Section 26.1 Objectives

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

Section 26.3 Applicability

The TOWN is the recipient of federal funds authorized by Federal transit laws in Title 49 US Code Chapter 53, as amended by the “Moving Ahead for Progress in the 21st Century Act” or “MAP-21,” the “Fixing America’s Surface Transportation Act” or “FAST Act,” And the “Infrastructure Investment and Jobs Act” or “IIJA.”

Section 26.5 Definitions

The TOWN will adopt the definitions contained in Section 26.5 for this program.

Section 26. 7 Non-discrimination Requirements

The TOWN will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will report DBE participation on a semi-annual basis using DOT form “Uniform Report of DBE Commitments/Awards and Payments.” The reports will reflect payments actually made to DBEs on DOT-assisted contracts. To ensure accuracy of records and timeliness of reporting, the DBELO will follow the TOWN’s Grant Management Procedures. The TOWN’s financial operating system documents all prime contractor activity and prime contractors will submit monthly vendor activity reports to the DBELO to document sub-contracting activities.

Bidders List: 26.11(c)

- The TOWN will create a bidders list, maintaining information about all DBE and non-DBE firms that bid, propose or quote on DOT-assisted contracts. This list will include the name, address, email address, phone number, DBE/non-DBE status, age and annual gross receipts. This information will be required at the time of bid. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. We will collect

this information from bidders at the time of submittal and from subcontractors through the use of a notice in all solicitations, and otherwise widely disseminated, requesting all firms quoting on subcontracts to report this information directly to the TOWN,

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

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

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

[Note: This language is to be used verbatim, as it is stated in 26.13(a).]

Contract Assurance: 26.13b

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.

[Note: This language is to be used verbatim, as it is stated in 26.13(b)]

SUBPART B • ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the TOWN receives grants from FTA in the amounts 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 any updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The Town of Cary has designated the following DBE Liaison Officer:

TeLeishia Holloway
Town of Cary
120 Maury O'Dell Place
Cary, NC 27513
(919) 653-7141 phone
(919) 380-6426 fax
Teleishia.Holloway@townofcary.org

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the TOWN complies with all provisions of 49 CFR Part 26. An organizational chart displaying the DBELO's position in the organization can be found in Attachment 1 of this program. The DBELO has direct, independent access to the TOWN Manager concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with the Procurement Division of the Finance Department to ensure 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 goal attainment and identifies ways to improve progress).
- Analyzes TOWN of Cary's / GoCary's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid/pre-proposal meetings.
- Advises the CEO/governing body on DBE matters and achievements.

- Provides DBEs with information about programs to assist their business, or that may offer assistance in preparing bids/proposals, including but not limited to, bonding and insurance.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Works with NCDOT's Office of Civil Rights to assist in getting potential DBE's certified and directing DBE's to NCDOT's Office of Civil Rights for technical assistance on certification.
- Researches, reviews and compiles reports, data, vendor activity and other information as required for DBE goal analysis, good faith efforts and semi-annual UCR submittals.
- Works with the Procurement Division of the Finance Department to set overall annual DBE goal.
- Acts as a liaison to the Uniform Certification Process in North Carolina.

Section 26.27 DBE Financial Institutions

It is the policy of the TOWN to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions:

We will review the Minority-Owned Depository Institution website at <https://www.federalreserve.gov/publications/2021-july-promoting-minority-depository-institutions.htm> to see if any other DBE financial institutions exist in the Triangle Region. Only one such bank, to date, has been found in the Triangle Region of North Carolina – Mechanics and Farmers Bank. Mechanics and Farmers Bank has locations in Raleigh and Durham, North Carolina.

Mechanics and Farmers Bank Headquarters
 2634 Durham Chapel Hill Boulevard
 Durham, NC 27707
 (919) 687-7800

The TOWN will encourage, to the extent possible, that prime contractors use such institutions.

Section 26.29 Prompt Payment Mechanisms

The TOWN will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from TOWN. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days

after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the TOWN. This clause applies to both DBE and non-DBE subcontracts. In the event that a DBE firm does not receive payment for services or products delivered, then that firm can appeal or meet with the TOWN's DBELO and the TOWN's prime contractor to resolve the dispute expeditiously. In the event that the DBE firm does not receive prompt payment after the appeal, the firm can meet with the TOWN Manager or designated mediator.

Failure of the prime contractor to comply with the above clause may be construed to be a breach of contract and subject to contract termination. The TOWN will take steps to resolve any prompt payment violations as expeditiously as possible.

Section 26.31 Directory

NCDOT 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. NCDOT revises the Directory on an ongoing basis as required. We make the Directory available as follows:

NCDOT DBE Directory - website link:

<https://www.ebs.nc.gov/VendorDirectory/default.html>

All recipients are required to participate in a combined statewide directory under the Uniform Certification Program.

The TOWN also uses the Small Business Associations' directory which is set up in a way that directs contractors to potential DBE firms and promotes small business doing business with other small businesses. There may be businesses in this directory that are not certified as DBEs but who provide resources to small business. For example, there may be a small business that sets up accounts with credit card companies for small businesses. That particular business would not be in a North American Industry Classification System (NAICS) that the TOWN would request procurement for. However, that small business would be of use to another small business.

Section 26.33 Overconcentration

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

To perform overconcentration analysis, on an annual basis the TOWN will examine the representation of DBEs and work going to DBEs in three ways;

1. Share of DOT-assisted contract dollars within a type of work going to DBEs; For each specific type of work examine and calculate the share of dollars going to DBE firms.

2. Distribution of DBE dollars by work type: The TOWN will also examine whether there is a potential overconcentration of DBES in certain types of work. If the TOWN evaluates race-neutral participation and determines that contract goals must be utilized to meet the DBE goal, this may overly burden non-DBEs in subindustries and have the potential to create an overconcentration of DBEs.
3. Representation of DBEs among all firms available for specific types of contracts and subcontracts; Analyze whether DBEs accounted for a dominant share of firms available for particular types of work.

Section 26.35 Business Development Programs

The TOWN has not established a business development program. However, when necessary the TOWN directs DBEs and potential DBEs to the North Carolina Department of Transportation Office of Civil Rights Business Development Program that provides DBEs with general and firm-specific training and technical assistance to help them become more competitive within their industry.

Section 26.37 Monitoring and Enforcement Mechanisms

The TOWN will employ 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 3 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. This will be accomplished by reviewing subcontracted vendor activity reports and consulting listed DBEs on a regular basis via site inspections and requiring a certification that the designated DBE belongs to a certified DBE program.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business Participation

The TOWN will implement a Small Business Participation Plan ("Plan"). The Plan effects contracts that fall within the DBE regulation and is not meant to replace the

TOWN's Small Business Enterprise Program. Under the Plan, and when commercially and operationally reasonable to do so, the TOWN will undertake certain efforts Intended to increase the opportunities for small businesses that shall include but not be limited to the following strategies:

- A. Require bidders/proposers on large contracts to identify and/or provide specific subcontracts appropriate for small business participation.
- B. 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.
- C. Ensuring that a reasonable number of prime contracts are a size that small businesses, including DBE's, can reasonably perform.

SUBPART C • GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The TOWN does not use quotas in any way in the administration of this DBE Program.

Section 26.45 Overall Goals

The TOWN uses a two-step process to calculate its three-year DBE goal in accordance with the federal regulations on “Participation of DBEs in the Department of Transportation Financial Assistance Program”, as outlined in 49 CFR Part 26. A full description of the methodology used to calculate the overall goal can be found in Attachment 4, “Overall DBE Goal Submission & Methodology for FY2018-2020.”

In accordance with Section 26.45(f) the TOWN will submit its overall goal to DOT every three years, or when requested by FTA. Before establishing the overall goal each year, the TOWN will consult with DBE certified firms, prime contractors, minority, women and general contractor groups, and community organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the TOWN's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the TOWN will publish a notice of the proposed overall goal(s), informing the public that the proposed goal(s) and rationale are available for inspection during normal business hours at Town Hall for 30 days following the date of the notice, and informing the public that the TOWN and NCDOT will accept comments on the goals for 45 days from the date of the notice. The TOWN will advertise the proposed DBE goal and it's rationale in local newspapers, available minority-focused media and websites, and on the TOWN's website. The notice will

include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The TOWN's overall goal submission to FTA will include a summary of information and comments received during this public participation process and our responses.

The TOWN will begin using the overall goal on July 1st of each year, unless we have received other instructions from FTA. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Goal Setting & Accountability

If the awards and commitments shown on the TOWN's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- A. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; Establish specific steps and milestones to correct the problems identified in the analysis; and maintain information/records regarding the analysis and efforts made and the effectiveness of those measures.

The TOWN understands that we cannot be penalized, or treated by the Department as being in noncompliance because our DBE participation falls short of our overall goal, unless we have failed to administer our program in good faith.

Section 26.49 Transit Vehicle Manufacturers Goals

The TOWN 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, the TOWN 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. The TOWN will report vehicles purchased to FTA using the online form.

Section 26.51 (a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

1. Participate in local business opportunity workshops and/or events held in Wake, Durham and Orange counties. The TOWN will provide information on "how to do business with" the TOWN and the types of opportunities available for contractors and vendors. DBE/SBE information will also be available for distribution.

2. Work with the TOWN's Small Business Liaison and minority contractors' associations in North Carolina to provide (potential) DBEs and SBEs information regarding certification and business development programs to interested firms.
3. The Procurement Division of the Finance Department may participate in pre-bid/pre-proposal meetings on projects where federal funds are utilized and the DBELO participates in every pre-bid/pre-proposal meeting for transit, regardless if there is a goal on a project. A detailed explanation is given to all attendees on the utilization of NCDOT's DBE and SBE directories and what constitutes good faith effort. This on-going participation is anticipated to increase the prime contractors' and consultants' awareness of the DBE/SBE program and requirements. The DBE/SBE directories will be utilized by the prime contractors in their goal attainment efforts for our projects.
4. Planning and participating in DBE/SBE training seminars and workshops
 - a. Create DBE/SBE presentations for speaking engagements among the DBE/SBE communities on How to Do Business with the TOWN and post to the TOWN's website, www.gocary.org and minority publications.
 - b. Conduct Open House Meetings to encourage local general contractors, small businesses and potential DBE firms to learn about upcoming procurement opportunities on GoCary's Capital Projects List.
 - c. The DBELO will conduct a technical assistance workshop with contractors working on GoCary federally assisted projects to discuss various topics including the small business plan and other contracting opportunities.
 - d. The DBELO will partner with agencies including but not limited to NCDOT Office of Civil Rights Business Opportunity and Workforce Development Division, Carolinas Association of Governmental Purchasing, and the Regional Business Alliance of North Carolina seeking presentation opportunities and/or outreach efforts to the DBE/SBE community
 - e. The DBELO will meet with the Procurement Division of the Finance Department to review federally assisted upcoming procurements, in advance, to target participation either through the DBE program or for the small business plan
 - f. The DBELO will work with the Procurement Division of the Finance Department to include contract goals to meet any portion of the overall goal the DBELO does not project being able to meet using race-neutral means, on federally assisted contracts that have (sub)contracting opportunities
5. Update GoCary's website to ensure ease of use and user-friendly ways to learn 'How to Do Business with the Town' and include more DBE/SBE information.

6. Ensure the links from the NCDOT DBE/SBE site to GoCary's DBE/SBE information is correct and provides value added information.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program. This section of the program will be updated when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

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

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

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

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

TeLeishia Holloway – Transit Program Coordinator/DBELO

The TOWN will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror. If the DBELO determines the bid/offer to be in non-compliance, he/she will confer with the TOWN's Attorney and Procurement Division prior to making a recommendation to reject the bid/offer.

Information to be submitted (26.53(b))

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

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

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

Administrative reconsideration (26.53(d))

Within 45 days of being informed by the TOWN that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official:

Procurement & Contracts Manager
Town of Cary
420 James Jackson Avenue
Cary, NC 27513
(919) 469-4079 phone

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 so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The TOWN will require a contractor to make good faith efforts to replace a DBE that is terminated, or has otherwise failed to complete its work on a contract, with

another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

We will require the prime contractor to obtain our prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The TOWN will provide written consent or rejection of whether or not the prime contractor has good cause to terminate the DBE firm.

Good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 C.F.R. Parts 180, 215 and 1200 or applicable state law;
6. The TOWN has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to the TOWN written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; or
10. Other documented good cause that the TOWN determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the TOWN its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the TOWN, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the TOWN and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the TOWN should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the TOWN may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, the TOWN will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the TOWN will consider similar action under our own legal authorities, including suspension of work pending corrective action(s), termination of existing and future TOWN contracts, and/or all remedies as specified in Section 26.37 Monitoring and Enforcement Mechanisms.

Sample Bid Specification:

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

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

Section 26.55 Counting DBE Participation

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

SUBPART D - CERTIFICATION STANDARDS

Section 26.61- 26.73 Certification Process

The TOWN does not conduct a certification process. We refer all interested businesses to the North Carolina Department of Transportation, Office of Civil Rights which utilizes the standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT -assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

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

North Carolina Department of Transportation
Office of Civil Rights
1511 Mail Service Center
Raleigh, NC 27699-1511

Certification application forms and documentation requirements are found online at <https://www.ncdot.gov/about-us/board-offices/offices/civil-rights/Pages/disadvantaged-business-enterprise.aspx> to start this program.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The TOWN is the member of a Unified Certification Program (UCP) administered by the North Carolina Department of Transportation (NCDOT) Office of Civil Rights (OCR). The UCP will meet all requirements of this section. The following is a description of the UCP:

The North Carolina Department of Transportation and the TOWN of Cary have agreed to be a partner in the UCP since 2004. NCDOT assists in this effort with all transit systems in the State of North Carolina who receive assistance from the FTA.

Section 26.83 Procedures for Certification Decisions

Re-certifications: § 26.83(a) and (c)

The TOWN, as a member of the NC-UCP, follows the processes established pursuant to that program.

“No Change” Affidavits and Notices of Change: § 26.83(j)

The TOWN, as a member of the NC-UCP, follows the processes established pursuant to that program.

Section 26.85 Denials of Initial Requests for Certification

The TOWN, as a member of the NC-UCP, follows the processes established pursuant to that program.

Section 26.87 Removal of a DBE's Eligibility

The TOWN, as a member of the NC-UCP, follows the processes established pursuant to that program.

Section 26.89 Certification Appeals

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

U.S. Department of Transportation
Departmental Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave., S.E.
West Building, 7th Floor
Washington, DC 20590

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

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

NCDOT and the TOWN will safeguard from disclosure to third party's 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, NCDOT 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

The TOWN 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 available for inspection upon request by any authorized representative of the TOWN or DOT. This reporting requirement also extends to any certified DBE subcontractor. The TOWN will keep a running tally of actual payments to DBEs and SBEs for work committed to them at the time of contract award.

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

Attachments

Attachment 1: Organizational Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms

Attachment 4: Overall Goal Calculation

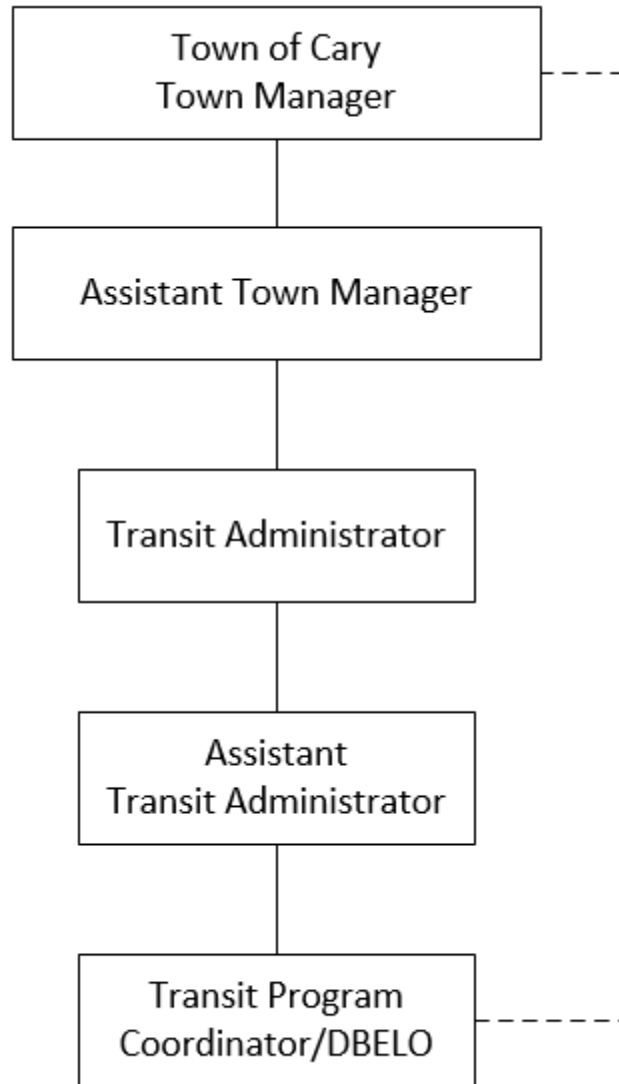
Attachment 5: Form 1 & 2 Demonstration of Good Faith Efforts

Attachment 6: Certification Forms

Attachment 7: Procedures for Removal of DBE's Eligibility

Attachment 8: Regulations: 49 CFR Part 26

ATTACHMENT 1
Organizational Chart



ATTACHMENT 2

DBE Directory

Unified Certification Program List of DBE Firms

Contact: North Carolina Department of Transportation
Office of Civil Rights
1511 Mail Service Center
Raleigh, NC 27699-1511
Phone: 919-508-1808

DBE Directory may be viewed at:

<https://www.ebs.nc.gov/VendorDirectory/default.html>

ATTACHMENT 3

Monitoring and Enforcement Mechanisms

The TOWN of Cary has available several remedies to enforce the DBE requirements contained in its contracts. All participants are hereby notified that pursuant to 49 CFR, Part 26 and the TOWN's DBE Program, they must affirmatively ensure that in any contract entered into with the TOWN for applicable projects; DBEs will be afforded equal opportunity to participate in subcontracting activities.

All contracts between the TOWN and its Service Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the TOWN's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this Program.

All documentation submitted at the time of bid, as well as additional data provided by the successful bidder, is considered to be part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of bid must have prior approval of the applicable department DBELO. Should a DBE firm not certified by the NCDOT UCP be proposed by a potential Contractor as a part of his/her DBE plan efforts, replacement with a properly certified DBE firm or review and certification procedures must be conducted prior to award of any contract.

Agreements between a Contractor and a DBE in which the DBE promises not to provide subcontracting quotations to other participants are prohibited. In contracts with a DBE contract goal, bids submitted which do not meet the DBE contract goal, and which do not show that a meaningful good faith effort was made to achieve the stated goal, will be considered nonresponsive bids, and bidders will not be eligible for award of the contract.

The TOWN reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsible, responsive and qualified bidder. A bid will not be considered responsive unless the bidder complies with 49 CFR, Part 26, and the TOWN's DBE Program.

Additional information on The TOWN's DBE Program can be obtained from any of the DBELOs.

To ensure that all obligations under the contracts awarded to DBEs are met, the TOWN will review the participant's DBE involvement efforts during the performance of the contract. The participant shall bring to the attention of the TOWN any situation in which regularly scheduled progress payments are not made

to DBE participants. Records of all progress payments made by prime contractors are required on a monthly basis. To verify the truthfulness and accuracy of representations made by bidders, as well as to ensure their compliance with contract requirements, the following steps will be taken:

1. Review bid package documentation thoroughly, obtaining clarification, if necessary.
2. Review all information on the subcontract awards made to DBE and Non-DBEs, including the firm's name, scope of work to be performed (For DBEs-determining whether the work is in a NAICS code for which the NCDOT-UCP has certified the company), and contract amount.
3. Conduct desk audits to review monthly reports to ensure adherence to this Program as represented in bid documents and as stipulated in 49 CFR Part 26.
4. Monitor records of all progress payments to DBEs through monthly reports from prime contractors. Records will be periodically verified by obtaining certified statements from DBE subcontractors.
5. Monitor progress of DBE's work through on-site reviews and communications with DBEs.
6. Conduct any additional investigation that may be necessary due to a lack of proper record keeping; failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evidence of unsatisfactory performance; other evidence as may warrant further investigation.
7. Use the legal instrument of the contract clause to enforce 49 CFR Part 26 requirements. Documentation of noncompliance will include the specific areas in which the contractor failed to comply. In these instances, appropriate legal action consistent with the DBE Program and other contract provisions will be taken.
8. Ensure that prime contractors and DBEs immediately notify the TOWN of any changes in their firm. This includes ownership, trade license(s), and areas of expertise, address, telephone number and contact person.

The TOWN will bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the Program, thereby enabling USDOT to pursue the appropriate steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. The TOWN will also consider similar action under local legal authorities, including responsibility determinations in future contracts.

ATTACHMENT 4

Overall Goal Calculation

As the recipient of Federal Transit Administration (FTA) federal funds, the Town of Cary (GoCary) must set an overall goal for Disadvantaged Business Enterprises (DBE) to participate in U.S. Department of Transportation assisted contracts. The overall race-neutral goal provides for participation by certified DBEs and will not be subdivided into group specific goals. Further, no contractor will be subject to a quota, set aside, or preference.

GoCary, in accordance with FTA Guidelines (49 CFR Part 26), and in consultation with FTA documentation “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program” has established a DBE Triennial Participation Goal for FY 2021-2023.

GoCary’s FY 2021-2023 FTA DBE Goal = 3.74 %

DOT-assisted contract amount:	FY 2021	\$ 6,149,807
	FY 2022	\$ 1,945,020
	FY 2023	<u>\$ 2,007,041</u>
Total		\$ 10,101,868

Total dollar amount to be expended on DBE’s: \$ 377,810

Goal Development

STEP 1 – Determining the Base Figure 26.45(c): Actual relative availability of DBE’s

- A. The projected DOT-assisted contractible and sub-contractible opportunities over the FY2021-2023 time period were determined. For each DOT-assisted contractible and sub-contractible opportunity the projected work description and associated NAICS code was identified.

DOT-assisted Contractible and Sub-contractible Opportunities FFY21 – 23

Prime Contractor Three Year Forecast

NAICS	Description	2020 - 2021	2021 - 2022	2022 - 2023	TOTAL BUDGET
CONSTRUCTION					
237310	Highway, street, and bridge construction	\$ 1,194,841.00	\$ -	\$ -	\$ 1,194,841.00
TOTAL		\$ 1,194,841.00	\$ -	\$ -	\$ 1,194,841.00
SUPPLIES					
423130	Tires	\$ 22,685.40	\$ 23,365.96	\$ 24,066.94	\$ 70,118.30
423430	IT Hardware & Software	\$ 10,890.47	\$ 11,217.18	\$ 11,553.70	\$ 33,661.35
452319	Safety supplies	\$ 1,934.03	\$ 1,992.05	\$ 2,051.81	\$ 5,977.90
423120	Bus/Vehicle Parts & Shop Tools & Equipment	\$ 40,746.62	\$ 41,969.02	\$ 43,228.09	\$ 125,943.74
448190	Uniforms	\$ 3,380.64	\$ 3,482.05	\$ 3,586.52	\$ 10,449.21
453210	Office Supplies	\$ 5,607.40	\$ 5,775.62	\$ 5,948.89	\$ 17,331.92
812331	Linen Supply	\$ 4,786.06	\$ 4,929.64	\$ 5,077.53	\$ 14,793.23
TOTAL		\$ 90,030.62	\$ 92,731.54	\$ 95,513.49	\$ 278,275.65
SERVICE S					
485113	Bus and Other Motor Vehicle Transit Systems	\$ 2,831,915.00	\$ 1,818,278.00	\$ 1,876,497.00	\$ 6,526,690.00
237210	Land acquisition, assembling and subdividing	\$ 2,000,000.00	\$ -	\$ -	\$ 2,000,000.00
561790	Other Services to Buildings and Dwellings	\$ 1,738.64	\$ 1,790.80	\$ 1,844.52	\$ 5,373.96
238220	HVAC	\$ 2,623.25	\$ 2,701.94	\$ 2,783.00	\$ 8,108.19
488410	Towing	\$ 3,202.27	\$ 3,298.34	\$ 3,397.29	\$ 9,897.90
811111	Outside Service - Engine & Collision Repair	\$ 1,295.28	\$ 1,334.13	\$ 1,374.16	\$ 4,003.57
811113	Outside Service - Transmission	\$ 2,194.99	\$ 2,260.84	\$ 2,328.67	\$ 6,784.50
811112	Outside Service - Vehicle Glass Repair	\$ 252.35	\$ 259.92	\$ 267.72	\$ 779.99
811191	Outside Service - Oil	\$ 7,988.91	\$ 8,228.57	\$ 8,475.43	\$ 24,692.91
492110	Mailing	\$ 944.52	\$ 972.86	\$ 1,002.04	\$ 2,919.42
811192	Bus Wraps & Pressure Washing	\$ 9,435.43	\$ 9,718.49	\$ 10,010.05	\$ 29,163.97
561730	Lawn Service	\$ 721.00	\$ 742.63	\$ 764.91	\$ 2,228.54
562211	Industrial Waste Management	\$ 2,623.25	\$ 2,701.94	\$ 2,783.00	\$ 8,108.19
TOTAL		\$ 4,864,934.87	\$ 1,852,288.47	\$ 1,911,527.78	\$ 8,628,751.13
TOTAL		\$ 6,149,806.50	\$ 1,945,020.01	\$ 2,007,041.27	\$ 10,101,867.77

Construction	(1,194,841/10,101,867.77) =	11.83%
Supplies	(278,275.65/10,101,867.77) =	2.75%
Services	(8,628,751.13/10,101,867.77) =	85.42%

- B. A base figure was developed per 49 CFR 26.45(c) to determine the relative availability of DBEs to perform work on anticipated contracts and sub-contracts.

$$\text{Step One Base Figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing, and able (including DBEs and non-DBEs)}}$$

The base figure was initially calculated using the number of DBE’s available and desiring work in Wake, Durham or Orange counties in North Carolina for the numerator and the number of all available firms in Wake, Durham or Orange counties in North Carolina for the types of contracts we anticipated awarding. The data source used to derive the numerator was the NCDOT Directory of Firms (<https://www.ebs.nc.gov/VendorDirectory/default.html>) and the data source used to derive the denominator was the 2015 United States Census Bureau County Business Patterns (CBP) (<http://www.census.gov/programs-surveys/cbp/data.html>).

Availability of DBE's FFY21 – 23

NAICS Code	Description	Available DBEs	8 County Establishments	Relative Availability DBE/8 County
237310	CONSTRUCTION - Bus Stop Improvement Phase II Highway, street, and bridge construction	57	55	103.64%
	TOTAL	57	55	103.64%
	SUPPLIES			
423130	Tires	0	12	0.00%
423430	IT Hardware & Software	1	58	1.72%
452319	Safety supplies	0	226	0.00%
423120	Bus/Vehicle Parts & Shop Tools & Equipment	2	90	2.22%
448190	Uniforms	1	65	1.54%
453210	Office Supplies	1	30	3.33%
812331	Linen Supply	1	3	33.33%
	TOTAL	6	484	1.24%
	SERVICES			
485113	Bus and Other Motor Vehicle Transit Systems	1	0	0.00%
237210	Land acquisition, assembling and subdividing	1	49	2.04%
561790	Other Services to Buildings and Dwellings	2	86	2.33%
238220	HVAC	7	678	1.03%
488410	Towing	1	61	1.64%
811111	Outside Service - Engine & Collision Repair	0	502	0.00%
811113	Outside Service - Transmission	0	18	0.00%
811112	Outside Service - Vehicle Glass Repair	1	8	12.50%
811191	Outside Service - Oil	0	57	0.00%
492110	Mailing	1	57	1.75%
811192	Bus Wraps & Pressure Washing	2	94	2.13%
561730	Lawn Service	29	761	3.81%
562211	Industrial Waste Management	1	4	25.00%
	Total	46	2375	1.94%
	OVERALL TOTAL	109	2914	3.74%

Step One Base Figure

$$3.74\% = \frac{109 \text{ Ready, willing, and able DBEs}}{2,914 \text{ All firms ready, willing, and able (including DBEs and non-DBEs)}}$$

STEP 2 – Adjustments to the Base Figure 26.45(d): Adjustments to Step 1 base figure.

Per 49 CFR 26.45(d), following calculation of a base figure, all available evidence must be examined to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall DBE goal. The primary form of evidence available is the past participation of DBEs in Transit Division contracting.

There is a new bus stop improvement contracting opportunity identified in this triennial goal cycle. Adjusting the base on past participation still seems like a legitimate benchmark for future participation as past projects are very similar to the expected future projects.

- A. Median Past Participation.** The first step in adjusting our Step One Base Figure for past participation is to determine the "median" past participation percentages. Past DBE participation reported for the last two years was used (data for previous years was deemed unreliable).

	Past DBE Participation
FY 2017	4.5 %
FY 2018	5.1 %
FY 2019	5.6%
Average	5.1 %

The Step One Base Figure was then adjusted by taking the average of the past participation and the Step One Base Figure. This method was selected in order to not give past disproportionate weight.

Step One Base Figure	3.74 %
Average Past DBE Participation	5.10 %
DBE Goal (Race-Neutral)	4.42 %

Calculating a Step 2 adjustment based on median past participation results in a similar figure (4.42%) indicating a Step 2 adjustment is not necessary. Therefore, the Town of Cary (GoCary) is proposing a FFY 2021-2023 FTA DBE Goal of 3.74%. Adjusting the base on past participation does not appear to be a legitimate benchmark for future participation as past projects do not reflect an accurate picture of the next three years use of federal funding due to the impact of the COVID-19 pandemic.

ATTACHMENT 5

Forms 1 & 2 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 _____ % DBE utilization on this contract.

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

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.

(Submit this page for each DBE subcontractor.)

ATTACHMENT 6

Certification Forms

The TOWN does not conduct DBE certifications, however, will distribute the same forms as the Unified Certifications Program (UCP) found at the following website:

<https://www.ncdot.gov/about-us/board-offices/offices/civil-rights/Pages/disadvantaged-business-enterprise.aspx>
to any interested firms who wish to be certified as a DBE.

ATTACHMENT 7

Procedures for Removal of DBE's Eligibility

49 CFR Part 26.87

The TOWN will annually assess the availability of research documents and demographic studies that may provide additional data on the extent to which DBE firms are (1) "ready, willing and able" to engage in contracting opportunities, and (2) successfully performing on contracts as determined by subcontract and prime contract awards.

In the event there is reasonable cause to believe that a firm is ineligible based on the following factors:

1. 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;
2. Information or evidence not available to you at the time the firm was certified;
3. Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
4. A change in the certification standards or requirements of the Department since it was first certified the firm.

The TOWN will provide NCDOT written notice that the firm may be ineligible, setting forth the reasons for the proposed determination. All statements will be substantiated with the evidence in the record on which each reason is based.

ATTACHMENT 8

Regulations: 49 CFR Part 26

To ensure DBE's have an equal opportunity to receive and participate in USDOT-assisted contracts, it is also our policy:

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

For more information concerning 49 CFR Part 26, please direct to the link on the US DOT's website:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl