

**City of Burlington, North Carolina**  
**Link Transit Disadvantage Business Enterprise Program Goal and**  
**Methodology - Federal Fiscal Year 2022-2024**

**INITIAL DATE POSTED: August 16, 2021**  
**FINAL PLAN POSTED: September 30, 2021**

Pursuant to §26.45 of 49 Code of Federal Regulation (CFR) Part 26, the City of Burlington submits the following Disadvantage Business Enterprise (DBE) program goal calculation methodology for consideration by the Federal Transit Administration (FTA) for federally assisted contracts associated with the operation of Link Transit for Federal Fiscal Year 2022-2024. **Based upon the methodology described below, the City of Burlington has established a DBE goal of 0.11%** for the period, with the entire amount projected to be met through race-neutral measures. The DBE goal is exclusive of FTA funds used for the purchase of transit vehicles.

**Methodology Used to Calculate the Overall Goal**

*Step 1- Contractor and Certified DBE Inventory*

To establish a baseline for setting an overall DBE participation goal, staff inventoried the number of contractors within the Burlington-Graham Metropolitan Region available to perform the types of services that the City of Burlington would contract for during the 2019-2021 period for Link Transit. The Burlington-Graham Metropolitan Region consists of all of Alamance County and small portions of both Guilford and Orange Counties. For the purpose of this inventory, the North American Industry Classification System (NAICS) was used to identify and classify the types of activities anticipated for contract during the performance period. Staff then utilized the North Carolina Department of Transportation (NCDOT) listed of certified DBEs to determine the number of certified DBE firms within the Metropolitan Region to complete the types of work expected.

At the FTA's recommendation and utilizing past participation from previously selected vendors of similar projects, the search area was extended to encompass a larger area surrounding the Burlington-Graham Metropolitan Region. The areas included in the search were the entire NCDOT Division 7 and portions of Division 8 and 9 surrounding Alamance County, which include the following counties:

Caswell County	Rockingham County	Davidson County
Guilford County	Orange County	Randolph County
	Chatham County	

Staff estimates that \$4,379,000 in federal funds will be available for procurement opportunities in FY 22-24. These funds are divided by their respective NAICS Code in Table 1, showing the weight of DOT funds for each NAICS Code. The NAICS codes chosen most closely correlate to common DOT funded bidding opportunities for

anticipated upcoming projects. Staff also provided a description of the anticipated upcoming projects to help DBEs understand what each project entails.

<b>Table 1. Determine of weight of each type of work by NAICS Code</b>				
<b>NAICS Code</b>	<b>Project</b>	<b>Description</b>	<b>Estimated Federal Funding</b>	<b>% of total DOT funds (weight)</b>
238990	All Other Specialty Trade Contractors	Sidewalk Construction, Concrete Paving	\$0	0.0
541611	Administrative Management and General Management Consulting Services	Transit & Service Facility Feasibility Study	\$179,000	0.0409
236220	Commercial & Institutional Building Construction	Bus Shelter Construction	\$150,000	0.0343
485113	Transit Operations	Transit Operations	\$4,050,000.00	0.9249
		<b>Total</b>	<b>\$4,379,000.00</b>	<b>1</b>

### *Step 2- Base Figure Calculation*

Utilizing the 2019 County Business Patterns from the United State Census and the North Carolina Department of Transportation Unified Certification Database; staff was able to determine the number of available firms and the number of certified DBEs within the NAICS code within the search area defined above.

Based on the NAICS code and the search area, a total of 10 certified DBEs were identified as willing to complete work within Alamance County. A total of 539 firms were identified within the same NAICS code. Staff used these numbers to determine the relative availability of DBEs by NAICS code in Table 2.

The formula used to determine ready, willing and able DBE's in the defined search area, divides the potential number of DBE bidders by the total number of all potential bidders in the defined search area. The results of this analysis area used to determine the relative availability of DBEs in the search area. The results are as follows:

Base Figure = DBEs/All available firms (including DBEs), or Base Figure = 10/539. Providing a yield of 0.0183 or 1.83%. This result means that there is 1.83% DBE firm availability within the service area on the anticipated upcoming projects.

**Table 2. Determine the relative availability of DBE's by NAICS Code**

NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
238990	All Other Specialty Trade Contractors	3	104	0.0288
541611	Administrative Management and General Management Consulting Services	6	318	0.0189
236220	Commercial & Institutional Building Construction	1	117	0.0085
485113	Transit Operations	0	7	0
		<b>10</b>	<b>539</b>	<b>0.0183 or 1.83%</b>

### *Step 3- Adjustment*

Estimated three-year funding through the Federal Transit Administration, excluding rolling stock, is \$4,379,000.00. Weighted percentages were applied to each NAICS code in Table 1 and multiplied by the relative availability calculated in Table 2 to provide a “weighted base” found in Table 3 below.

Weighted base = (weighted average by NAICS)\*(relative availability of DBE firm).

Expressed as a rounded percentage, the calculated weighted based figure is 0.11%. As stated in the federal regulations, it is necessary for the City of Burlington to establish a goal based upon the number of DBEs ready, willing and able to participate in federally assisted contracts. Unfortunately, as noted in the above charts, there are very few ready, willing and able DBEs within our service area. Based on past performance with DBE contract awards and the availability of DBE firms, the City of Burlington believes it is reasonable to adopt a 0.11% DBE goal.

The City of Burlington’s overall DBE program goal for federally assisted contracts is 0.11% or **\$36,190.00** for FY 22-24.

**Table 3. (Weight) x (Availability) = Weighted Base Figure**

NAICS Code	Project	Weight	X	Availability	Weighted Base Figure
238990	All Other Specialty Trade Contractors	0.4088	x	0.02885	0.0
541611	Administrative Management and General Management Consulting Services	0.3425	x	0.01887	0.01887
236220	Commercial & Institutional Building Construction	0.92487	x	0.00855	0.00855
				Total Expressed as % Rounded, Weighted Base Figure:	0.011 0.11% 0.11%

**DBE Financial Institutions (§26.27)**

It is the policy of the City of Burlington 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 contract to make use of these institutions. The City will also re-evaluate the availability of DBE financial institutions on an annual basis. Information on the availability of such institutions can be obtained from the DBE Liaison Officer (DBELO).

**Prompt Payment Mechanisms (§26.29)**

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 contract receives from the City of Burlington. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Burlington. This clause applies to both DBE and non-DBE subcontracts.

The prime contractor agrees to return retainage payments to each subcontractor within thirty (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 City of Burlington. This clause applies to both DBE and non-DBE subcontracts for federal and state funded transportation contracts.

The City of Burlington has established a reporting requirement to monitor and enforce that prompt payment and return of retainage is in fact occurring. This includes the verification of sub-contractor payments that accompany request for payments under a contract. In addition, the DBE Liaison Officer verifies payments via direct communication.

### **Monitoring and Enforcement Mechanisms (§26.37)**

All participants are hereby notified that pursuant to 49 CFR, Part 26 and the City of Burlington's DBE Program, they must affirmatively ensure that in any contract entered into with the City of Burlington for applicable projects; DBEs will be afforded equal opportunity to participate in subcontracting activities.

All contracts between the City of Burlington and a contractor shall contain an appropriate provision to the effect that failure by the contractor to comply with City of Burlington'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 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 City of Burlington's DBELO and City Manager.

Should a DBE firm not be certified by the NCDOT United Certification Program (UCP) and 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, and/or payments for such said contract to be made.

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 City of Burlington 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 City of Burlington's DBE Program. Additional information on the City of Burlington's DBE Program can be obtained from the City of Burlington's DBELO.

To ensure that all obligations under the contracts awarded to DBEs are met, the City of Burlington will review the participants DBE involvement efforts during the performance of the contract. The participant shall bring to the attention of the City of Burlington 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/proposers as well as to ensure their compliance with contract requirements, the following steps will be taken:

- Review bid package documentation thoroughly, obtaining clarification, if necessary.
- 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 that the NCDOT-UCP has certified the company, and contract amount.
- 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.
- 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.
- Monitor progress of DBE's work through on-site reviews and communications with DBEs. 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. 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.
- Ensure that prime contractors and DBEs immediately notify the City of Burlington of any changes in their firm. This includes ownership, trade license(s), areas of expertise, address, telephone number and contact person(s).

The City of Burlington 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. PART 26 will also consider similar action under local legal authorities, including responsibility determinations in future contracts.

### **Transit Vehicle Purchase (§26.49)**

Per Federal Transit Administration guidelines, the City of Burlington will only purchase transit vehicles from a DBE-certified transit vehicle manufacturer (TVM) and will report the purchase to the FTA within 30 days of the purchase. The current list of DBE-certified TVMs and the online reporting tool can be found on the DBE portion of the

FTA's website at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>.

### Race Neutral Measures (§26.51)

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

The City of Burlington will adjust the estimated breakout of race neutral and race conscious participation separately. For reporting purposes, race neutral DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firms DBE status in making the award.

The City of Burlington will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation. The following means will be used to increase DBE participation:

- Arranging solicitations, times for presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (i.e., simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids and providing services to help DBE's and other small business obtain bonding and financing).
- Providing technical assistance and other services.
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBE's and other small business on mailing lists for bidders, ensuring the dissemination to bidders on prime contractors of lists of potential sub-contractors, and provision of information in languages other than English, where appropriate).
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses.
- Providing services to help DBE's and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve self-sufficiency.
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.
- Ensuring distribution of the DBE directory to the widest group of potential prime contractors.
- Assisting DBE's and other small businesses to develop their capability to utilize

emerging technology and conduct business through electronic media.

### **Contract Goals (§26.51)**

The City of Burlington will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals reestablished so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our goals that is not projected to meet through the use of race-neutral means.

The City of Burlington 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 (i.e., type and location of work, availability of DBE contractors to perform the particular type of work). We will express our contract goals as a percentage of federal share of federal assisted contracts.

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

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

### **Administrative Reconsideration (§26.53)**

Within seven (7) days of being informed by the City of Burlington that is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposers should make this request in writing to the DBELO Officer. The reconsideration official will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer 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/proposer 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. The City will send the bidder/proposer a written decision on reconsideration, explaining the basis for the 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 Effort when a DBE is terminated/replaced on a contract with contract goals (§26.53)**

The City of Burlington requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without the City of Burlington's prior written consent. Prior written consent will only be provided where there is "good cause" for termination, as established by Section 26.53 of the DBE regulation.

Before transmitting to the City of Burlington its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to the City of Burlington prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise the City of Burlington as to why it objects to the proposed termination.

In those instances where "good cause" exists to terminate the DBE's contract, the City of Burlington will require the prime 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. The City will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

### **Public Participation**

The City of Burlington is committed to providing every opportunity for DBEs to contract with the City of Burlington. Development of a Request for Proposal (RFP) includes the completion of a vendor application for any new vendor who expresses interest in performing work for the City of Burlington. If the vendor indicates on their application that they are a DBE, the City and NCDOT's Civil Rights Office will assist that vendor in completing and submitting the UCP required forms. The City of Burlington will use and count DBE credit only for those DBE firms certified by NCDOT.

If a goal is set for a project, but cannot be met by the vendor, the RFP includes certification instructions to guide the vendor through the process of assuring the City that every reasonable effort was made to meet the listed goal.

If a contractor requests assistance in locating a DBE subcontractor, the contractor is directed to the State Office of Civil Rights and NCDOT.

The City of Burlington is a member of the UCP administered by NCDOT.

## **Public Outreach**

The FY 22-24 DBE goal is published on the Link Transit's website under the Disadvantaged Businesses page. The link to this page is <https://linktransit.org/About/Disadvantaged-Businesses>.

In the development of projects, City of Burlington/Link Transit staff works closely with the City's Purchasing Department. All projects that utilize federal funds will require specific DBE clauses be included within the RFP.

If the City of Burlington has set a goal for a given project, bidders are made aware of the requirement to pursue every reasonable effort to have subcontractors certified by the State's Office of Civil Rights. Emphasis is placed on meeting any published DBE goals during pre-bid and pre-construction meetings.

## **Consultation**

On August 25, 2021, the City of Burlington/Link Transit staff held a consultation meeting from 10:00 a.m. to 11:00 a.m., to allow the public the opportunity to review the methodology and provide feedback regarding the plan and methodology calculations. There were no attendees as part of the consultation.

The City posted advertisements for this consultation meeting in the local newspaper, minority newspaper, social media sites and on board all buses in service. The goal was posted on the website at [www.linktransit.org](http://www.linktransit.org).

The meeting will be held via videoconferencing. Staff also created a Zoom link for citizens and businesses to sign up for the meeting for tracking purposes. The Purchasing Manager handled the email distribution of the invitation to local officials, minority agencies within the community, and past DBE contractors/subcontractors. The Transit Manager handled the local newspaper, social media and bus advertisements.

Despite these efforts and due to the COVID-19 pandemic, there was no attendees from the DBE or potential DBE community.

Participants at the meeting would have received the DBE goal methodology, learn how to become a vendor with the City, find current & future bid/contracting opportunities and information about becoming a DBE. The webinar was recorded for future reference. The event sign-in sheet, Eventbrite participant registration information and all marketing/public outreach efforts are available upon request. An email log of all correspondences will be kept and a sign-in sheet for the consultation meeting will be completed. The Transit Manager took meeting minutes, which included any comments received at the meeting. Written comments regarding the proposed DBE goal and the methodology of how it was established will be accepted for up to 45 days after it is posted. All written comments were sent to John Andoh, Interim Transit Manager, City of Burlington/Link Transit, 234 East Summit Avenue, Burlington, NC, 27216. There were no written comments received.

Should comments have been received, staff would review all comment received and assess the need to incorporate the comments within the methodology and overall DBE goal. A final DBE goal was posted on September 30, 2021.

## **ATTACHMENTS**

- Attachment 1: Organizational Chart
- Attachment 2: DBE Directory
- Attachment 3: Monitoring and Enforcement Mechanisms
- Attachment 6: Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 7: Certification Application Forms
- Attachment 8: Procedures for Removal of DBE's Eligibility
- Attachment 9: Regulations: 49 CFR part 26

## Public Notice



## PUBLIC NOTICE

### Updated Proposed Disadvantaged Business Enterprise (DBE) Triennial Goal Methodology for Federal Transit Administration (FTA) Projects for Fiscal Years 2022-2024

The City of Burlington NC is updating its DBE triennial goal methodology for Fiscal Years 2022-2024 which will support an overall goal of 0.11% on its FTA funded contracts with a 0.11% race-neutral component. The public is encouraged to provide comments during the open comment period.

You can also learn more about being a vendor and pursue purchasing opportunities with the City.

Get Involved	Register to Attend the Public Outreach Meeting
<p>The City of Burlington encourages any interested persons to provide comments regarding the updated proposed DBE goal methodology during the open comment period. Written comments should be submitted to the City of Burlington's Planning &amp; Transportation Department the following ways.</p>	<p>Date: Wednesday, August 25th, 2021 Time: 10:00 a.m. to 11:00 a.m. Location: Remote Zoom Meeting</p> <p>Registration Link is Below: <a href="https://us02web.zoom.us/meeting/register/tZUrcuGspzksHNT0aOBxg8dYXyrXsOQ1Ix6">https://us02web.zoom.us/meeting/register/tZUrcuGspzksHNT0aOBxg8dYXyrXsOQ1Ix6</a></p>
<p>1) Mail/Hand Deliver City of Burlington/Link Transit Attn: John Andoh, Interim Transit Manager PO Box 1358, Burlington NC 27216 234 East Summit Avenue Burlington, NC 27215</p> <p>2) Email: <a href="mailto:jandoh@burlingtonnc.gov">jandoh@burlingtonnc.gov</a></p> <p>3) Fax (336) 222-5019</p> <p>Written comments will be accepted for up to 45 days through Thursday, September 29, 2021 at 5:00 p.m. EDT.</p>	<p>After registering, you will receive a confirmation email containing information about joining the meeting.</p> <p><b>Learn More About Link Transit &amp; City of Burlington DBE, Purchasing &amp; DBE Goal</b></p> <p>Visit the following links:</p> <p><a href="https://linktransit.org/About/Disadvantaged-Businesses">https://linktransit.org/About/Disadvantaged-Businesses</a></p> <p><a href="https://www.burlingtonnc.gov/132/Purchasing">https://www.burlingtonnc.gov/132/Purchasing</a></p>

## **Attachment 1: Organizational Chart**

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

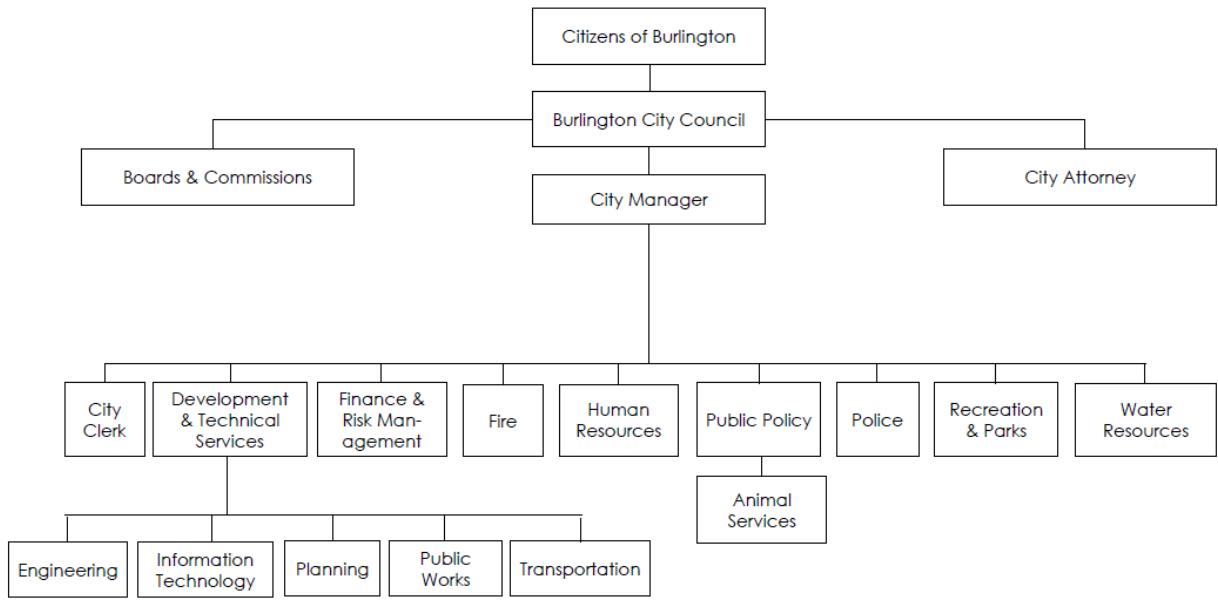
The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has access within the City of Burlington and departmental staff to assist in the administration of the program. The duties and responsibilities include the 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 all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race neutral methods and contract specific goals attainment and identifies ways to improve progress. Analyzes the City of Burlington's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the City of Burlington's City Manager on DBE matters and achievement. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Maintains the City of Burlington's updated directory on certified DBEs and/or confirms with NCDOT Directory of Firms.

The City of Burlington's DBE Liaison Officer is:

Sonja Cross, Purchasing Agent  
City of Burlington Purchasing Division  
237 W Maple Avenue  
Burlington, NC 27215  
(336) 222-5006 (phone)  
(336) 222-5019 (fax)  
[scross@burlingtonnc.gov](mailto:scross@burlingtonnc.gov)

\*Please note that the City of Burlington's Transit Manager works closely with the designated DBE Liaison Officer to ensure compliance.



Purchasing is within the Finance & Risk Management Department and the DBELO (City's Purchasing Manager) has independent access to the City Manager to report on DBE related matters.

Link Transit is within the Transportation Department. The Link Transit Manager reports to the Director of Transportation.

**Attachment 2: DBE Directory**

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

### **Attachment 3: Monitoring and Enforcement Mechanisms**

The City of Burlington has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract; and
2. Breach of contract action, pursuant to North Carolina Revised Statutes

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

## **Attachment 5 Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious**

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

- Maintain a procurement website
- Hold consultation meetings to learn about procurement opportunities

We estimate that, in meeting our overall goal of 0.11%, we will obtain 0.5% from race-neutral participation and 0.6% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race conscious DBE participation:

Details is explained on page 8.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately.

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

DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award. We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

## **Federal Good Faith Efforts Criteria**

The following factors will be used to determine if the bidder has made adequate good faith effort. Supporting Documentation must be included in bid submittal to be considered a responsive bid.

- (A) Whether the bidder attended any pre-bid meetings that may be scheduled by the City of Burlington to inform DBEs of subcontracting opportunities.
- (B) Whether the bidder provided solicitations through all reasonable and available means (e.g., advertising in newspapers owned and targeted to the Disadvantaged) at least 10 calendar days prior to bid opening). Whether the bidder provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, (as noted in the DBE Directory) that the bidder will be subletting.
- (C) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable number of DBEs within the targeted project area do not provide intent to quote or no DBEs specialize in the subcontracted areas, the bidder shall notify DBEs outside of the targeted project area that specialize in the subcontracted areas.
- (D) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these work items with its own forces.
- (E) Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract.
- (F) Whether the bidder negotiated in good faith with interested DBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.
- (G) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firms quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy contract goals.
- (H) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.
- (I) Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.
- (J) Any other evidence that the bidder submits which show that the bidder has made reasonably good faith efforts to meet the contract goal.

## **Attachment 6 Forms 1 & 2 for Demonstration of Good Faith Efforts**

### **FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

- The bidder is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.  
 The bidder (if unable to meet the DBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) \_\_\_\_\_ Title \_\_\_\_\_

### **FORM 2: LETTER OF INTENT**

Name of bidder's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder 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 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 7 Certification Application Forms**

<https://connect.ncdot.gov/business/SmallBusiness/Pages/UCP%20Certification%20Process%20for%20DBE%20firms.aspx>

## **Attachment 8 Procedures for Removal of DBE's Eligibility**

The City of Burlington will report DBE eligibility to NCDOT and utilize NCDOT's processes in the removal of DBE eligibility consistent with Section 26.87.

## **Attachment 9 Regulations**

49 CFR Part 26

[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

The City Attorney of City of Burlington has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

***The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.***

## **City of Burlington DBE Program Policy Statement**



The City of Burlington shall not discriminate in any manner on the basis of race, color, sex or national origin, and shall take all reasonable steps to ensure that certified Disadvantaged Business Enterprises (DBE's) have the maximum opportunity to participate in the performance of contracts financed, in whole or in part, with financial assistance from the United States Department of Transportation (DOT), acting through such agencies as the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA). The City of Burlington shall implement this DBE Program in accordance with Part 26 of Title 49 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs."

The objectives of the City of Burlington's DBE Program are:

- Ensure compliance with 49 CFR 26;
- To ensure nondiscrimination in the award and administration of DOT assisted contracts;
- To ensure that the DBE program is narrowly tailored in accordance with applicable federal, state and local laws;
- To ensure that only firms fully meeting the eligibility requirements of the DBE program are permitted to participate;
- To help create a level playing field on which DBEs can fairly compete for DOT-assisted contracts;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- To help and assist in the development of firms that can compete successfully in the marketplace outside of the DBE program; and
- To provide appropriate flexibility to establish and provide DBEs opportunities to participate in DOT-assisted contracts in accordance with applicable federal, state and local laws.

These objectives will be implemented through City of Burlington's DBE Program utilizing race-neutral measures to the maximum extent feasible.