



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

August 2014

**City of Burlington
City Municipal Offices
425 S. Lexington Ave.
Burlington, NC
(336) 222-5000**

**CITY OF BURLINGTON
DBE PROGRAM POLICY STATEMENT**

Section 26.1, 26.23 Objectives/Policy Statement

The City of Burlington 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 City of Burlington has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Burlington has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Burlington to ensure that DBEs are defined in City of Burlington 26, and 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 market place outside the DBE Program.
- To review and/or update this policy and overall DBE program on an annual basis.

The City of Burlington’s Purchasing Officer has been designated as the DBE Liaison Officer. In that capacity, HR/Compliance Specialist 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 CITY OF BURLINGTON in its financial assistance agreements with the Department of Transportation.

The City of Burlington has disseminated this policy statement to the City of Burlington City Council and all of the components of our organization. The City of Burlington will regularly distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through a variety of means, including established print media outlets, minority and women association newsletters, Chamber of Commerce, advertisements and DBE Program workshops and seminars.

Burlington City Council Chair

Date

Date

SEAL:

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

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

Section 26.3 Applicability

The City of Burlington is the recipient of federal –aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The City of Burlington is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The City of Burlington will adopt the definitions contained in Section 26.5 of City of Burlington 26 for this program and continuously review and update these definitions (Attachment 8) as define under Section 26.5 of Part 26.

Section 26.7 Non-discrimination Requirements

The City of Burlington 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 City of Burlington 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

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

The City of Burlington will report DBE participation to the relevant operating administration (FHWA and/or FTA) using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)

The City of Burlington will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms (where available).

The City of Burlington will collect this information in the following ways:

- Bid sheet and Good Faith Effort showing DBE participation.
- Contract clause requiring prime bidders to report the names/addresses, payment verification and other pertinent information.
- NCDOT
- Local Municipalities and Chambers of Commerce

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

The City of Burlington shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

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.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the City of Burlington has received a grant of financial assistance from the Federal Transit Administration (FTA) of \$250,000 or more in FTA planning, capital, and/or operating assistance in federal fiscal year 2015 we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.25 DBE Liaison Officer (DBELO)

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

City of Burlington Purchasing Officer: Hal Hayes

P.O. Box 1358 Burlington, NC 27216-1358, Phone Number 336-222-5016

email address hhayes@ci.burlington.nc.us

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

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.

Section 26.27 DBE Financial Institutions

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. We will also re-evaluate the availability of DBE financial institutions on an annual basis. We have identified such institutions as contained in Attachment 2. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

The City of Burlington 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 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.

Retainage: 26.29(b)

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 or state funded transportation contracts.

Monitoring and Enforcement: 26.29(d)

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.

Section 26.31 Directory

The primary DBE Directory for USDOT-assisted projects (other than acquisition of transit vehicles), comes from certification files compiled and maintained by the Unified Certification Program (UCP) of the North Carolina Department of Transportation (NCDOT). The directory is accessible online at the state's website; <http://partner.ncdot.gov/VendorDirectory/default.html>.

This statewide DBE directory should enable prime contractors for applicable projects to proceed more easily in their attempts to comply with goals regarding Disadvantaged Business Enterprises. In the event any contractor has other DBE firms he wishes to use, it can be listed in the UCP, provided it meets the established certification procedures. Additional DBE firms that desire to be listed will be included in the UCP if they also can be certified.

Section 26.33 Overconcentration

The City of Burlington has not, at this time, identified any overconcentration in one or more types of work at the organization. The City of Burlington will annually review the number of DBE firms in the areas of work most frequently awarded to those DBE firms and compare those figures to the total number of non-DBE firms in the respected work areas. If the number of DBE firms is determined to be disproportionately high, then overconcentration may exist. The City of Burlington will then propose appropriate measures to remedy the concerns, and submit the measures to the appropriate USDOT agency for review.

Section 26.35 Business Development Programs

At this time, the City of Burlington does not propose to establish any separate Business Development Programs or mentor-protégé Program. Should more extensive efforts be required beyond the small-business development activities which the City of Burlington and local minority business associations currently implement (e.g. continuing education opportunities and seminars), the City of Burlington will propose developing strategies as outlined in 49 CFR Part 26.

Section 26.37 Monitoring and Enforcement Mechanisms

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 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 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.
- Insure 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.

Section 26.39 Small Business Participation

The City of Burlington will coordinate with local urban transit providers to develop a Small Business Participation Plan ("Plan"). The Plan effects contracts that fall within the DBE regulation and is not meant to replace any other similar program. Under the Plan, and when commercially and operationally reasonable to do so, The City of Burlington will undertake certain efforts intended to increase the opportunities for small businesses that shall include but not be limited to the following strategies:

- A. In multi-year design-build contracts or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontractors that are of a size that small businesses, including DBE's, can reasonably perform.
- B. 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 City of Burlington does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45, The City of Burlington will submit its triennial overall DBE goal to FTA on August 1 of the year specified by FTA.

The City of Burlington also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA. The process generally used by the City of Burlington to establish overall DBE goals is as detailed in Attachment 4 addresses the following key steps:

STEP 1: Establishes the method used to calculate the relative availability of DBEs ("base figure") for the goal [Sec. 26.45(c)]. This step uses quantifiable evidence to ascertain the percentage of ready, willing, and able DBE businesses (i.e. DBE directory). The base figure is a percentage calculated by dividing the available DBEs, by all firms listed in the Business Census Data for the study area, and classified by trade using the North American Industry Classification System (NAICS) codes.

STEP 2: This step is intended to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation that would be expected in the absence of discrimination [Sec.26.45 (d)]. Step 2 may incorporate historical data of DBE participation and any disparity studies (State or Local), by which an adjustment to the base figure can be made in response to real market conditions. Before establishing the overall goal each year,

In addition to Step 1 and Step 2 of the Methodology, the City of Burlington will consult with a variety of resource agencies and persons in developing the overall goal. These agencies have included, but are not limited to local minority, women's and general contractors groups.

The City of Burlington will consult with local governments and the business community to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Burlington's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the City of Burlington will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the City of Burlington's administrative office for 30 days following the date of the notice, and informing the public that the City of Burlington and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, the City of Burlington will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets.

The City of Burlington will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. 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. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 Goal Setting and Accountability

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

- 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
- Submit the plan to FTA within 60 days of the end of the affected fiscal year.

Section 26.49 Transit Vehicle Manufacturers Goals

The City of Burlington 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 City of Burlington 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.

Section 26.51 Meeting Overall Goals/Contract Goals

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

1. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Disseminating information communications on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.

The City of Burlington will use contract goals to meet any portion of the overall goal. The City of Burlington 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 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 (e.g., type and location of work, availability of DBEs to perform the particular type of work.) The City of Burlington will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, the City of Burlington will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) & (c)

The City of Burlington Purchasing Officer, and project management personnel are responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The process used to determine whether good faith efforts have been made by a bidder may reference Appendix A to Part 26 for the types of actions which are normally considered good faith efforts. While not intended to be exclusive or exhausted those factors help to serve as a framework for the decision of responsiveness. The City of Burlington will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before the City of Burlington commits to the performance of the contract by the bidder/proposer.

Information to be Submitted: 26.53(b)

The City of Burlington 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/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(d)

Within 7 days of being informed by the City of Burlington that it 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 Hal Hayes, Purchasing Officer, P.O. Box 1358 Burlington, NC 27216-1358, phone number 336-222-5016, email address hhayes@ci.burlington.nc.us. 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. We will send the bidder/proposer 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 Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

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 of the DBE firm, as established by Section 26.53(f)(3) 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 a 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. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Burlington 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/proposers including those who qualify as a DBE. A DBE contract goal of X percent has been established for this contract. The bidder/proposer 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/proposer 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/proposer 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.

SUBPARTS D & E– CERTIFICATION

Section 26.61 – 26.73 Certification Process

The City of Burlington will use the certification standards of Sub Part D of City of Burlington 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

The State of North Carolina Department of Transportation (NCDOT), in response to USDOT CFR PART 26.81 has established a Unified Certification Program (UCP). All certifications, certification appeals, re-certifications and annual affidavits are submitted to and managed by the Contractual Services Unit of NCDOT. Access to the necessary forms can be found at www.NCDOT.org and submitted to the following:

North Carolina Department of Transportation
ATTN: Unified Certification Program
1509 Mail Service
Center Raleigh, NC
27699-1509

Section 26.81 Unified Certification Programs

The City of Burlington is a member of a Unified Certification Program (UCP) administered by NCDOT. The UCP will meet all of the requirements of this section. The City of Burlington will use and count for DBE credit only those DBE firms certified by the NCDOT.

Section 26.83-26.91 Procedures for Certification Decisions

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

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

The City of Burlington 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

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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

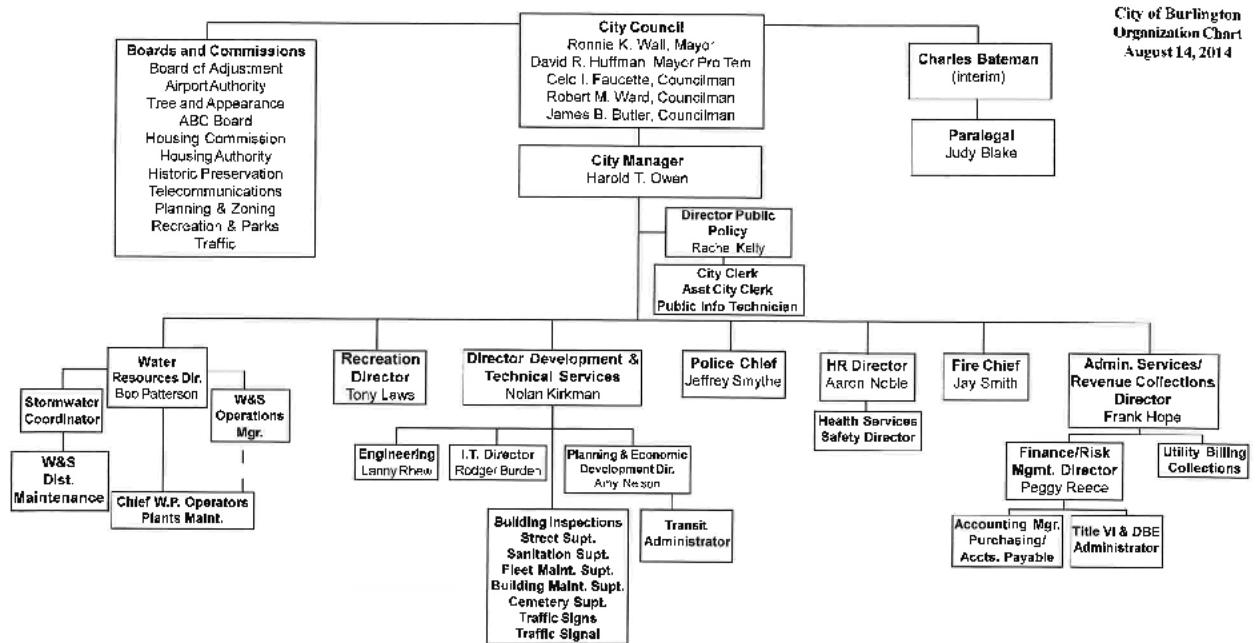
The City of Burlington will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

ATTACHMENTS

- Attachment 1: Organizational Chart
- Attachment 2: DBE Directory
- Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies
- Attachment 4: Goal Setting Methodology
- Attachment 5: Good Faith Efforts Forms
- Attachment 6: Certification Forms
- Attachment 7: DBE Regulation, 49 CFR Part 26
- Attachment 8: Definitions of Terms

Attachment 1

City of Burlington Organization Chart



Attachment 2

DBE Directory

www.NCDOT.gov

Minority Financial Institutions in the Recipient's Area.

The City of Burlington has identified two minority financial institutions within the state of North Carolina. The following are the addresses of the institutions:

Mechanic's and Farmers Bank,
100 South Morrow Blvd., Greensboro, NC 27401; (336) 373-8500;

Lumbee Guaranty Bank,
P.O. Box 908, Pembroke, NC 28372, 910-521-6102.

A full listing of certified DBE firms is available at the City of Burlington, and is drawn from the complete listing at <https://partner.ncdot.gov/VendorDirectory/default.html>

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

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

- Breach of contract action, pursuant to the terms of the contract;
- Breach of contract action, pursuant to NC State Code;
- Liquidated damages to prime contractors as specified in contract terms for commitment to awarding sub-contracts to DBE firms.
- 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.

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
3. Prosecution pursuant to 18 USC 1001.

Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. The City of Burlington's overall goal for the following time period 2015-2018 is the following: ___% of the Federal financial assistance we will expend in DOT-assisted contracts. These funds are specific for FTA assistance and the overall goal is exclusive for the purchase of transit vehicles.
2. \$_____ is the dollar amount of DOT-assisted contracts that the City of Burlington expects to award during FFY2015-2018. This means that the City of Burlington has set a goal of expending \$_____ with DBEs during this fiscal year/project.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

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

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

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

data source or demonstrable evidence used to derive the denominator was:

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by ___%.

The data used to determine the adjustment to the base figure was: The

reason we chose to adjust our figure using this data was because: From

this data, we have adjusted our base figure to:

Public Participation

We published our goal information in these publications:

Received comments from / Summaries of these comments are as follows / Our responses to these comments are:

**Section 26.51: Breakout of Estimated
Race-Neutral & Race Conscious Participation**

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: *[List the things that you actually do. See Section 26.51(b) for examples]*

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

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: *[summarize how the estimate was derived: from private sector MBE/WBE participation, DBE participation of DBEs in local procurement programs in which there are no DBE contract goals, extend of your race-neutral business assistance efforts.]*

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.

Attachment 5

Forms for Demonstration of Good Faith Efforts

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION FORM		
NAME:	PROJECT NUMBER:	
PROJECT DESCRIPTION:	PROJECT LOCATION:	
PRIME CONTRACTOR INFORMATION		
NAME/ADDRESS: Name of firm Contact person Address, City, Zip Phone Email 111 DBE 111 MBE 111 WBE 111	TYPE OF CONTRACT <input type="checkbox"/> ARCHITECT/ENGINEER(A/E) <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> SUPPLIER/SERVICE (S/S)	
		AMOUNT OF CONTRACT/BID: \$
SUBCONTRACTOR INFORMATION		
111 DBE 111 MBE 111 WBE 111 OTHER 111 SUBCONTRACTOR 111 SUPPLIER/SERVICE 111 JOINT VENTURE 111 BROKER	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone	
TYPE OF CONTRACT		
CONTRACT AMOUNT \$		
111 DBE 111 MBE 111 WBE 111 111 SUBCONTRACTOR 111 SUPPLIER/SERVICE 111 JOINT VENTURE 111 BROKER	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone	
TYPE OF CONTRACT		
CONTRACT AMOUNT \$		
111 DBE 111 MBE 111 WBE 111 111 SUBCONTRACTOR 111 SUPPLIER/SERVICE 111 JOINT VENTURE 111 BROKER	NAME /ADDRESS: Name of firm Contact person Address, City, Zip Phone	
TYPE OF CONTRACT		
CONTRACT AMOUNT \$		
FORM COMPLETED BY:		
NAME	TITLE	PHONE
SIGNATURE	DATE	EMAIL

Federal Good Faith 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 amount of DBEs within the targeted project area do not provide an 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 reasonable good faith efforts to meet the contract goal

**DISADVANTAGED BUSINESS ENTERPRISES GOOD FAITH EFFORT LOG OF DBE
SUBCONTRACTORS/SUPPLIERS SOLICITED**

Submitted by:

Contractor/Supplier Name	Address or Phone/	Firm type (DBE /MBE/WBE/ Other)	Date of Contact	Contact Method (letter, phone, email, etc)	Task/Item Description	Delivery Schedule	Response (Yes/No)

LETTER OF INTENT

Name of bidder/proposer 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/proposer 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/proposer 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

Each state has its own Unified Certification Program (UCP), which is administered by their Department of Transportation. The purpose of the UCP is to provide "one-stop shopping" for applicants to apply for DBE certification, such that an applicant is required to apply only once for a DBE certification that and it will be honored by all agencies that are recipients of Federal DOT funding in the state.

State and local recipients of Federal Department of Transportation money often set DBE participation goals on their contracts. Prime bidders must either meet or make a good faith effort to meet these goals. When a DBE is certified through the UCP, it is included in the UCP Directory. Prime bidders needing to perform outreach to DBEs for their bid can use the UCP Directory to locate potential DBE subcontractors and suppliers.

All related program information and registration requirements and associated forms can be obtained via the internet at <https://connect.ncdot.gov/Pages/default.aspx>

What is the Directory of Firms?

The Directory of Firms is a real-time consolidated list of firms that have been certified through North Carolina's Unified Certification Program as Disadvantaged Business Enterprises (DBE), Airport Concession Disadvantaged Business Enterprises (ACDBE), Small Professional Services Firms (SPSF), Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), and/or Small Business Enterprises (SBE).

The Directory also contains real-time information on firms that have been prequalified to perform work on and/or bid on NCDOT contracts. Prequalification is not a warranty or assurance that a firm is qualified or has the capacity to perform the type(s) of work the owner has represented it's firm as competent to perform. Prequalification by NCDOT does not relieve the prime contractor of his responsibility for determining if the subcontractors selected are, in fact, qualified to perform the work for which they are engaged.

The Directory is provided as an informational source for prime contractors, subcontractors, and consultants as well as local and federal agencies. The following link provides the most up to date listing of certified firms:

<https://partner.ncdot.gov/VendorDirectory/default.html>

Attachment 7

Regulations: 49 CFR Part 26

Full document available at <http://www.ecfr.gov/cgi-bin/text>

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Contents

Subpart A- General

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

Subpart C—Goals, Good Faith Efforts, and Counting

Subpart D—Certification Standards

Subpart E—Certification Procedures

Subpart F—Compliance and Enforcement

[Appendix A to Part 26—Guidance Concerning Good Faith Efforts](#)

[Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and](#)

[Payments Form Appendix C to Part 26—DBE Business Development Program](#)

[Guidelines Appendix D to Part 26—Mentor-Protégé Program Guidelines Appendix E](#)

[to Part 26—Individual Determinations of Social and Economic Disadvantage](#)

[Appendix F to Part 26—Uniform Certification Application Form](#)

Attachment 8

Definitions of Terms

Definitions of Terms: (The terms used in this Program have the meanings defined in 49 CFR 26.5.)

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.

1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, absence of proof of minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction, leasing of real property, and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a USDOT-assisted highway, transit, or airport Program.

Department or USDOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern-

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

USDOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special Programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of USDOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual

are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient means a recipient which receives USDOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE Program purposes.

Program means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or Program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or Program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race neutral includes gender neutrality.

Recipient is any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the Programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the U. S. Small Business Admin. Small business concern means, with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in Sec. 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is-

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttable presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).