



City of Charlotte
Disadvantaged Business Enterprise Program

March 2013
(Revision 4/2015)

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General Requirements

Section 26.5: Definitions of Terms

The City will adopt the following definitions found in 26.5 for this program.

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, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

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 and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

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

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

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.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT 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.

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 DOT: 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 DOT 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 DOT 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 DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

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 United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

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 rebuttably 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, Kiribati, 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).

Section 26.7: Nondiscrimination

The City will not 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 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

26.11(b): Reporting to USDOT

The City will report DBE participation to USDOT as follows:

CLT - will report DBE participation on an annual basis, using USDOT Form 4630, as modified for use by FAA recipients. These reports will reflect projects awarded/committed as well as payments actually made to DBEs on USDOT assisted contracts completed during the reporting federal fiscal year.

CATS -will report DBE participation on a semi-annual basis, using USDOT Form 4630. These reports will reflect payments actually made to DBEs on USDOT assisted contracts.

CDOT – will report DBE participation on a per project basis to the NCDOT as a sub-recipient of USDOT-assistance through municipal agreements. CDOT shall follow the City Program requirements for goal-setting, monitoring and enforcement, as well as maintain appropriate records as described.

E&PM - will report DBE participation on a per project basis to the appropriate DBELO as described in a local memorandum of understanding agreement. E&PM shall follow the City Program requirements for goal-setting, monitoring and enforcement, as well as maintain appropriate records as described.

Per (49 CFR Part 26.47), If the awards and commitments listed on a department's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, that City of Charlotte department will do the following to continue to administer the DBE Program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) CATS and CLT will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If CATS is listed as one of the 50 largest transit authorities as determined by the FTA; or if CLT is listed as an Operational Evolution Partnership Plan airport or is so designated to do so by the FAA, and if the operating administration approves the report. This City of Charlotte will perform the tasks as outlined above as (1), (2), (3) (i) to remain in compliance with federal regulations for the remainder of that fiscal year.

26.11(c): Bidders List

The City will create a bidders list for both CLT and CATS projects consisting of information about *all* DBE and non-DBE firms that bid or quote on USDOT/FAA/FTA assisted contracts. The bidders list will include, to the extent available, the name, address, DBE/non-DBE status, age of firm, and annual gross receipts.

The City will collect this information in one or more of the following ways, or in some combination thereof:

1. *Conduct a survey to gather the information needed to estimate the universe of DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts.*
2. *Include a notice in all solicitations requesting firms quoting on subcontracts to report the approved information directly to the DBELO or designee, for inclusion in the bidder's list.*
3. *Request the above information from all potential bidders who contact the City seeking bid information, and/or who attend pre-bid meetings, conferences, etc.*

Section 26.13: Federal Financial Assistance Agreement Assurance

26.13(a): Assurance

The City has signed the following assurance, applicable to all USDOT-assisted contracts and their administration (when the City uses the services of sub-recipients as part of its development Program, this language will also appear in financial assistance agreements with sub-recipients):

"The City of Charlotte shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-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 USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, 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 City of Charlotte of its failure to carry out its approved Program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U. S. C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U. S. C. 3801 et seq.)."

26.13(b) Contract Assurance

The City 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

The City will continue to carry out this Program until all funds from USDOT financial assistance have been expended. The City will provide to USDOT updates representing significant changes in the Program.

Section 26.23 Policy Statement

The City of Charlotte policy statement can be found in Attachment 1 of this Program.

Section 26.25 DBE Liaison Officer (DBELO)

The City has designated the following individuals as DBE Liaison Officers:

Arlanda Rouse,
Charlotte Area Transit System
600 East Fourth Street
Charlotte, NC 28202
704-432-2566
arouse@charlottenc.gov

Russ Carpenter
Charlotte Department of Transportation
600 East Fourth Street
Charlotte, NC 28202
704-336-5847
rcarpenter@charlottenc.gov

Jeremy Weeden
Engineering & Property Management
600 East Fourth Street
Charlotte, NC 28202
704-336-3651
tpierce@charlottenc.gov

Laura Dahlberg
City of Charlotte Aviation Department
PO Box 19066
Charlotte, NC 28219
704-359-1910
ladahlberg@cltairport.com

Each DBELO shall be responsible for implementing all aspects of the DBE Program and ensuring that the City complies with all provisions of 49 CFR Part 26 in their respective departments. Each DBELO has direct, independent access to his or her department head and the City Manager concerning DBE Program matters. DBE administrative matters will be managed in-house by each DBELO with occasional support from industry consultants.

Each DBELO will be responsible for developing, implementing and monitoring the DBE Program, in coordination with his or her department head for federal requirements. The DBELO or designee will be responsible for the following as may be applicable to the respective departments:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this Program.
3. Works with all divisions within their department to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurement so that DBE requirements are included in solicitations and monitors results.
6. Analyzes CLT's and CATS' progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises their respective department heads/City Manager on DBE matters and achievement.
9. Completes DBE language on agenda items prior to going to City Council.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Accesses certified DBEs through the Unified Certification Program (UCP) of the North Carolina Department of Transportation (NCDOT).
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Follows DBE Program requirements as necessary for sub-recipient, municipal agreements with NCDOT.

Organization Charts for each of DBELO is located in Attachment 7 of this document

Section 26.27 DBE Financial Institutions

It is the policy of the City 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 the institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. The City encourages the use of these institutions during outreach events with vendors and contractors. The City will re-evaluate the availability of DBE financial institutions on an annual basis. The City has identified two minority financial institutions within the state of North Carolina found in Attachment 5.

Section 26.29: Prompt Payment Mechanisms

26.29(a): Prompt Payment

The City will include the following clauses in each USDOT-assisted prime Contract:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each periodic or final payment the full amount the prime contractor receives from the City of Charlotte for each subcontractor's work and materials under the subcontract. Any delay or postponement of payment from the above referenced time frame may result in liquidated damages and/or sanctions as stipulated in bid/contract documents. Exceptions may occur only for good cause following written approval by the City. This clause applies to both DBE and non-DBE subcontractors".

26.29(b) Retainage

"The prime contractor agrees to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors."

26.29(d) Monitoring and Enforcement

All contracts between the City and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the City'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, which include the prompt payment of subcontracts, and return of retainage payments.

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: www.ncdot.org.

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 has not, at this time, identified any overconcentration in one or more types of work at the CLT or CATS. The City 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 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 Program

At this time, the City has not established any separate Business Development Programs or mentor-protégé Program. The City will reevaluate the need for such a program every two (2) years to determine if more extensive efforts are required beyond the small-business development activities in which the City and local minority business associations currently implement.

Section 26.37: Monitoring and Enforcement Mechanisms

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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

All contracts between the City and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the City'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 applicable department DBELO.

Should a DBE firm not certified by the NCDOT UCP be proposed by a potential Contractor as a part of his/her DBE plan efforts, replacement with a properly certified DBE firm or review and certification procedures must be conducted prior to award of any contract.

Agreements between a Contractor and a DBE in which the DBE promises not to provide subcontracting quotations to other participants are prohibited.

In contracts with a DBE contract goal, bids submitted which do not meet the DBE contract goal, and which do not show that a meaningful good faith effort was made to achieve the stated goal, will be

considered nonresponsive bids, and bidders will not be eligible for award of the contract.

The City 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 who complies with 49 CFR, Part 26, and the City's DBE Program.

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

To ensure that all obligations under the contracts awarded to DBEs are met, the City will review the participant's DBE involvement efforts during the performance of the contract. The participant shall bring to the attention of the City 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:

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

10. The City will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
11. The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

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

Section 26.39: Small Business Participation Plan

1. Purpose and Implementation Plan

Effective February 25, 2013 the City will implement a Small Business Participation Plan (“Plan”) in order to increase opportunities for small businesses to compete for procurements as prime contractors or subcontractors.

The Plan effects contracts that fall within the DBE regulation and is not meant to replace the City’s Small Business Enterprise Program (SBO Program). For purposes of the Plan, a small business concern as defined in Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65 .

2. Certification and verification requirements

The City will accept the following certifications for participation in the Small Business Participation Plan:

- A. NCDOT DBE Certification – DBE Certification by the NCDOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by NCDOT.
- B. NCDOT Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and page 2 of the NCDOT DBE Certification application after contract award.
- C. North Carolina Department of Administration HUB Certification - Will require submittal of three years of business tax returns and page 2 of the NCDOT DBE Certification application after contract award.

- D. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.
- E. City of Charlotte, NC Small Business Enterprise Program (SBE)- SBE Certification by the City of Charlotte which stipulates that a firm has been determined to meet all the requirements in accordance with the SBE program. All certification determinations are evidenced by a letter of SBE certification issued by the City of Charlotte.

3. Monitoring /Enforcement

- a. The City will use the same race-neutral guidance when reporting is required.
- b. The City will use a bidders list to recruit and encourage DBE's, non-DBE's and SBE's to bid on projects.
- c. The City will hold yearly SBE, DBE training classes to promote bidding, sub-contracting, networking and community involvement and will ensure that bidders will have no geographic restrictions.

4. Participation Strategies

Under the Plan, the City will undertake certain efforts intended to facilitate opportunities for small businesses to compete for contracts when it is both commercially and operationally reasonable to do so. These strategies shall include but not be limited to the following:

- A. Megaproject Breakout. In multi-year design-build contracts or other large contracts (e.g. for "megaprojects"), the City will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- B. Unbundling. The City will, ensure that a reasonable number of prime contracts are a size that small businesses, including DBE's, can reasonably perform. The City will do this by unbundling large projects into smaller ones , rather than letting one large contract of a size that a small business could not be expected to compete for as a prime contractor

With these strategies in place, we hope to maximize the chances for Small Businesses to compete as either a prime contractor or subcontractor.

SUBPART C: Goals, Good Faith Efforts, and Counting

Section 26.43: Set-asides or Quotas

The City does not use quotas in any way in the administration of this program.

Section 26.45: Overall Goals

Pursuant to 49 CFR 26.45, CLT and CATS will establish separate overall DBE goals for participation of DBEs in USDOT-assisted projects. Both CATS and CLT are part of the Group A goal setting cycle

with triennial DBE goals which due August 1, 2013. Goals will be calculated tri-annually using a methodology that is narrowly tailored, tied to local market conditions and designed to attain a goal that is rationally related to the relative availability of DBEs (as identified using U.S. Business Census Data & resource directories) in the study area. The methodology adopted to calculate overall goals shall be approved by USDOT.

The amount of the separate overall goal for CLT and CATS will be calculated and documented tri-annually as an attachment to the DBE Plan attachment. Refer to Attachment No. 3 for the percentage goal of Federal financial assistance the City will expend in USDOT-assisted contracts.

The City, in developing its overall goals and methodology, applied the "suggested" procedures contained in 49 CFR Part 26:45 C-1, i.e. using DBE directories and census data/SIC Codes to establish "baseline" goal for Step 1. Also, the suggestions in 49 CFR Part 26:45 D-1 (i) (ii), regarding consideration of additional "adjustment" factors, including the possibility of information from disparity studies and/or "the current capacity of DBEs to perform work in your USDOT-assisted contracting Program, as measured by the volume of work DBEs have performed in recent years;" were used as part of this methodology. Details of the application for this "methodology approach" are presented as an attachment to the DBE Plan attachment. Refer to Attachment No. 2 for the step-by-step methodology utilized by CLT and CATS. Attachment No. 2 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 capacity to perform, or any disparity studies (State or Local), by which an adjustment to the base figure can be made in response to real market conditions.

Consultations and Public Participation

In addition to Step 1 and Step 2 of the Methodology, the City consults 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.

Consultation Summary: City of Charlotte DBE Program

The City of Charlotte shall endeavor to submit its overall goal to the FAA and FTA on August 1 of the appropriate tri-annual reporting year.

Before establishing overall goals, the City will inform local minority, women's, and general contractor, supplier, and development groups as well as the Metrolina Association of Minority

Contractors, Charlotte Minority Business Development Center, Carolinas Minority Supplier Development Councils, the Women Business Owners Association, and the Association of General Contractors to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the City will publish a notice of the proposed overall goal, informing the public that the proposed goal and the rationale are available for inspection during normal business hours at CLT and CATS offices for 30 days following the date of the notice, and informing the public that the City and FAA/FTA will accept comments on the goal for 45 days from the date of the notice. The notice will be published in appropriate media outlets, including The Charlotte Observer. The City shall endeavor to issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

The City's overall goal submission to the FAA/FTA will include a summary of information and comments received (if any), during this public participation process.

The City will begin using the overall goal on October 1 of each year, unless the City has received other instructions from FAA/FTA (or, if the goal is established on a project basis), by the time of the first solicitation for an applicable USDOT-assisted contract.

Section 26.47: Goal Setting and Accountability

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

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

Section 26.49: Transit Vehicle Manufacturers Goals

Consistent with the provisions of 49 CFR, 26.49, the City 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 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: Contract Goals

The City will use contract goals to meet any portion of the overall goal the City 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 will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The City recognizes that it need not establish a contract goal on every such contract, and the size of 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 will express its contract goals as a percentage of a USDOT-assisted contract.

Section 26.53: Good Faith Efforts

The City treats bidders'/proposers' compliance with good faith effort requirements as a matter of responsiveness or responsibility, depending on the City department.

Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information at the time of submission of bid or within 72 hours thereafter, depending on the City department, and as explained in their respective invitations to bid or requests for proposals:

1. *The names and addresses of DBE firms that will participate in the contract;*
2. *A description of the work that each DBE will perform and including the corresponding NAICS codes that NCDOT-UCP has certified the company;*
3. *The dollar amount of the participation of each DBE firm participating;*
4. *Written and signed documentation of commitment from the bidder/proposer to use a DBE subcontractor whose participation it submits to meet a contract goal,*
5. *Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and*
6. *If the contract goal is not met, evidence of good faith efforts.*

Demonstration of good faith efforts

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

The DBELO, or his/her designee, is 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 DBELO will identify the criteria being used to determine good faith efforts at the beginning of each evaluation document. The DBELO 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 will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before the City commits to the performance of the contract by

the bidder/proposer.

26.53(d) Administrative reconsideration

Within three (3) business days of being informed by the City of Charlotte that it is not responsive or responsible because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposer should make this request in writing to the following reconsideration official:

Ron Carlee, City Manager
City of Charlotte
600 East Trade Street - CMCG
Charlotte, North Carolina 28202-2853
Phone: (704) 336-2241
Fax: (704) 336-6644

The reconsideration official or his designee will not have played any role in the original determination that the bidder/proposer did not make 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 the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The City 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.

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

The City requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal with City'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 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 prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise the City of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE contract, the City 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 written approval of the substitute DBE and to provide copies of the new or amended subcontracts, or documents of good faith efforts.

If the contractor fails or refuses to comply, the 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 Notifications can be found in Attachment 6

Section 26.55: Counting DBE Participation

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

SUBPART D & E Certification.

Section 26.81: Unified Certification Program

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

All certifications, certification appeals, re-certifications and annual affidavits are submitted to and managed by the Contractual Services Unit of NCDOT. North Carolina does not have reciprocity with any other certifying agency. 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

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

US Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave, SE
West Building, 7th Floor
Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs

for our DOT-assisted contracting.

SUBPART F: Compliance and Enforcement

Section 26.109: Information, Confidentiality, Cooperation

The City 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, the City will not release personal financial information submitted in response to the Personal Net Worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The City will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

The City will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

Attachments

1. Policy Statement
2. DBE Goal Methodology
3. CLT DBE Goal
4. CATS DBE Goal
5. DBE Financial Institutions
6. Sample Bid Documents
7. Organizational Charts

Attachment 1: City of Charlotte DBE Policy

**US DEPARTMENT OF TRANSPORTATION
DBE PROGRAM - 49 CFR PART 2
FOR
THE CITY OF CHARLOTTE, NORTH CAROLINA Policy Statement: 26.1, 26.23**

The City of Charlotte, North Carolina (City) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the United States Department of Transportation (USDOT), 49 CFR Part 26. The City has received direct Federal financial assistance from the USDOT, for the Charlotte Douglas International Airport (CLT) and the Charlotte Area Transit System (CATS), as well as indirect Federal financial assistance for the Charlotte Department of Transportation (CDOT) as a sub-recipient through the North Carolina Department of Transportation (NCDOT). The City's department of Engineering and Property Management (E&PM) on a per project basis also receives funding as a sub-recipient to NCDOT and other direct recipients, or acts as the project administrator for other direct recipient City departments receiving USDOT funding. As a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26. Should any other City department become a recipient of USDOT funding they will act in compliance with 49 CFR Part 26, and will operate within the following Program's parameters.

It is the policy of the City to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

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

The Office of the City Clerk shall maintain the original DBE Program document. CATS, CLT, CDOT and E&PM shall each assign a Disadvantaged Business Enterprise liaison Officer (DBELO) who is responsible for implementing all aspects of the City's USDOT DBE Program in their respective departments. Day to day DBE responsibilities will be delegated to each department's DBELO.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with both the federal aviation and federal transit administration, as well as a municipal agreement with NCDOT where Federal financial assistance is involved. CLT and CATS each establish annual goals as direct recipients of USDOT funding, monitor their DBE projects throughout the federal fiscal year and report on achievements. CDOT & (when applicable) E&PM, as indirect recipients of USDOT funding, are only required to monitor and report to NCDOT or other direct recipients on a per project basis.

The City does disseminate this policy statement to the governing Boards of the City, Mecklenburg County, the Metropolitan Transit Authority, the Airport Advisory Committee, and all the relevant departments of City government. The City will maintain copies of this Policy Statement in the office of the City Clerk, as well as CATS, CLT, E&PM and CDOT offices, where it is available to all interested

citizens and organizations. The Policy will be publicized to the DBE and non-DBE business communities that perform work on its USDOT-assisted contracts through a variety of means, including through established print media outlets, minority and women business association newsletters, advertisements, and DBE Program workshops and seminars.

City Manager

Date

Attachment 2: DBE Goal Methodology

METHODOLOGY for Establishing the Overall Disadvantaged Business Enterprise (DBE) Goal for:

The City of Charlotte DBE Program, Charlotte, North Carolina (49 CFR Part 26)

Preface:

Pursuant to CFR 49 Part 26 requirements, the City of Charlotte (City) has developed a Methodology that shall be the basis for calculating the annual, Overall DBE Goals for USDOT-FAA-FTA-funded projects in the City. Separate Overall Goals shall be set for FAA-Airport and FTA-Transit Program activities. The methodology used in establishing these goals is described herein:

GOAL METHODOLOGY OVERVIEW

The methodology used to establish the overall goal, including determining the relative availability of DBEs in the normal market area for procurement of goods and services for both the Charlotte Area Transit System (CATS) and for Charlotte Douglas International Airport (CLT), consists of a multi-step process, consistent with that outlined in 49 CFR Part 26.

A. Identifying the Geographic Scope of the Market Area

1. The first step is to determine the normal market area for procuring goods and services; this will establish geographic parameters for statistical analysis. The parameters are the census-defined seven (7) county Charlotte Metropolitan Statistical Area (MSA), which includes: Mecklenburg, Lincoln, Gaston, Cabarrus, Rowan, Union, and York, South Carolina.
2. Second, the Capital Improvement Program Budget (CIP) for proposed projects or any other relevant documents is examined from both the CATS and CLT to ascertain the type and scope of projects involving federal funds proposed for the upcoming federal fiscal years.
3. The list of projects is analyzed to determine the types of firms/services, by NAICS codes that the City would likely engage to execute its USDOT-assisted projects. This information is also placed in a summary table format.
4. Using Census definitions, a list of relevant NAICS codes is compiled based on the firm types identified in Step A.3 above.
5. The market area is refined based on the normal area for procuring goods and services and the availability of NAICS data. The "refined" normal market area has been determined to be the City of Charlotte and the greater Charlotte MSA, as defined by the US Census, includes seven counties and several other cities and smaller municipalities.

B. Determining the Relative Availability of DBEs in the Market Area (STEP 1)

1. Assessing the availability of DBEs involved attempting to identify the number of minority and

women-owned firms in the market area. This effort involves searching for, and researching documents and resource agencies which may have information on the relative availability of DBE's in the City's normal market/service area. The primary source for this determination included the following:

***The Unified Certification Program (UCP) of the
North Carolina Department of Transportation (NCDOT)***

2. From the resource directory, the relative availability of all DBEs within the market area are identified, and placed in a summary table format.
3. This list is further narrowed down through the identification of only firms which performed work relevant to the City's capital improvements plan for USDOT-assisted projects (i.e., the same NAICS codes identified in step A.3, above).
4. The DBE firms identified in Step B.2 are tallied.

C. Determining Relevant Market Conditions

Using the NAICS numbers identified in Step A, recent census data (County Business Patterns), for the market area is examined to determine the total number of firms that perform the type of work relevant to the City's capital improvements plan.

D. Determining the "Base Figure" DBE Goal

1. The number of (all) firms in the relevant NAICS categories serve as the denominator.
2. The number of DBE firms determined in Step B, serve as the numerator.
3. The percent derived from items 1 and 2, above is the "base figure", or Step 1 goal.

ADJUSTMENTS TO BASE FIGURE GOAL (STEP 2):

Overall Goal

After the "Base figure" or Step 1 DBE Goal has been developed, additional information and data that is relevant to the City's contracting experiences will be considered. The additional information will be used to determine what adjustment, if any is needed to the base figure to derive at a final overall goal.

The types of data or information that can be considered when adjusting the base figure include:

- (A) The Current Capacity of DBEs to Perform Work on USDOT-assisted Contracts.

Determining Current Capacity of DBE's to Perform Work on USDOT Assisted Contracts as Measured By The Volume of Work DBE's Have Performed In Recent Years.

The historical overall DBE goals accomplished by the City on USDOT projects for several recent fiscal years is examined relative to the above consideration. Specifically, the annual "Report of DBE Goal Accomplishments" (Form USDOT-F 4630) is analyzed and placed into a table format, as shown

in the sample below:

Table: Historic DBE Accomplishment for Selected Reporting Periods.

<i>Report Period</i>	<i>Number of DBE Subcontracts</i>	<i>Tot. DBE Pct. Achieved from DBE Subcontracts</i>	<i>No. of DBE Prime Contracts</i>	<i>Pct Dollar Value of DBE Prime Contracts</i>	<i>Combined DBE Percent Achieved*</i>
1.					
2.					
3.					
4.					
5.					
Totals					
Average per Period					

(B) Relevant Information from Research Studies.

Determining If Relevant Information Exists From Research Studies (e.g. Disparity Study, SBA, Census Bureau), conducted within the City's Normal Market Area, to the Extent That It Is Not Accounted For in the Base Figure.

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

With all of the factors in STEP 2 considered, the City may adjust the base figure DBE goal, first by adding the average availability factors identified and/or derived in section (A) above, and averaging the total resulting in the total overall goal. Finally, this overall goal may be further adjusted when warranted based on the relative size and capacity of DBE firms included in STEP 1 base figure goal analysis.

RACE-NEUTRAL/ RACE-CONSCIOUS IMPLICATIONS

Pursuant to 49 CFR Part 26, there are two (2) basic ways to meet the overall goal. They are race-neutral measures and race-conscious measures.

- Race-neutral measures are such things as outreach, technical consultation, small business assistance programs, prompt payment, et cetera. It also includes DBE participation obtained through contracts without goals. Any time a DBE gets a prime or subcontract when nothing but its low bid is considered, that is considered a form of race-neutral participation.

- Race-conscious measures primarily include contract goals, but other methods that explicitly consider race and gender may be considered race-conscious also.

The City will project how much of the goal can be achieved through race-neutral means and use contract goals only to meet that portion of the overall goal that it does not expect to meet using race-neutral measures. This does not mean that race-neutral measures must be used first, in chronological sense, but this will be determined on the basis of a project's scope/value relative to DBE availability, and the capacity to perform on USDOT-assisted contracts.

The historic DBE achievement levels in the City of Charlotte will be evaluated to estimate levels of race-conscious and race-neutral accomplishments over time. The DBE "prime contract" factor will be the principal "race neutral" factor, however other factors as described above may be considered.

**Attachment 3: Triennial DBE Goal
Charlotte Douglas Airport**

METHODOLOGY for Establishing the FY 2011 - 2013 Overall Disadvantaged Business Enterprise (DBE) Goal for:

Charlotte Douglas International Airport
Charlotte, North Carolina
(49 CFR Part 26)
August 2010

In fulfillment of the requirements of 49 CFR Part 26, Charlotte Douglas International Airport (CLT) has developed a proposed Overall Goal for FY 2011 – 2013 FAA-AIP projects.

I. Goal Methodology: Detailed Application, Step One — DBE Base Figure

A. AMOUNT OF GOAL

CLT's overall goal for FY 2011 – 2013 is the following: 12.6% of the Federal financial assistance it will expend in DOT-assisted contracts for the airport.

Given that the amount of DOT-assisted contracts that CLT expects to let with FY 2011 – 2013 funds is \$83,720,200 this means that CLT has set a goal of expending \$10,548,745 with DBEs during the next three years.

B. Determination of the Market Area of the study

Based on discussions with CLT Staff, and reviewing recent projects bid at the Airport, the normal market area for CLT includes fifteen North Carolina Counties. The market area is based upon the fact that the substantial majority (79.9%) of the bidders has come from these counties and that the substantial majority (61.1%) of the contracting dollars has been spent in these counties.

Table 2: Proposed FY 2011 - 2013 Projects – CLT

Project	Activity	NAICS	%
Runway 18L Rehabilitation	Highway & Street	237310	5.0%
	Site Prep	238910	1.4%
	Engineering	541330	0.7%
	Landscaping	561730	0.1%
Taxiway 'D' Extension - South	Highway & Street	237310	8.1%
	Engineering	541330	0.5%
	Landscaping	561730	1.0%
Deicing Facility	Highway & Street	237310	3.5%
	Drainage	237990	6.4%
	Site Prep	238910	1.8%
	Electrical	283210	0.3%
	Engineering	541330	1.2%
Storm Drain	Drainage	237990	4.6%
	Engineering	541330	0.3%
Runway 18C-36C Rehabilitation	Highway & Street	237310	22.0%
	Site Prep	238910	6.0%
	Engineering	541330	3.1%
	Landscaping	561730	0.3%
Terminal Ramp Expansion West	Terminal Ramp Expansion	237310	5.6%
	Engineering	541330	0.3%
	Landscaping	561730	0.7%
In-Line Baggage System	Passenger baggage belt loaders	333922	NA
	Building Construction	236220	7.5%
	Electrical	238210	7.5%
Master Plan Land Acquisition	Appraisal Service	531320	0.0%
	Surveying	541370	0.0%
	Legal	541110	0.1%
	Land	NA	NA
Noise Compatibility Program	Engineering	541330	11.9%
Total			100.0%

SOURCE: CLT Airport Capital Improvements Plan

*This chart was generated by breaking the projects down into activities/NAICS Codes and calculating the percentage of estimated dollars to be spent on each activity.

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.

The historical overall DBE goals accomplished at the Airport in recent years were examined relative to the above consideration. Specifically, the annual Uniform Report of DBE Awards or Commitments and Payments for the reporting periods listed below was assessed.

Table 4: CLT DBE Accomplishment as indicated by DBE Data Reporting Form: FY 2005–2009

Report Period	DBE Goal	Total DBE Percent Achieved	Over/Under Achieved
FY 2005	21.0%	11.0%	-10.0%
FY 2006	19.6%	18.4%	-1.2%
FY 2007	15.8%	12.5%	-3.3%
FY 2008	12.8%	10.5%	-2.3%
FY 2009	12.7%	13.0%	0.3%
MEDIAN	15.8%	12.5%	-2.3%

Source: CLT; Compiled by Ken Weeden & Associates, Inc.

The median DBE accomplishment for the reporting periods (i.e., the periods in which there was actual AIP-funded activity to report) as shown in Table 4 above is 12.5% compared to the Step 1 DBE base figure for the Airport of 12.6%, derived using the methodology detailed in Part I of this report. It should be noted that the historic data is based on historical participation that is substantially similar to the proposed activities.

B. Consultations

1. Consultation meeting

CLT held a public meeting on July 27, 2010 at 10:00 am. The purpose of the meeting was to solicit information from interested stakeholders about the draft goal, as well as the availability of potential DBEs at CLT, the effects of discrimination on opportunities for DBEs, and CLT's effort to increase DBE participation.

Invitations to the meeting were sent to companies/organizations (see below, table 6) and advertised in the Greater Diversity News, a minority focused newspaper. Below are a few comments made during the meeting:

- One attendee felt the attendance should have been higher and recommended that CLT expand it's notification for future meetings.

2. **Evidence from Disparity Studies**

In 2002, the City of Charlotte took steps to update its 1992 Disparity Study for its non-federal M/WBD-SBE-SBO programs. The study was completed in 2003, and published in 2004. The main purpose of a disparity study is to assess local procurement conditions in a specific market area—usually a local government or similar non-federal government entity—in order to determine if there is substantiated evidence of non-parity between the *availability* of minority and/or women-owned businesses and their *utilization* (or ability to obtain contracts). The studies usually consist of a detailed examination of both statistical/historical and anecdotal evidence to prove discrepancies between availability and utilization. If substantial non-parity exists, then the results might be used to prove a "compelling interest", that is, a reason to support the establishment of goals for small, minority, or women-owned businesses.

For federal USDOT DBE programs, however, a disparity study is not required, since Congress has already determined that there is a national "compelling interest" for those programs. Among the findings of the City's study is that there *is* a disparity between the availability and utilization of minority and women-owned businesses in City contracts over a wide range of goods and services. Although the City's study could possibly be used to justify a non-federal goals program, it will not be considered in adjusting the FY 2011 - 2013 goal for CLT.

The disparity study covers a broad range of activities and contracting amounts that may or may not include the Airport's purchasing activities. For example, "construction contracts" were considered in a range of less than \$30,000, and greater than \$30,000. Nearly all airport construction contracts would be substantially greater than \$30,000. Because the range of both goods and services and contract amounts are so broad in the disparity study, the disparity study will not be used to adjust the Airport's DBE base figure.

3. **Data on employment, self-employment, education, training and union apprenticeship programs; statistical disparities regarding access to capital**

Consultations were held with the following local government agencies and small and minority business organizations: The City of Charlotte Small Business Enterprise program, the Charlotte Chamber of Commerce, Carolinas Minority Supplier Development Council, the North Carolina Minority Business Development Center, and Central Piedmont Community College.

The City of Charlotte Small Business Enterprise (SBE) Program compiles a directory of small businesses in the Charlotte/Mecklenburg County area. The City also distributes a newsletter as part of its SBE program advising small

informing the public that would accept comments on the goals for 45 days from the date of the notice. The notice included addresses to which comments could be sent and addresses where the proposal could be reviewed.

CLT will begin using the overall goal on October 1 of each year, unless the Airport has received other instructions from DOT/FAA, or, if the goal is established on a project basis, by the time of the first solicitation for a DOT/FAA-assisted contract for the projects.

IV. Breakout of Estimated Race-Conscious/Race-Neutral Participation

CLT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. CLT will use a combination of the following race-neutral means to increase DBE participation:

1. *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, 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.)*
3. *Providing technical assistance and other services;*
4. *Ensuring distribution of the North Carolina UCP DBE directory, through print and/or electronic means, to the widest feasible universe of potential prime contractors.*

CLT proposes that, of the goal of 12.6%, **0.0%** is projected to be met using race-neutral means, and **12.6%** is projected to be met using race-conscious means. The reason for this breakout is that the projects from the previous years show that the median amount by which the past DBE goals were under-achieved is 2.3% (see **Table 4**). Therefore, it is projected that 0.0% of the adjusted goal will be achieved using race-neutral means. The remainder of the goal (12.6%) is projected to be achieved using race-conscious measures.

V. Contract Goals (26.51)

CLT 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 will be established so that, over the period to which the overall goal applies, they will cumulatively result in

Resources: CLT FY 2011 - 2013 Disadvantaged Business Enterprise Program Methodology

Persons, and/or Agencies Contacted:

1. Donna Hughes, DBE Program Administrator, CLT
2. Central Piedmont Community College
3. Carolinas Minority Supplier Development Council
4. Charlotte Chamber of Commerce

Resource Documents:

1. 2007 County Business Patterns, U.S. Census Bureau.
2. CLT Capital Improvements Plan.
3. City of Charlotte Minority/Women Business Enterprise Disparity Study, December 2003, MGT America
4. North Carolina UCP DBE Directory, July 2010.
5. Uniform Report of DBE Awards or Commitments and Payments

**Attachment 4: Triennial DBE Goal
Charlotte Area Transit System (CATS)**

Charlotte Area Transit System

DBE Program Update

Federal Fiscal Years

2011, 2012, & 2013

Step One:

Determine the Base Figure for Relative Availability of Disadvantaged Business Enterprises (DBE)

In Step 1, the Charlotte Area Transit System (CATS) measured the actual relative availability of DBE's in Charlotte's Metropolitan Statistical Area (MSA) to perform DOT-assisted contracting opportunities (both prime and sub) anticipated in federal fiscal years 2011, 2012, and 2013. The MSA is made up of Charlotte, Gastonia, Concord, and the northern portions of South Carolina. **Exhibit 1** shows three tables (**Table 1a, Table 1b, and Table 1c**), which detail anticipated contracting opportunities on DOT assisted contracts over the next three fiscal years.

A description of the columns in Exhibit 1 is as follows:

- Column One shows the fiscal year in which the expenses are anticipated
- Column Two gives a description of the type work that is anticipated in each of the federal grant projects by job classification
- Column Three shows the amount of federal dollars that is associated with each type of job classification
- Column Four shows the North American Industrial Classification System (NAICS) codes that are used in the performance of work. The definition for these codes may be found at <http://www.census.gov/eos/www/naics/>
- Column Five shows the number of DBE firms within the Charlotte MSA that are available to perform work for each type of classification code. These firms were found using the North Carolina DOT Unified Certification Database.
- Column Six shows the relative availability of all firms associated with the respective work codes. The US Census Bureau 2007 MSA Business Patterns (NAICS) database was used to assess the number of firms available in the Charlotte MSA.
- Column Seven shows the relative availability of DBE firm percentage when compared to the overall number of firms available in each of the work codes. The figure was derived from dividing the relative number of DBE firms available by the total number of firms in each work classification. (i.e. DBE Firms (Concrete) / Total Firms (Concrete) = %)
- Column Eight shows the percentage of dollars expedited on each project based upon the total dollars anticipated being spent over the next three fiscal years.
- Column Nine shows the weighted percentage of dollars being spent on each of the projects over the next three years, as well as the overall weighted base figure.

The Step 1 DBE Base Figure represents the availability of firms that are ready, willing, and able to compete on contracts which are intended to be let over the next three years. Special attention was

made by carefully examining lists of DBEs from other sources, such as state and local transportation agencies to determine whether these sources might reveal firms which should be included in the CATS list. By using a weighting process, by which the percentage of dollars to be spent on various activities was multiplied by the percentage of relevant DBE firms to all relevant firms in the Metropolitan Statistical Area (MSA). The Step 1 Base Figure for the Charlotte Area Transit System was determined to be **11.60%**.

Step Two:

Adjustment of Base Figure

It is the view of CATS that an adjustment for past participation is necessary, warranted, and the intent is to use the averaging figure obtained in Step One with figures that represent our past participation. By utilizing this method, we intend to obtain a more precise figure by including a several years of past participation.

1. The first step in adjusting our Step One Base Figure for past participation is to determine the “median” past participation percentages. Table 2 below shows the past DBE participation levels of CATS.

Table 2: CATS past DBE Participation

Federal Fiscal Year	Goal	Participation
2004	15.20%	13.19%
2005	16.40%	13.60%
2006	11.00%	14.30%
2007	9.20%	10.76%
2008	8.12%	9.34%
2009	9.00%	10.43%

2. The participation level figures are then arranged from low to high in order to determine the median. The figures are as follows: 9.34, 10.43, 10.76, 13.19, 13.60, and 14.30. The median is the average of 10.76% and 13.19%, which equals **11.98%**.

3. Next, CATS adjusted the Step One Base Figure with the Median past participation by taking the Step One Base Figure (11.6%) and the median past participation (11.98%) and dividing by 2, which equals 11.80%. Therefore CATS' adjusted overall DBE goal for FFY2011, 2012, and 2013 is 11.8%

In accordance with Section 26.51 of 49 CFR Part 26, CATS must meet the maximum feasible portion of its goal by using race/gender-neutral means of facilitating DBE participation. CATS have considered the following:

- A. Considering the amount that CATS exceeded the goal in the past two years in accordance with 26.51 (f) 4. CATS will determine the average amount the goal was exceeded over the past two years and make adjustments to the contract goal amount:

Federal Fiscal Year	Goal	Participation	Difference
2004	15.20%	13.19%	-2.1%
2005	16.40%	13.60%	-2.8%
2006	11.00%	14.30%	3.3%
2007	9.20%	10.76%	1.56%
2008	8.12%	9.34%	1.22%
2009	9.00%	10.43%	1.43%

Percentage goal was exceeded in FFY 08: $1.22\% / 8.12\% = 15.02\%$

Percentage goal was exceeded in FFY 09: $1.43\% / 9.00\% = 15.88\%$

Average goal was exceeded over two year period: $(15.02\% + 15.88\%) / 2 = 15.45\%$

Based figure adjustment: $11.80 * 15.45\% = 1.8\%$

CATS has exceeded its annual goal by an average of 15.45% over the past two years, and will adjust its contract goal amount by this factor of 1.8%, and will also used as evidence to support our projection of our race/gender-neutral participation for the coming years. Other factors were considered; such as, participation by DBE prime contractors, which we had none and where we had DBE subcontractors participating on contracts that exceeded the established goal or contracts that had race-neutral goal applied. Looking at these factors, we (CATS) assume we will replicate similar

levels of participation by DBE subcontractors in the years to come.

Therefore, in looking at our adjusted overall goal of **11.80%**; our contract specific goal for Federal Fiscal Years 2011, 2012 and 2013 will be **10.0%** and our race-neutral goal will be **1.8%**.

Weighting of FY 2011 Expenditures

FY 2011	Description	Federal Dollars	NAICS Code	Number of DBE's available to perform work	Number of all Firms available including DBE's	Relative Availability	Percent Expended	Dollars	Weighted Availability
New Transit Centers (CTC)									
	Concrete	43,680	238110	20	148	13.51%	0.07%		0.010%
	Electric	50,000	238210	19	513	3.70%	0.08%		0.003%
	Demolition	10,000	238910	53	216	24.54%	0.02%		0.004%
	Hauling	25,000	484110	41	144	28.47%	0.04%		0.012%
	Hauling	25,000	484220	59	108	54.63%	0.04%		0.023%
	Architectural Services	10,000	541310	11	185	5.95%	0.02%		0.001%
	Engineering	10,000	541330	69	399	17.29%	0.02%		0.003%
	Landscaping	10,000	561730	41	646	6.35%	0.02%		0.001%
New Park N Ride Lots									
	Concrete/Asphalt	1,100,000	238110	20	148	13.51%	1.84%		0.249%
	Electric	250,000	238210	19	513	3.70%	0.42%		0.015%
	Demolition	25,000	238910	53	216	24.54%	0.04%		0.010%
	Hauling	75,000	484110	41	144	28.47%	0.13%		0.036%
	Hauling	75,000	484220	59	108	54.63%	0.13%		0.068%
	Architectural Services	75,000	541310	11	185	5.95%	0.13%		0.007%
	Engineering	211,853	541330	69	399	17.29%	0.35%		0.061%
	Landscaping	70,000	561730	41	646	6.35%	0.12%		0.007%
Benches & Shelters									
	Engineering	129,270	541330	69	399	17.29%	0.22%		0.037%
Major Renovation & Replacement Program									
	N/A	158,720							
Grade Crossing Cut Outs - Relocation									
	Concrete	141,000	238110	20	148	13.51%	0.24%		0.032%
	Architectural Services	15,000	541310	11	185	5.95%	0.03%		0.001%
	Engineering	15,000	541330	69	399	17.29%	0.03%		0.004%
	Landscaping	5,000	561730	41	646	6.35%	0.01%		0.001%
Sleet Cutters									
	N/A	6,400							
Specialty Test Equip (Circuit Board Test Rack)									
	Technical Services	96,000	541512	16	322	4.97%	0.16%		0.008%
Tread Lubricators									
	N/A	9,600							
Safety Enhancements									
	Technical Services	64,000	541512	16	322	4.97%	0.11%		0.005%
Light Rail Safety Enhancements									
	N/A	65,270							
DHS Transit Security Grant Program									
	Technical Consulting	800,000	541690	13	101	12.87%	1.34%		0.172%
Northeast Corridor									
	Architectural Services	850,000	541310	11	185	5.95%	1.42%		0.084%
	Engineering	6,500,000	541330	69	399	17.29%	10.87%		1.879%

Table 1B: Weighting of FY 2012 Expenditures

FY 2012	Description	Federal Dollars	NAICS Code	Number of DBE's available to perform work	Number of all Firms available including DBE's	Relative Availability	Percent Dollars Expended	Weighted Availability
STS Facility / Davidson St Rehabilitation								
	Concrete/Asphalt	2,500,000	238110	20	148	13.51%	4.18%	0.565%
	Electric	700,000	238210	19	513	3.70%	1.17%	0.043%
	HVAC	700,000	238220	3	602	0.50%	1.17%	0.006%
	Drywall	250,000	238310	5	161	3.11%	0.42%	0.013%
	Flooring	200,000	238330	5	123	4.07%	0.33%	0.014%
	Painting	200,000	238320	6	268	2.24%	0.33%	0.007%
	Demolition	50,000	238910	53	216	24.54%	0.08%	0.021%
	Hauling	50,000	484110	41	144	28.47%	0.08%	0.024%
	Hauling	250,000	484220	59	108	54.63%	0.42%	0.228%
	Architectural Services	350,000	541310	11	185	5.95%	0.59%	0.035%
	Engineering	1,576,141	541330	69	399	17.29%	2.64%	0.456%
	Landscaping	150,000	561730	41	646	6.35%	0.25%	0.016%
New Transit Centers (CTC)								
	Concrete/Asphalt	1,000,000	238110	20	148	13.51%	1.67%	0.226%
	Electric	350,000	238210	19	513	3.70%	0.59%	0.022%
	Demolition	15,000	238910	53	216	24.54%	0.03%	0.006%
	Hauling	250,000	484110	41	144	28.47%	0.42%	0.119%
	Hauling	250,000	484220	59	108	54.63%	0.42%	0.228%
	Architectural Services	82,414	541310	11	185	5.95%	0.14%	0.008%
	Engineering	175,000	541330	69	399	17.29%	0.29%	0.051%
	Landscaping	75,000	561730	41	646	6.35%	0.13%	0.008%
New Park N Ride Lots								
	Concrete/Asphalt	1,000,000	238110	20	148	13.51%	1.67%	0.226%
	Electric	340,000	238210	19	513	3.70%	0.57%	0.021%
	Demolition	15,000	238910	53	216	24.54%	0.03%	0.006%
	Hauling	250,000	484110	41	144	28.47%	0.42%	0.119%
	Hauling	250,000	484220	59	108	54.63%	0.42%	0.228%
	Architectural Services	75,000	541310	11	185	5.95%	0.13%	0.007%
	Engineering	75,000	541330	69	399	17.29%	0.13%	0.022%
	Landscaping	75,000	561730	41	646	6.35%	0.13%	0.008%

FY 2012	Description	Federal Dollars	NAICS Code	Number of DBE's available to perform work	Number of all Firms available including DBE's	Relative Availability	Percent Dollars Expended	Weighted Availability
Benches & Shelters							0.00%	0.000%
	<i>Engineering</i>	270,290	541330	69	399	17.29%	0.45%	0.078%
Major Renovation & Replacement Program								
	<i>N/A</i>	85,120.00						
BOD Maintenance Fork Lifts								
	<i>N/A</i>	51,200.00						
Maintenance Service Lane Equipment								
	<i>N/A</i>	51,200.00						
Replace STS AVL System								
	Technical Services	960,000	541512	16	322	4.97%	1.60%	0.080%
Safety Guard Rails							0.00%	0.000%
	<i>Architectural Services</i>	128,000	541310	11	185	5.95%	0.21%	0.013%
Specialty Test Equip (Pinpoint Machine)								
	<i>N/A</i>	112,000.00						
S70-LRV Overhaul Program								
	<i>N/A</i>	640,000.00						
Tread Lubricators								
	<i>N/A</i>	48,000.00						
Light Rail Facility Shop Mezzanine Upgrades								
	<i>Electric</i>	100,000	238210	19	513	3.70%	0.17%	0.006%
	<i>Architectural Services</i>	222,560	541310	11	185	5.95%	0.37%	0.022%
Marketing Sign Holders								
	<i>N/A</i>	6,400.00						
Safety Enhancements								
	Technical Services	128,000	541512	16	322	4.97%	0.21%	0.011%
Light Rail Safety Enhancements								
	<i>N/A</i>	142,289.60						
DHS Transit Security Grant Program								
	<i>Technical Consulting</i>	800,000	541690	13	101	12.87%	1.34%	0.172%
Technology								
	Technical Services	387,616	541512	16	322	4.97%	0.65%	0.032%
Northeast Corridor								
	<i>Architectural Services</i>	2,000,000	541310	11	185	5.95%	3.34%	0.199%
	<i>Engineering</i>	10,000,000	541330	69	399	17.29%	16.72%	2.891%

FY 2012	Description	Federal Dollars	NAICS Code	Number of DBE's available to perform work	Number of all Firms available including DBE's	Relative Availability	Percent Dollars Expended	Weighted Availability
Transit Bridge Program								
	<i>Architectural Services</i>	24,000	541310	11	185	5.95%	0.04%	0.002%
	<i>Engineering</i>	120,000	541330	69	399	17.29%	0.20%	0.035%

Table 1C: Weighting of FY 2013 Expenditures

FY 2013	Description	Federal Dollars	NAICS Code	Number of DBE's available to perform work	Number of all Firms available including DBE's	Relative Availability	Percent Dollars Expended	Weighted Availability
Benches & Shelters								
	<i>Engineering</i>	141,257	541330	69	399	17.29%	0.24%	0.041%
Major Renovation & Replacement Program								
	N/A	90,166						
Maintenance Shop Equipment								
	N/A	192,000						
Platform Truck								
	N/A	224,000						
Rotary Dump Truck - Remanufactured (Used)								
	N/A	76,800						
Safety Enhancements								
	Technical Services	128,000	541512	16	322	4.97%	0.21%	0.011%
Light Rail Safety Enhancements								
	Technical Services	141,257	541512	16	322	4.97%	0.24%	0.012%
DHS Transit Security Grant Program								
	<i>Technical Consulting</i>	800,000	541690	13	101	12.87%	1.34%	0.172%
Technology								
	Technical Services	508,128	541512	16	322	4.97%	0.85%	0.042%
Northeast Corridor								
	<i>Architectural Services</i>	17,000,000	541310	11	185	5.95%	28.42%	1.690%
	<i>Engineering</i>	1,934,500	541330	69	399	17.29%	3.23%	0.559%
Transit Bridge Program								
	<i>Architectural Services</i>	78,000	541310	11	185	5.95%	0.13%	0.008%
	<i>Engineering</i>	50,000	541330	69	399	17.29%	0.08%	0.014%
Total		\$ 59,815,131						11.6%

Attachment 5: DBE Financial Institutions

Mechanic's and Farmers Bank
101 Beatties Ford Road,
Charlotte, NC 28216
(704) 332-2121

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

Attachment 6: Sample Bid Notifications



City Of Charlotte: Charlotte Douglas International Airport

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

CONTRACT PROVISIONS & FORMS: FOR FEDERALLY-ASSISTED CONTRACTS

PROJECT NAME:

PROJECT NUMBER:

Airport DBE Liaison Officer:

Laura Dahlberg: ladahlberg@cltairport.com

P.O. Box 19066, Charlotte, NC 28219

Phone: (704) 359-1910

DBE REQUIREMENTS

THE DBE GOAL FOR THIS PROJECT IS: ?%

I. REQUIRED DOCUMENTATION

The applicable forms in this division MUST be completed and included with the bid or specified timeframe if a bidder is to be considered responsive, and, therefore, eligible for award of a contract. If these forms are not submitted as such, the bidder may be considered non-responsive and the bid may be rejected. The required forms are listed below.

II. IF BIDDER IS MEETING THE DBE GOAL

- (1) The **Subcontractor / Supplier Utilization Commitment** (DBE Form 3) must be completed. A copy of each DBE company's NCDOT Directory printout may be **ATTACHED** to the form as backup documentation for proof of certification. *ONLY COMPANIES CERTIFIED AS A DBE THROUGH THE UNIFIED CERTIFICATION PROGRAM (UCP) FOR THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT) AT THE TIME OF BID CAN BE USED TO MEET THE PROJECT GOAL.*
- (2) The **Letter of Intent** (DBE Form 4) must be completed for **EACH** North Carolina Department of Transportation (NCDOT) certified DBE listed on DBE Form 3. Letter of Intents are not required to be submitted with the bid, however they will be required to be submitted within 72 hours by the apparent low bidder or after the City makes the request.

III. IF BIDDER IS NOT MEETING THE DBE GOAL/NEUTRAL PARTICIPATION

- (1) The **Subcontractor / Supplier Utilization Commitment** (DBE Form 3) must be completed. A copy of each DBE company's NCDOT Directory printout may be **ATTACHED** to the form as backup documentation for proof of certification. *If there is zero DBE participation, the form must still be submitted, with "Zero DBE Participation" noted in the first row. ONLY COMPANIES CERTIFIED AS A DBE THROUGH THE UNIFIED CERTIFICATION PROGRAM (UCP) FOR THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT) AT THE TIME OF BID CAN BE USED TO MEET THE PROJECT GOAL.*
- (2) The **Letter of Intent** (DBE Form 4) must be completed for **EACH** North Carolina Department of Transportation (NCDOT) certified DBE listed on DBE Form 3. Letter of Intents are not required to be submitted with the bid, however they will be required to be submitted within 72 hours by the apparent low bidder or after the City makes the request.
- (3) The **Schedule of DBE Unavailability** (DBE Form 5) must be completed to show DBE firms that were contacted but were not utilized. All columns on this form must be completed. ***NEW*** Download your DBE's from NCDOT's UCP directory to an excel file and track your good faith efforts, DBE form 2 can also be used to track your efforts. Type and attach your spreadsheet to the back of DBE Form 5. ALL documentation as to efforts made to attain the goal must be provided within 72 hours or after the City makes the request by the apparent low bidder as well as subsequent bidders if requested. Documentation would include, but not be limited to: copies of advertisements soliciting DBE participation; copies of letters of solicitation; logs of telephone calls to DBE firms; records of meetings with DBE firms; and any other data which would indicate to the City of Charlotte that positive efforts were, in fact, made.

IV. INFORMATION

Any bidder having questions concerning the required documentation listed above, or concerning the DBE requirements in general, should contact Laura Dahlberg, DBE Program Administrator, Charlotte Douglas International Airport, Post Office Box 19066, Charlotte NC 29219. Mrs. Dahlberg may be contacted by calling (704) 359-1910, or by visiting The CLT Center located at 5601 Wilkinson Blvd., Charlotte, NC 28208. Please call in advance to make arrangements for meetings.

V. DOT/FAA REGULATIONS

CFR 49 Part 26 defines "DBE" as:

"Socially and economically disadvantaged individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act."

Definitions of the above groups are as follows:

"Black Americans include persons having origins in any of the Black racial groups of Africa;

"Hispanic Americans include persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

"Native Americans include persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

"Asian-Pacific Americans include persons whose origins are from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia (Kampuchea), the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palua), Republic of the Marshall Islands, Federated States of Micronesia, or the Commonwealth of the Northern Marianas Islands, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu or Nauru; and

"Asian-Indian Americans include persons whose origins are from India, Pakistan and Bangladesh, Sri Lanka, Bhutan the Maldives Islands or Nepal."

In addition, credit for 60% (formerly 20%) of expenditure for suppliers (regular dealers) who perform a commercially useful function can be given.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

A. POLICY STATEMENT

1. Commitment. It is the policy of the City of Charlotte to afford minorities, women and socially and economically disadvantaged persons maximum opportunity in participating in all aspects of the Charlotte Douglas International Airport DBE Program, including but not limited to employment, construction development projects, materials/services contracts and/or lease agreements. It is further the policy of the City of Charlotte to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, national origin or sex.

2. Designation of Liaison Officer. The Aviation Director will designate a DBE Liaison Officer and adequate staff to administer the DBE Program. To facilitate optimum effectiveness, the DBE Liaison Officer will report directly to the Aviation Director and Assistant Aviation Director.
3. Objectives. DBE's shall be afforded opportunity to participate in and benefit from the Charlotte Douglas International Airport DBE Program. There shall be no discrimination against any person or business organization because of race, color, sex or national origin.

To the full extent allowed by law, there shall be compliance with all Federal Regulations governing employment and Disadvantaged Business Enterprise participation at Charlotte Douglas International Airport.

All sub-recipients shall be required to take strong affirmative action measures to ensure that DBE's are afforded an opportunity to participate in all aspects of the Charlotte Douglas International Airport DBE Program. The Aviation Director, along with the DBE Liaison Officer, shall establish and monitor overall as well as individual goals and procedures of this program; develop a comprehensive communications program; maintain a data bank on DBE capabilities; assume liaison duties among the community, DBE Program participants and the Airport; shall, on a continuing basis, research and coordinate assistance efforts and shall report periodically the progress of this program.

4. Dissemination. In keeping with the above commitment, from its initial inception, this program has been disseminated to individual DBE's; the Charlotte Business League; the AGC; Community Relations, City of Charlotte; Community Development, City of Charlotte; and assistance agencies in the local area as well as various other assistance agencies throughout the southeast area. In addition, the objectives and requirements of this program are provided each potential sub-recipient.

B. THE AIRPORT SHALL URGE THAT:

1. Applicable portions of available opportunities be subcontracted to DBE-owned firms.
2. Participants use methods approved by the Airport to facilitate involvement of Disadvantaged Business Enterprises. All prospective participants/bidders must submit **at the time of submission of bid**, a plan of DBE participation and/or data indicating efforts put forth to obtain participation. Participation may be achieved through subcontracts and/or procurement.

Such participation efforts/plans will be resolved and agreed upon by the Airport and each prospective participant prior to the award of a contract, and shall be incorporated in the final contract documents if the prospective participant is awarded the contract.

3. Participants develop a procedure that would permit DBE firms to participate without the necessity of obtaining separate surety bonds, if required. Proposed procedures to accomplish this should be presented to the DBE Liaison Officer for review prior to the award of a contract. Such procedures will be resolved and agreed upon by the Airport and prospective participants shall be incorporated in the final contract documents if the prospective participant is the successful bidder.
4. Participants make technical assistance, such as engineering expertise; available to DBE's to assist in the upgrading of DBE capabilities.

5. Participants make bulk purchases whenever feasible to reduce the capital requirements of its Disadvantaged Business Enterprise subcontractors.
6. Participants strive for the largest feasible DBE ownership participation and seek to achieve not less than the percentage goal established for each contract.

C. GOALS

In accordance with 49 CFR, Part 26 and the Charlotte Douglas International Airport DBE Program, Charlotte Douglas International Airport has an Overall Annual DBE Utilization Goal for FAA-assisted contracts for the federal fiscal year. Charlotte Douglas International Airport may set mandatory, contract specific goals so that, over the period to which the overall goal applies, it will cumulatively result in meeting any portion of the overall goal that is not projected to be met through neutral subcontract solicitation and equal opportunity outreach efforts.

A Disadvantaged Business Enterprise is a business at least 51% owned and controlled by Disadvantaged group members or women. A DBE is bona fide only if the Disadvantaged group or female ownership interests are real and continuing and not created solely to meet the DBE percentage requirement. In addition, to fulfill the purpose of the percentage goal, the DBE must itself perform successful work or services or provide supplies under the contract and not act as a mere conduit. In short, the contractual relationship must also be bona fide.

The phrase "owned and controlled" as used in this definition means a business which is either a sole proprietorship or a corporation legitimately owned by an individual or individuals who qualify as a Disadvantaged under the definitions formed in 49 CFR Part 26, or a partnership or joint venture controlled by such minorities and/or females, and which at least 51% of the beneficial ownership interests legitimately are held by such minorities and/or female and in which at least 51% of the voting interest and 51% of the beneficial ownership interests are legitimately held by such minorities and/or females. In addition, these persons must control the management and operation of the business on a day-to-day basis.

The degree of goal attainment by DBE contractors, and DBE suppliers should be calculated as follows:

1. A joint venture consisting of disadvantaged and majority business enterprises, functioning as a prime contractor, will be credited with DBE participation on the basis of percentage of ownership and control of the DBE. For example, if in a disadvantaged-majority joint venture, the DBE owns and controls 50% of the joint venture on a \$100,000 contract, DBE participation will be credited as 50% or \$50,000.
2. The total dollar value of a contract to a DBE owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the overall goals. When reviewing the participation for minorities and women respectively, participation is credited in proportion to the percentage of ownership and control of each group in the business. For example, if disadvantaged males own 75% of a firm and female non-DBE own 25% of the firm, then on a \$500,000 contract, disadvantaged participation will be credited as \$375,000 (75%) and female participation would be credited as \$125,000 (25%).

The total dollar value of a contract with a DBE owned and controlled by disadvantaged women is counted toward the overall disadvantaged goal. When reviewing the

participation for minorities and women respectively, it would be 100% female participation.

3. DBE bidders will be credited with DBE participation for that portion of the contract which they perform and that portion subcontracted to disadvantaged firms. For example, if a DBE bidder proposes to perform 50% of a project quoted at \$500,000 and subcontract 25% to a majority firm and 25% to a DBE firm, DBE participation will be credited at 75% or \$375,000.00.
4. Bidders will receive 60% credit toward goal attainment for use of DBE suppliers; i.e., where a bidder proposes to purchase \$100,000 worth of construction materials from a DBE Supplier, \$60,000 will be credited toward the bidder's DBE participation goal. However, where the supplier is the manufacturer of the product supplied, bidders will receive DBE credit for 100% of the dollar amount of the supply contract.

The Airport will count toward its DBE goals only expenditures to DBE's that perform a commercially useful function in the work of a contract. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE will not be considered to be performing a commercially useful function.

The Airport and contractors shall, at a minimum, seek DBE's in the same geographic area in which they seek contractors or subcontractors, generally for a given solicitation. If the Airport or contractor cannot meet the goal using DBE's from the same geographic area, the Airport or contractor, as part of its efforts to meet the goal, shall expand its search to a reasonable wider geographic area.

D. PARTICIPANTS SHALL:

1. Comply with all requirements of the Charlotte Douglas International Airport DBE Program. Compliance is required if participants are to be considered responsive and therefore successful.
2. Realize that commitments to DBE involvement are as important as the participant's commitment to any other aspect of the contract. The participant shall understand that upon 15 days' notice of noncompliance, the Airport reserves the right to terminate the contract of any participant who fails to meet such requirements as are described in this document.
3. Provide documentation to demonstrate sufficient reasonable efforts which shall include, but not be limited to the following steps:
 - a. Attend a pre-bid meeting, if any, scheduled by the Airport to inform DBE's of subcontracting opportunities under a given solicitation and/or to inform potential participants of the DBE Program requirements;
 - b. Advertise in general circulation media, trade association publications, and Disadvantaged focus media for at least twenty (20) days before bids or proposal are due. If twenty (20) days are not available, publication for a shorter reasonable time is acceptable;
 - c. Written notification to DBE's that their interest in the contract is solicited;

- d. Efforts made to select portions of the work proposed to be performed by DBE's in order to increase the likelihood of achieving the stated goal;
- e. Efforts to negotiate with DBE's for specific sub-bids including at a minimum:
 - (1) The names, addresses and telephone numbers of DBE's that were contacted;
 - (2) A description of the information provided to DBE's regarding the plans and specifications of portions of the work to be performed; and
 - (3) A statement of why additional agreements with DBE's were not reached.
- f. Concerning each DBE the participant contacted but rejected as unqualified, the reasons for the participant's conclusion; and
- g. Efforts made to assist the DBE's contacted that needed assistance in obtaining bonding or insurance required by the participant.

In addition to data submitted at time of bid, the successful bidder shall be required to submit monthly DBE Utilization Progress Reports (DBE Form 6) on payments made to DBE subcontractors.

E. ALL CONTRACTORS SHALL:

- 1. Comply with and abide by the Charlotte Douglas International Airport Disadvantaged Business Enterprise Program Requirements, including a commitment to make all reasonable and sufficient efforts to meet all goals established.
- 2. Agree to submit timely DBE reports to the DBE Liaison Officer and allow the DBE Liaison Officer access to DBE applicable information.
- 3. Thoroughly examine and be familiar with government regulations and contract requirements relating to this procurement. Submission of a proposal shall constitute an acknowledgment upon which the City may rely that the contractor has thoroughly examined, and is familiar with said regulations and contract requirements. Failure or neglect of a contractor to receive or examine any of these government regulations and contract requirements shall in no way relieve him from any obligations with respect to his proposals or subsequent contract.
- 4. Provide documented proof that the approved data bank maintained by the Project Manager has been utilized to the maximum extent feasible for the purpose of soliciting disadvantaged business enterprise participation.

F. METHOD BY WHICH THE AIRPORT WILL REQUIRE PARTICIPANTS (CONTRACTORS AND SUBCONTRACTORS) TO COMPLY WITH THE DBE REQUIREMENTS

All contracts between the City and a Contractor shall contain an appropriate provision to the effect that failure by any contractor to comply with Airport'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 contractor complies with all the DBE requirements of this program.

In addition the Airport shall require submission as part of the bid package to be submitted by bidders at the time of submission of bid, the efforts taken by which the bidder intends to afford minorities and females maximum opportunity to participate in the performance of work included in the bidder's proposal as stipulated by the DBE Program.

The Airport shall also require additional documentation as specified by the DBE Program to be submitted by the successful bidder prior to award of contract.

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 and is therefore legal and binding.

Any alterations, substitutions, deletions, etc., to data provided must have prior approval of the Airport DBE Liaison Officer.

Should a DBE firm not certified by the Airport be utilized by a prospective participant/bidder as a part of his DBE plan efforts, review and verification of Schedule(s) data must be conducted prior to award of any contract.

Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

The Airport shall require prime contractors to make best faith efforts to replace a DBE participant that is unable to perform successfully with another DBE. The Airport shall approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible DBE's.

Again, it is important to emphasize that in contracts with DBE contract goals, bids submitted which do not meet the DBE contract goals, and which do not show that a meaningful reasonable effort was made to achieve the stated goals, will be considered nonresponsive bids, and bidders will not be eligible for award of the contract.

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

All bidders are hereby notified that pursuant to Title 49 Code of Federal Regulations, Department of Transportation, Part 26 and the Airport's Disadvantaged Business Enterprise Participation Program, they must affirmatively ensure that in any contract entered into with the City, DBE's will be afforded opportunity to participate in subcontracting activities.

Further, the City reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsive and qualified bidder. A bid will not be considered responsive unless the bidder complies with Title 49 Code of Federal Regulations, Part 26, and the Airport's Disadvantaged Business Enterprise Participation Program. Additional information on the Airport's Disadvantaged Business Enterprise Participation Program can be obtained from the DBE Liaison Officer.

In addition to the above, the Airport shall establish procedures to verify the veracity and accuracy of representations made by contractors as well as to ensure their compliance with these requirements. These procedures will include, but not be limited to, the following:

1. Review bid package documentation thoroughly, obtaining clarification, if necessary.
2. Review reports regarding employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.
3. Monitor progress of payments to DBE's through reports from prime contractors.
4. Monitor progress of DBE's work through on-site visits and communication with DBE's.

End of Document

City Of Charlotte: Charlotte Area Transit System

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

CONTRACT PROVISIONS & FORMS: FOR FEDERALLY-ASSISTED CONTRACTS

PROJECT NAME:

PROJECT NUMBER:

CATS Civil Rights Officer

Arlanda Rouse: arouse@charlottenc.gov

600 East Fourth St.

Charlotte, NC 28202

Phone: (704) 432-2566

DISADVANTAGED BUSINESS ENTERPRISE

This Contract is subject to the requirements of 49 C.F.R., Part 26, *Participation by DBE in Department of Transportation Financial Assistance Programs*. The national goal for participation of DBE is _____. The City's overall goal for participation is ____%. A separate contract goal [of ____% DBE participation has] OR [has not] been established for this procurement.

The Contractor 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 C.F.R., Part 26 in the award and administration of this DOT-assisted contract. 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 City deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 C.F.R. 26.13(b)).

[If a separate contract goal has been established, use the following] Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.53. Award of this Contract is conditioned upon the submission of the following [concurrent with and accompanying sealed bid] OR [concurrent with and accompanying an initial proposal] OR [prior to award].

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

[Bidders] OR [Offerors] must present the information required above [as a matter of responsiveness] OR [with initial proposals] OR [prior to contract award] (see 49 C.F.R. 26.53 (3)).

[If no separate contract goal has been established, use the following] The successful **[bidder] OR [offeror]** will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than thirty (30) days after the Contractor's receipt of payment for that work from the City. In addition, the Contractor may not hold retainage from its subcontractors once the City has provided notice that the work has been completed and has been accepted. The Contractor is required to return any retainage payment to those subcontractors within seven (7) days of notice of acceptance after the subcontractor's work related to this Contract is satisfactorily completed. The Contractor is required to return any retainage payments to those subcontractors within seven (7) days of notice of incremental acceptance of that portion of the subcontractor's work by the City and Contractor's receipt of the partial retainage payment related to the subcontractor's work.

The Contractor must promptly notify the City, whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate ***without prior written consent of the City.***

DBE PROVISIONS & REQUIREMENTS

Pursuant Title VI of the Civil Rights Act of 1964, Equal Employment Opportunity, Executive 11246 as implemented in the Charlotte area by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), Executive Order 11625 concerning the utilization of DBE, the DOT Circular 4716.1A, 49 CFR Part 26, the **Contractor/Bidder** is required to take certain actions designed to assure equitable participation and maximum feasible opportunities for the participation of DBE.

PART I - EQUAL EMPLOYMENT OPPORTUNITY (EEO)

A. FEDERAL NONDISCRIMINATION PROVISIONS PURSUANT TO 41 CFR 60-1.4(B) FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

Each contract must incorporate the following Equal Opportunity Clause:

(Note: Contracts less than ten thousand dollars (\$10,000.00) are exempt)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national

origin. Such action shall include, but not be limited to the following; employment, upgrading, demolition or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees, and applicants for employment, notices of be provided setting forth the provisions or this nondiscrimination clause.

2. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
3. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Administering Agency and Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government Contracts notification shall list the name, address and telephone number of the subcontractor, employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

B. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY PURSUANT TO 41 CFR 60-4.2

Executive order 11246 shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts in excess of ten thousand dollars (\$10,000.00) in Charlotte's geographical area.

1. The Contractor's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" (Part I. C a-p) set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the Charlotte area, are as follows:

The following goals and timetable for female employment apply nationwide.

Timetable	Table	Goal
From April 1, 1980 Until further notice by OFCCP	All Combined	___%

The following goals and timetables for minority employment apply to the Charlotte, North Carolina, Standard Metropolitan Statistical Area (SMSA) which includes Gastonia, Mecklenburg, and Union Counties.

Timetable	Trade	Goal
Until further notice by OFCCP	Each Trade	___%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally-assisted) performed in the Charlotte covered area. If the Contractor performs construction work in a geographical area located outside of the Charlotte SMSA, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with *Executive Order 11246*, the regulations in 41 CFR Part 60-4, shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specification set forth in 41 CFR 60-4.3(a) section C below, and its efforts to meet the goals established for the Charlotte geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, *Executive Order 11246*, the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. Subject to the requirements provided in the appropriate General and Supplementary Conditions, the Contractor shall provide written notification to the City, Office of Civil Rights and the Director of the Office of Federal Contract Compliance Programs within ten (10) working days of award of any construction subcontract in excess of ten thousand dollars (\$10,000.00) at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

C. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE PURSUANT TO 41 CFR 60-4.3(A) IS REQUIRED TO BE INCLUDED IN, & PART OF, ALL NONEXEMPT FEDERAL CONTRACTS & SUBCONTRACTS, INCLUDING CONSTRUCTION CONTRACTS & SUBCONTRACTS

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

1. As used in the following specifications:

- a. *“Covered area”* means the Charlotte, North Carolina, Standard Metropolitan Statistical Area, which includes: Gastonia, Mecklenburg, and Union counties.
- b. *“Director”* means Director, Office of Federal Contract Compliance Programs (OFCCP) US Department of Labor, or any person to whom the Director delegates authority.
- c. *“Minority”* includes:
 - (i) Black (all person having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central of South American or other Spanish or Portuguese Culture of origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, of the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of the North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of ten thousand dollars (\$10,000.00) the provisions of these specifications and the foregoing Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.

3. Each Contractor or subcontractor is individually required to comply with its obligations under these EEO provisions, and to make good faith effort to achieve each goal in the Charlotte area in each trade in which it has employees. The overall good faith performance by the Contractors or subcontractors toward a goal in the Charlotte area does not excuse any covered Contractor’s or subcontractor’s failure to take good faith efforts to achieve the covered area’s goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization. The Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in

geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and training must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, which specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the City's Civil Rights Officer and OFCCP's Director when the union and unions with which the Contractor has a

collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor, or when the Contractor has other information that the union referral process has impede the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination of other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and subcontractors with which the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one (1) month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and

vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.

- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force, participation, makes good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill and obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of

Executive Order 11246 if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of Executive Order 11246 if a specific minority group or women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with requirements of Executive Order 11246, the implementing regulations, or these Specifications, the Director will precede in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as required by the City in paragraph 16 below and as may be required by the Government, and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance of upon the application of requirements for the hiring of local or other area residents (e.g.; those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program). Similarly, nothing herein shall be interpreted to diminish the responsibilities of the City nor the obligations of Contractors or subcontractors pursuant to Executive Order 11246.

D. NON-DISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DOT - EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 PURSUANT OF 49 CFR PART 21.

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
2. The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by §21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. In all solicitations either by competitive bidding or negotiations made by the Contractor for work to be performed under a subcontract, including procurements to materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.
4. The Contractor shall provide all information and reports required by the Regulations and directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City, of the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
 - b. Cancellation, termination or suspension of the Contract in whole or in part.

PART II – DBE PROGRAM REQUIREMENTS

DBE Participation Contract Provisions & Specifications Pursuant to Executive Order 11625 & 49 CFR Part 26.

Goal through Race-Neutral Means

The City has established a tri-annual overall DBE Program Goal of ____% for the participation of disadvantaged business in all contracts for federal fiscal years _____. Subcontracts awarded by the

Contractor to firms owned by disadvantaged persons and to joint ventures of which such firms are a part are essential to the achievement of the City's DBE goal. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award.

Contract Specific Goal

Where there is a contract specific goal, failure to carry out the pre-award requirements of this part of the DBE Provisions will be sufficient ground to reject the Bid. By submitting his/her bid, each Bidder gives assurances that he/she will meet the City's percentage goal set forth in the Part for participation by disadvantaged business enterprises in the performance of any contract resulting from this solicitation or, as an alternative, that he/she has made such efforts as required under Part II of this Provision.

A contract specific goal of _____ percent (%) has been established for this Project: (Stimulus Funds).

Bidders are informed that price alone does not constitute an acceptable basis for rejecting DBE bids unless the Bidder can demonstrate that no reasonable price can be obtained from a DBE. A Bidder's failure to meet the DBE goal or to show reasonable efforts to that end will, in the City's discretion, constitute sufficient grounds for bid rejection. Such reasonable efforts are discussed in Section II.

Pursuant to Federal Regulations 49 CFR part 26, the following pages will provide Bidders with information about the City's DBE Program requirements, which is administered by the City's Office of Civil Rights. Clarification of the DBE specifications along with assistance in completing the forms of certification can be obtained by calling (704) 432-2566. Bidders will also have an opportunity to ask questions regarding the directives contained in the DBE provisions at the pre-bid/pre-proposal conference(s).

A. CONTRACT ASSURANCE CLAUSE

It is the policy of the City that DBE as defined in the U.S Department of Transportation Regulation 49 CFR Part 26 shall have the opportunity to compete for and participate in the performance of contracts financed in whole or part with Federal funds. Each contract signed between the City, contractor and subcontractor must include the following assurance as required in [see 49 CFR Part 26.13(b)]:

“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 Department of Transportation (DOT)-assisted contracts. Failure by the contractor to carry out these requirements in a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate”.

This language is included to comply with relevant Federal law and to ensure that all persons who enter into any direct or indirect form of contractual agreement with the City, through the City of Charlotte, are aware of their responsibility and the commitment of the City to see that the City's DBE Policy is carried out in all instances.

B. DOCUMENTATION OF GOOD FAITH EFFORTS

In order to monitor DBE participation on Federally-assisted contracts Bidders are required to submit with their Bids, on Form A, the names, respective scope of work/service to be performed, and the dollar values of each DBE subcontractor that the Bidder proposes for participation in the contract work. If the information so submitted indicates that the City's goal will not be met, the Bidder shall also submit evidence sufficient to show to the City's satisfaction that the Bidder has in good faith made every reasonable effort, in the City's judgment, to meet such goals prior to contract award.

A bid will not be considered responsive unless the bidder complies with Title 49 Code of the Federal Regulations, Part 26, and the City's DBE Program. Bidders are **required** to submit the following documentation with their bid submittal:

DBE Form A: Schedule of DBE Participation

Note: This form (attached in Exhibit 2) is a list of actions which you should consider as part of the Good Faith Efforts to obtain DBE participation. It is not intended to be exclusive or exhaustive:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and /or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that DBEs goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner at assist them in responding to a solicitation.
4. Negotiating in good faith with interested DBE. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE's to perform the work. (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself

sufficient reason for bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) as not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
7. Effectively using the services of available minority/women community organizations; minority/women contractor's groups: local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Bidders must present the information required above as a matter of responsiveness (see CFR Part 26.53 (b)(3)(i)).

C. DBE PROGRAM DEFINITIONS, AS USED IN CONTRACT

1. "Disadvantaged Business Enterprise" or "DBE" means a small business concern:
 - a. Which is at least fifty-one (51%) percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one (51%) percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individual owners.
 - b. A DBE shall not include a small business concern where that concern or a group of concerns controlled by the same socially and economically disadvantaged individual or individuals has annual average gross receipts in excess of \$20,410,000.00 over the previous three (3) fiscal years or is not otherwise eligible as a small business as defined by the Small Business Administration in 13 CFR Part 121.
2. "Socially and Economically Disadvantaged Individuals" mean those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:
 - a. Any individual, whom a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

- b. Any individual in the following groups, members of which are refutably 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, Burma (Myanmar), Korea, Vietnam, Laos-Cambodia, the Philippines (Kampucha), Thailand, Malaysia, Indonesia, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic and Palau) and the commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Mauro, Federated States of Micronesia or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons, whose origins are from India, Pakistan, and Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) “Women,” regardless of race, ethnicity, or origin;
 - (vii) Or any additional groups whose members are designated as socially and economically disadvantaged by the SBA pursuant to §8(a) of the Small Business Act. The City shall make a rebuttal presumption that individuals in the above groups are socially and economically disadvantaged. Such presumption may be challenged by a third party in accordance with the procedures in 49 CFR §26.69; and
 - (viii) “Tribally-Owned” concern means any concern at least fifty-one (51%) percent owned by an Indian tribe as a defined in this section.

D. THE ELEMENTS OF THE SOCIALLY AND ECONOMICALLY DISADVANTAGED

1. Socially Disadvantaged:

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American Society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

- a. At least one objective distinguishing feature that has contributed to social disadvantaged, such as race, ethnic origin, gender, disability, long-term

residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

- b. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and
- c. Negative impact on entry into or advancement in the business world because of the disadvantage. All relevant evidence in assessing this element will be considered. In every case, however, recipients will consider education, employment and business/history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

2. Economic Disadvantaged:

- a. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
- b. When an individual's Personal Net Worth exceeds the \$750,000.00 threshold, the presumption of economic disadvantage is conclusively rebutted and the individual is no longer eligible to participate in the DBE program.
- c. People who are not presumed socially and economically disadvantaged can still apply for DBE certification. To do so, they must demonstrate that they are disadvantaged as individuals.

3. DBE Utilization

The Bidder may rely on written representation by subcontractors regarding their status as disadvantaged business enterprises in lieu of an independent investigation, however;

- a. Prior to award of this Contract, as requested by the City, Bidders shall cause disadvantaged business enterprises and joint ventures involving disadvantaged businesses to submit, through the Bidder, appropriate certification documentation to the City as required by the NCDOT DBE Certification Application. On the basis of this disclosure and any other relevant information, should the City determine any firm to not be a legitimate DBE, Bidders shall be permitted to substitute bona fide DBEs for the City's consideration.
- b. After bid opening and during contract performance, Bidders and the Contractor, as the case may be, are required to make every reasonable effort to replace a DBE subcontractor that is unable to perform successfully, with another DBE, prior to substituting a DBE which is not performing satisfactorily, the Contractor shall seek approval from the City's Office of Civil Rights. the City's Office of Civil

Rights shall approve all prior substitutions in writing in order to ensure that the substitutions of firms are bona fide DBEs. The Prime Contractor may not terminate any DBE subcontractors and perform that work through its own forces or those of an affiliate without prior written consent of the City (CATS Civil Rights Officer).

- c. In the event of the Contractor's non-compliance with the disadvantaged business requirements of this Contract, the City shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

Withholding of payments to the Contractor until the Contractor complies, and/or

Cancellation, termination or suspension of the Contract, in whole or in part.

- d. For information to Bidders, attached at the end of these provisions are entitled "*Counting DBE Participation Toward DBE Goals With Only Firms Certified Under NCDOT Unified Certification Program*" outlines the Department of Transportation's rules, guidelines and criteria for (a) making determinations as to the legitimacy of DBEs (b) ensuring that contracts are awarded to Bidders that meet DBE goals, and (c) counting DBE participation toward DBE goals. Special attention should be given to the 30 Percent Rule for DBE Primes and the 60 Percent Rule for DBE Suppliers.
- e. The Contractor shall cooperate with the City's Civil Rights Officer or a designee in any review of the Contractor's procedures and practices with respect to disadvantaged business enterprises which the Civil Rights Officer may from time to time conduct.

E. DBE REPORTING REQUIREMENTS

The Contractor shall submit the Monthly Report on DBE Participation not later than the 10th day of each month of the contract period. The Contractor and subcontractors shall permit access to their books, records, and accounts by the Office of Civil Rights of the FTA and the City's Office of Civil Rights or a designated representative for purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion, which is readily accessible to the City for a minimum of three (3) years following completion of this Contract.

To ensure that all obligations under any contract awarded as a result of this bid solicitation are met, the City will conduct periodic reviews of the Contractor's DBE involvement efforts during contract performance. The Contractor shall bring to the attention of the City's Civil Rights Officer any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

The City will track and report the extent of the Contractor's race-neutral business assistance efforts. For reporting purposes, race-neutral DBE participation includes, but is not 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 contract that did not consider a firm's DBE status in making the award.

F. PROMPT & RETAINAGE PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the City. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. The City will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after City's payment to the prime contractor.

For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The contractor's failure to pay subcontractors as provided shall be a material breach for which the City may cancel the Contract.

The prime contractor agrees to return retainage payments to each subcontractor within seven (7) 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. This clause applies to both DBE and non-DBE subcontractors.

G. REPORTING & RECORDKEEPING REQUIREMENTS

1. The Contractor shall submit periodic reports of contracting with disadvantaged business enterprises in such form and manner and at such time as prescribed by the City, the **Monthly Report on DBE Participation Form** (attached to this document) is currently required to be submitted within ten (10) calendar days following the end of month.
2. The Contractor and subcontractors shall permit access to their books, records, and accounts by the Office of Civil Rights of the FTA and CATS' Civil Rights Officer or a designated representative for purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained by the Contractor in a fashion, which is readily accessible to the City for a minimum of three (3) years following completion of this Contract.

3. To ensure that all obligations under any contract awarded as a result of this bid solicitation are met, the City will conduct periodic reviews of the Contractor's DBE involvement efforts during contract performance. The Contractor shall bring to the attention of CATS' Office of Civil Rights any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

H. MISCELLANEOUS REQUIREMENTS

1. There should be no restrictions through, for example, by law provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners, without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm in accordance with 49CFR26.71(c).
2. The Contractor shall take affirmative steps in establishing local banking requirements for funds received from this project. Failure to investigate the opportunities to use banking institutions owned and controlled by minorities and women in good faith may cause a contractor to be in non-compliance with 49 CFR26.27. The Federal requirement states that deposits in banking institutions are not considered toward fulfillment of the DBE goals.

Counting DBE Participation toward DBE Goals with Only Firms Certified Under NCDOT Unified Certification Program

- A. When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
 1. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a) (2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

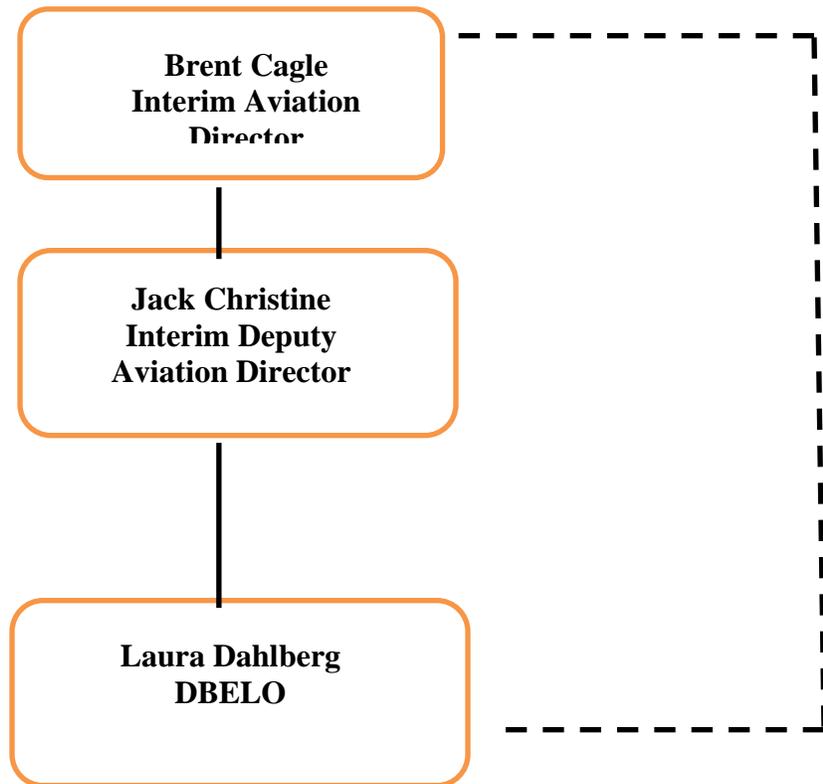
- B. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- C. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - 1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - 2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
 - 3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
 - 4. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - 5. Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- D. Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - 1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.
 6. Example to this paragraph (d) (5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.
 7. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- E. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
1. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 2. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals. For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

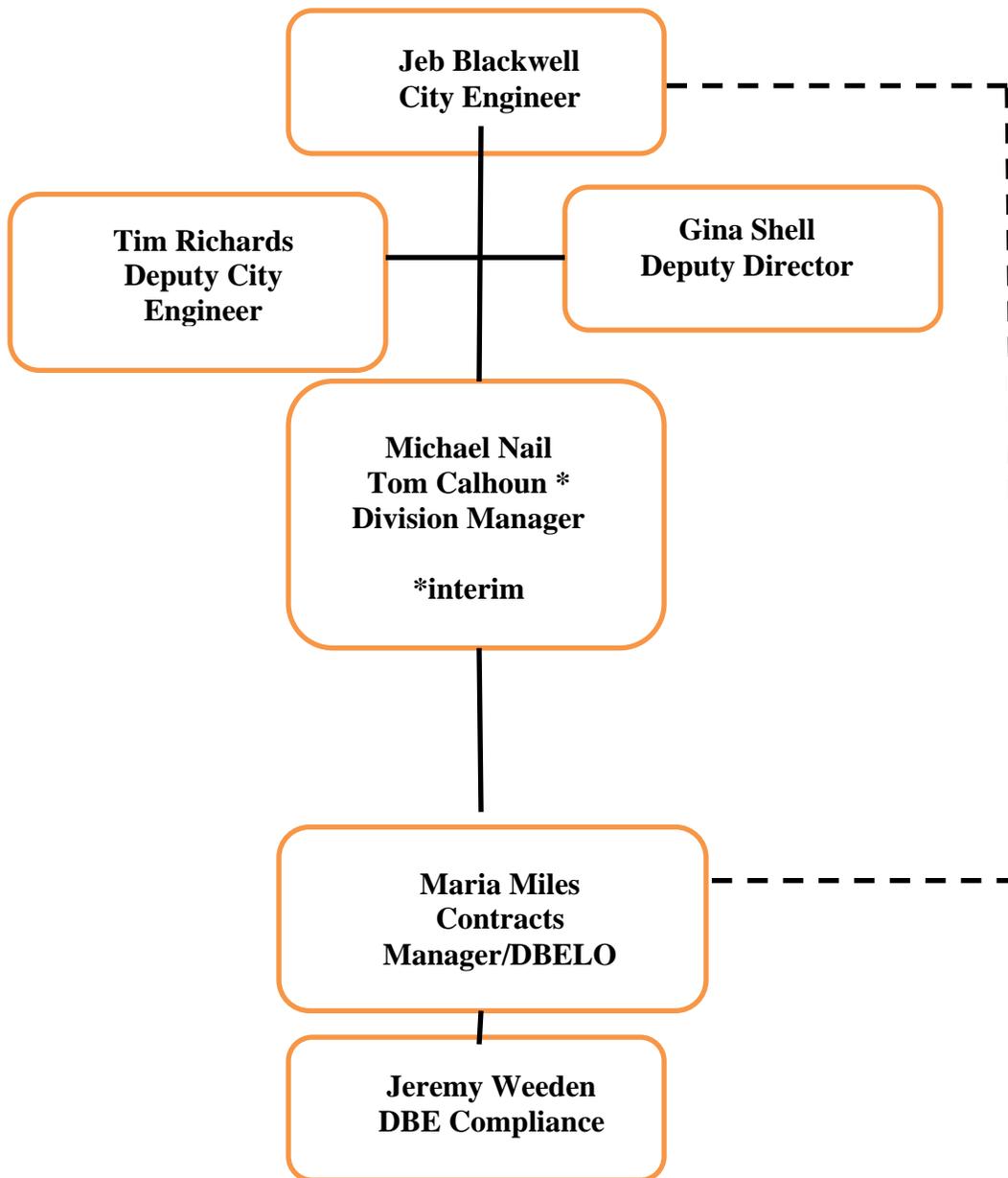
- a. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - b. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - c. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- F. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87 (i).
 - G. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
 - H. Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

Attachment 7: Organizational Charts

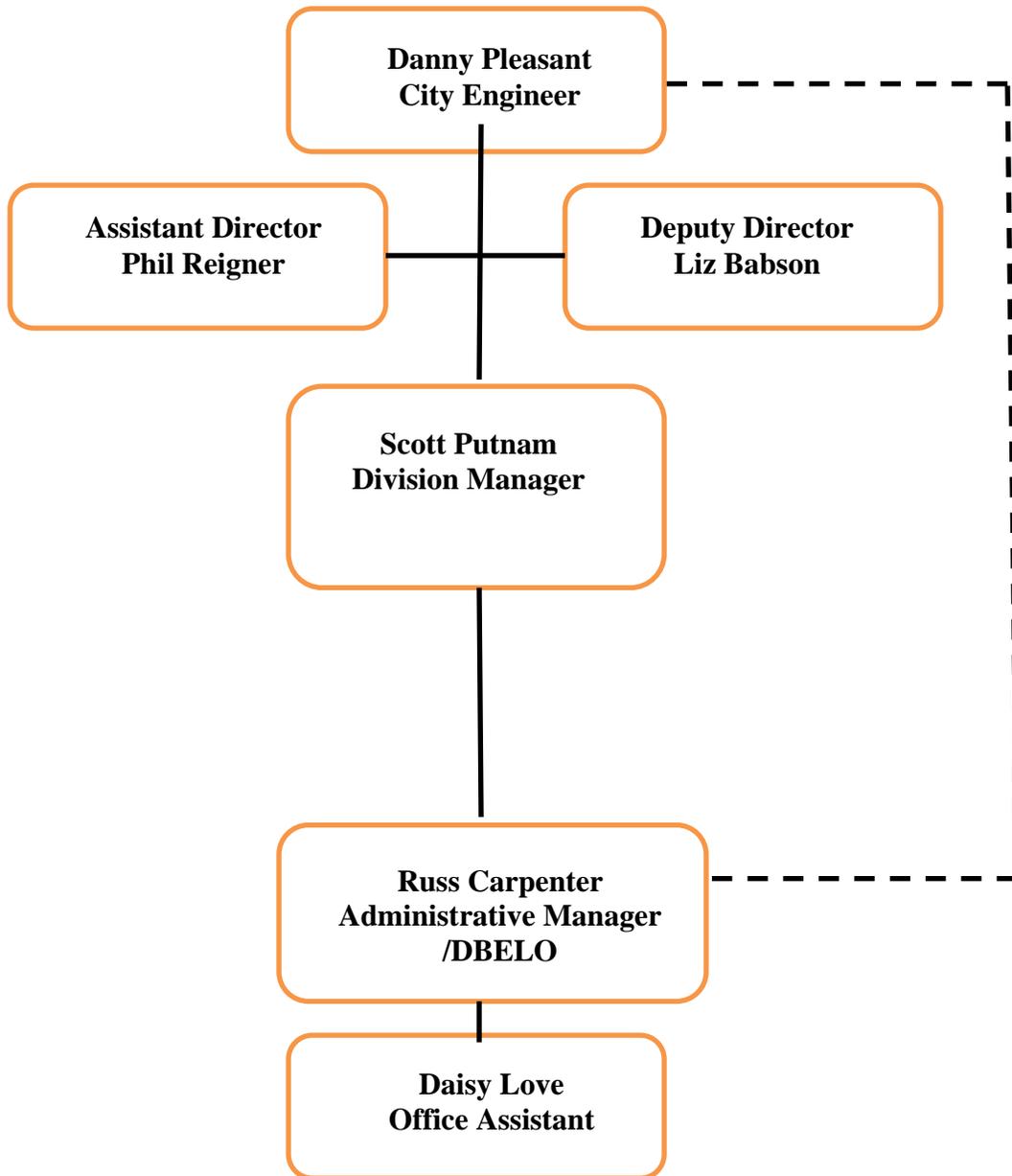
Attachment 7a
Aviation Organization Chart (DBELO)



Attachment 7b
E&PM Organization Chart (DBELO)



Attachment 7c
CDOT Organization Chart (DBELO)



Attachment 7d
CATS Organization Chart (DBELO)

