

DBE PROGRAM – updated August 2016
City of Asheville Transit
Asheville, North Carolina



Revision – 6-16-16

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DBE PROGRAM POLICY STATEMENT

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

The objectives are found in the policy statement on the first page of this program. Each time the City of Asheville (City) hires new Chief Executive Officer the policy will be updated, signed, and circulated throughout the organization and to the business community that could work on DOT assisted contracts.

Section 26.3 Applicability

The City is the recipient of federal transit funds authorized by Federal transit laws in Title 49, U.S. Code and 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in the Department of Transportation Financial Assistance Programs.”

Section 26.5 Definitions

For the City’s DBE program, we will adopt the definitions as provided by USDOT in Section 26.5 of Part 26 —Participation by Disadvantage Business Enterprise in Department of Transportation Financial Assistance programs found at www.fta.dot.gov/civilrights/12326.html.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

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

City will report DBE participation to FTA using TEAM.

Bidders List: 26.11(c)

The City will create a bidders list, consisting of information about all DBE and non-DBE contractors and subcontractors that bid or quote on DOT-assisted contracts. The purpose of this requirement is to use the bidders list to calculating overall goals. The bidders list will include the firms names, firms addresses, firms statues as DBE and non-DBE contractor or subcontractors, age of firms, annual gross receipts of firms and the percent of contract proposed to be completed by DBE registered firms.

City will collect this information upon submission of bids as a requirement of firms that bid on DOT assisted contract using **Attachment A**.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

This City will ensure that this language appears verbatim in financial assistance agreements with sub-recipients.

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

Contract Assurance: 26.13b

The City will ensure that the following clause is placed verbatim in every DOT-assisted contract and subcontract:

{Contractor, sub-recipient, or subcontractor} shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. {Contractor, sub-recipient, or subcontractor} shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the {contractor, sub-recipient, or subcontractor} to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the City receives grants from the FTA for more than \$250,000 in FTA planning capital, and or operating assistance per federal fiscal year, we will continue to carry out this program. We will provide to DOT updates representing significant changes in the program.

Section 26.25 DBE Liaison Officer (DBELO)

The City’s designated DBE Liaison Officer is:

The Transportation Planning Manager, Mariate Echeverry.

PO Box 7148

Asheville, NC 28802

Phone: (828) 259-5943

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

The DBELO is responsible for supervising the development, implementation and monitoring of the DBE program, in coordination with other appropriate officials. The DBE duties and responsibilities include the following:

1. Ensure statistical data and other information is gathered and reported as required by DOT.
2. Ensure that notices of bid solicitations and the City's DBE goals are published and disseminated in minority focused media.
3. Ensure that the review of third party contracts and purchase requisitions are completed in compliance with the City's DBE program.
4. Ensure that overall goals are set for DOT assisted contracts.
5. Ensure that bid notices and requests for proposals are available to DBE's, who desire work within our region and who are certified by NCDOT in a timely manner.
6. Ensure all elements of transit operations have identifies contracts and procurements that require DBE compliance and that goals reached.
7. Analyze City's progress toward attainment and identifies ways to improve progress.
8. Ensure that DBE certification is verified, review of good faith efforts is conducted and participation in pre-bid and contract meetings occurs, as necessary.
9. Advise the City Manager and the Transit Commission on DBE matters and achievement.
10. Ensure that DBE's are provided with information and assistance in preparing bids, as needed.
11. Ensure assists in the planning and participate in DBE training seminars and remain current on DBE related regulations.
12. Ensure communication between potential DBE's and the NCDOT Uniform Certification Process to assist DBE's in getter certified according to the criteria set by DOT.
13. Conduct outreach to DBE's, agencies, trade associations and community organizations to advise them of opportunities.

The DBELO will work with the City's Minority Business Program, NCDOT Contractual Services Unit and SBTDC's Procurement Technical Assistance Center at Western Carolina University to provide counseling and certification advice and or guidance.

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 these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

City will re-evaluate the availability of DBE financial institutions upon the re-evaluation of our DBE participation goal or update to the DBE program. This will be accomplished by:

1. Contact NCDOT UPC
2. Contact City Minority Business Program,
3. Contact SBTDC's Procurement Technical Assistance Center at Western Carolina University

To date we have identified the following institutions that are DBE Financial Institutions:

1. Mechanics and Farmers Bank. www.mfbonline.com/main/index2.html. Senior Vice-President Lending Officer, James Sansom, (919) 687-7835. A deposit and banking institution in Durham, NC.

In addition, the following institutions may be able to financial assist DBE's and other small business firms;

1. AdvantageWest Economic Development Group 134 Wright Brothers Way, Fletcher, NC 28732 (828) 687-7234 / www.advantagewest.com, mraker@awnc.org. AdvantageWest Economic Development Group serves 23 western counties in North Carolina through a number of diverse programs, including the Blue Ridge Entrepreneurial Council (BREC). BREC supports entrepreneurs through education, mentoring, networking forums and access to capital through the Advantage Opportunity Loan Fund.
2. The Sequoyah Fund, PO Box 1200, Cherokee, NC 28719, (828) 359-5002 / www.sequoyahfund.com independent, non-profit Native American Community Development Financial Institution (CDFI). Its' New Economy Loan Fund is a loan product, that provides business loans totaling \$50,000-\$250,000 for green, knowledge-based, or creative economy businesses located in the seven far-western counties (Haywood, Transylvania, Jackson, Swain, Macon, Clay, Graham, Cherokee) of North Carolina and on the Qualla Boundary.
3. Mountain BizWorks, 153 Lexington Avenue, Asheville, NC 28801, (828) 253-2834 / www.mountainbizworks.org / Nathan@mountainbizworks.org. Mountain BizWorks is a nonprofit community development financial institution serving Western North Carolina. Through lending (loans up to \$50,000 or more in some cases), consulting and training, Mountain BizWorks provides the tools and resources businesses need for long term

success and helps them grow from pre-launch ideas to durable small businesses that create jobs.

4. Self Help Credit Union, Western Regional Director, Jane Hatley, jane.hatley@self-help.org, 34 Wall St., Suite 704 Asheville NC 28801, (828) 253-5251, www.self-help.org. Self-Help's mission is to create and protect ownership and economic opportunity for people of color, women, rural residents, and low-wealth families and communities. Self-Help makes personal, car, business and home loans to people throughout Western North Carolina. Special loan programs target inhabitants of rural counties, loans for child care centers, green businesses, manufacturing companies and healthcare facilities, as well as loans for energy efficiency upgrades on businesses. Our residential lending includes special programs for single mothers and for financing manufactured housing. We work with available down payment assistance programs.

More information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from 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. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontracts. City may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

Monitoring and Enforcement: 26.29(d)

The City has established the following mechanism to monitor and enforce prompt payment and return of retainage.

1. The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have already performed

Section 26.31

Directory

The City uses the North Carolina Department of Transportation maintained directory which identifying all firms eligible to participate as DBE's in DOT-assisted contracts. The Directory is available at: <https://partner.ncdot.gov/VendorDirectory/default.html>.

The City will continue to identify uses for SAM (System for Award Management) at: www.sam.gov.

Section 26.33 Overconcentration

Due to the wide variability of FTA funded projects administered by the City of Asheville, the likelihood of overconcentration in a particular area of contracting by DBE firms is not likely to be possible. The City has not identified that overconcentration exists in the types of work that DBE's perform. The City will evaluate for overconcentration every three years upon when setting our overall DBE goal.

Section 26.35 Business Development Programs

City has not established a business development program or any formal agreements with local business development program offices. The City has worked hard as part of a network of organizations supporting the development of disadvantaged and small businesses within our area. Although no formal agreement has been developed the organizations shown below are part of this collaborative network:

1. ABTECH Center for Business and Technology Incubation, 1465 Sand Hill Road, Candler, NC 28715, (828) 254-1921 x 5850, www.abtech.edu/sbc. Valery Bennett, valeryjbennett@abtech.edu.
2. AdvantageWest Economic Development Group , 134 Wright Brothers Way, Fletcher, NC 28732 , (828) 687-7234, mraker@awnc.org, www.advantagewest.com
3. Asheville Area Chamber of Commerce, Small Business & Entrepreneurship, 36 Montford Ave., Asheville, NC 28801, (828) 258-6116, plewis@ashevillechamber.org
4. Asheville SCORE, Federal Bldg, 151 Patton Ave - RM 259, Asheville NC 28801-5007, (828) 271 4786, info@ashevillescore.org, www.ashevillescore.org
5. Cherokee Enterprise Development & The Sequoyah Fund, PO Box 1200, Cherokee, NC 28719, (828) 554-6719, glorgris@nc-cherokee.com, www.sequoyahfund.com .
6. Eagle Market Streets Development Corporation (EMSDC), P O Box 3015-28802, Asheville, NC 28801, (828) 281-1227 / stephanie@eaglemarketsts.net, rolettie@eaglemarketsts.net.
7. Mountain BizWorks, 153 Lexington Avenue, Asheville, NC 28801 , (828) 253-2834, Nathan@mountainbizworks.org, www.mountainbizworks.org /
8. Small Business & Technology Development Center (SBTDC) at Western Carolina University, 46 Haywood Street, Suite 212, Asheville, NC 28801, phone: 828.251.6025, cfields@email.wcu.edu, www.nc-ptac.org.

9. Business Link North Carolina, 301 N. Wilmington Street, Raleigh, NC 27601, 4344 Mail Service Center, Raleigh, NC 27699-4344, 1-800-228-8443, info@blnc.gov, <http://blnc.gov>
10. NC Rural Economic Development Center, 4021 Carya Drive, Raleigh, NC 27610, (919) 250-4314, info@ncruralcenter.org, www.ncruralcenter.org/
11. Southwestern Community College Small Business Center, 447 College Drive, Sylva NC 28779, (828) 488-6413, t_henry@southwesterncc.edu, www.southwesterncc.edu/swain/small-bus-ctr
12. U.S. Small Business Administration, 29 Haywood Street, Asheville NC 28801, (828) 225-1844 Michael.arriola@sba.gov
13. North Carolina Institute for Minority Economic Development. (919)956.8889, Andrea Harris, andreharris@ncimed.com, <http://www.ncimed.com/>

City will evaluate the need for such a program every three years along with our overall DBE goal.

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.

1. City will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in 26.109.
2. City will consider similar action under our own legal authorities, including determinations in future contract opportunities. In the events of non-compliance with the DBE regulation by a participant in our procurement activities, the City's Legal Department would take action in light of City of Asheville Procurement, Purchasing and Contracting Policy and GS 143-129, GS 143-128 and GS 143-131.
3. City will also provide a monitoring and enforcement mechanism to verify that work committed to DBE's at contract award is actually performed by the DBE's. This will be accomplished by the DBE staff through site visits, participating in pre-contract meetings, contract progress meetings, punch list inspection meetings, and final contract meetings. In addition, contractors will be required to report on DBE participation (including any payments to DBE's in all contract reports). DBE staff or project manager will use **Attachment D** as written certification and monitoring. This will occur for each contract/project on which DBE's are participating. Using this form City will document a running tally of actual payments to DBE firms.

Section 26.39 Small Business Participation

A small business is 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).

City will establish project-specific DBE goals as appropriate for each DOT-assisted contract.

The process generally used by City to establish overall DBE goals is as follows:

The City goal setting process is:

1. Developing a Base Figure.
 - a. Determine the weight of each type of work by NAICS Code is projected first. Determining all anticipated DOT-assisted contracts and their estimated cost that the City will administer, and then identify the corresponding NAICS code for this project/purchase. Using the “Goal Setting, NTI DBE Worksheet” each small projects percent of the total DOT funds is calculated.

	Project	NAICS Code	Project Area	Amount of DOT funds on project:	% of total DOT funds (weight)
1	Station CIP	541310	Architecture	\$6,525.00	0.0012
2		237310	Materials	\$57,225.00	0.0104
3		238110	Construction	\$81,750.00	0.0148
4		561790	Services to Buildings	\$13,600.00	0.0025
5		238320	Painting	\$13,600.00	0.0025
6		238990	Other Specialty Trade Contractors	\$7,800.00	0.0014
7		541330	Engineer Concrete Design	\$18,000.00	0.0033
8	Shelter construction	236220	Purchase	\$42,000.00	0.0076
9		541330	Design engineer	\$18,000.00	0.0033
10		237310	Construction	\$60,000.00	0.0109
11	Signage	323115	Digital printing	\$900.00	0.0002
12		237310	Signs and post	\$6,600.00	0.0012
13		237310	Installation	\$4,500.00	0.0008
14	LED signage	339950	Sign Manufacturing	\$0.00	0.0000
15	Henderson C. Station	541310	Architecture	\$0.00	0.0000
16	Henderson C. Shelters	236220	Purchase	\$24,000.00	0.0044
17		541330	Design engineer	\$0.00	0.0000
18		237310	Construction	\$24,000.00	0.0044
19	Henderson C. Signage	323115	Digital printing	\$760.00	0.0001
20		237310	Signs and post	\$4,640.00	0.0008
21		237310	Installation	\$3,000.00	0.0005
22	Henderson C. Planning		Salaries & Benefits	\$232,080.00	0.0421
23	Henderson C. Operations	485111	Preventative Maintenance & Operations	\$390,000.00	0.0708
24	ART Operations	485111	Preventative Maintenance & Operations	\$3,900,000.00	0.7079
25	ART ADA	485991	ADA services	\$600,000.00	0.1089
	Total FTA-Assisted Contract Funds			\$5,508,980.00	1.0000

2. Determine the relative availability of DBE's by NAICS Code occurs by entering the “total number of DBE firms” and “Number of all firms available (including DBEs)” into the “Goal Setting, NTI DBE Worksheet 1b”. Using a work sheet titled “Available Firms” the city does the following.
 - i. Determining the number of all firms ready willing and able to perform the types of contract we anticipate awarding. This is done by searching on <http://censtats.census.gov/cbpnaic/cbpnaic.shtml>, under "County Business Patterns" select NC, and then select each seven (7) county within NCDOT Division 13. By separately selecting each county, the City establishes the “Total establishments” or number of businesses within each county.
 - ii. Determining the number of DBE firms ready willing and able to perform the types of contract we anticipate awarding. This is done by searching the North Carolina Department of Transportation (NCDOT) Directory of Transportation Firms database (<https://apps.dot.state.nc.us/Vendor/Directory/>), search directory using the NAICS codes corresponding with each project. Narrow search by selecting certification “DBE” and then select “Desired Work Location” as Division 13. This provides the total number of DBE firms certified to conduct work within our area.
 - iii. Next the “Total Establishments” for each NAICS code is added to number of total number of DBE firms certified to conduct work within our area to establish the “Number of all firms available (including DBEs)”

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1	541310	Architecture	12	58	0.2069
2	237310	Materials	106	128	0.8281
3	238110	Construction	16	38	0.4211
4	561790	Services to Buildings	3	14	0.2143
5	238320	Painting	10	57	0.1754
6	238990	Other Specialty Trade Contractors	30	70	0.4286
7	541330	Engineer Concrete Design	73	141	0.5177
8	236220	Purchase	24	66	0.3636
9	541330	Design engineer	73	141	0.5177
10	237310	Construction	106	128	0.8281
11	323113	Digital printing	1	38	0.0263
12	237310	Signs and post	106	128	0.8281
13	237310	Installation	106	128	0.8281
14	339950	Sign Manufacturing	4	10	0.4000
15	541310	Architecture	12	58	0.2069
16	236220	Purchase	24	66	0.3636
17	541330	Design engineer	73	141	0.5177
18	237310	Construction	106	128	0.8281
19	323113	Digital printing	1	38	0.0263
20	237310	Signs and post	106	128	0.8281
21	237310	Installation	106	128	0.8281
22	0	Salaries & Benefits	0	0	
23	485111	Preventative Maintenance & Operations	0	1	0.0000
24	485111	Preventative Maintenance & Operations	0	1	0.0000
25	485991	ADA services	0	4	0.0000
	Combined Totals		1098	1838	59.74%
					Overall DBE Availability

- b. Finally the “relative availability of DBE’s” is multiplied by the “weight of each type of work “ to identify “weighted base figure” for each NAICS area. The combined total of all “weighted base figures” provides the total “weighted base DBE goal” for the project(s).

IC (Weight) x (Availability) = Weighted Base Figure						
	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1	541310	Architecture	0.00118	x	0.20690	0.0002
2	237310	Materials	0.01039	x	0.82813	0.0086
3	238110	Construction	0.01484	x	0.42105	0.0062
4	561790	Services to Buildings	0.00247	x	0.21429	0.0005
5	238320	Painting	0.00247	x	0.17544	0.0004
6	238990	Other Specialty Trade Contractors	0.00142	x	0.42857	0.0006
7	541330	Engineer Concrete Design	0.00327	x	0.51773	0.0017
8	236220	Purchase	0.00762	x	0.36364	0.0028
9	541330	Design engineer	0.00327	x	0.51773	0.0017
10	237310	Construction	0.01089	x	0.82813	0.0090
11	323113	Digital printing	0.00016	x	0.02632	0.0000
12	237310	Signs and post	0.00120	x	0.82813	0.0010
13	237310	Installation	0.00082	x	0.82813	0.0007
14	339950	Sign Manufacturing	0.00000	x	0.40000	0.0000
15	541310	Architecture	0.00000	x	0.20690	0.0000
16	236220	Purchase	0.00436	x	0.36364	0.0016
17	541330	Design engineer	0.00000	x	0.51773	0.0000
18	237310	Construction	0.00436	x	0.82813	0.0036
19	323113	Digital printing	0.00014	x	0.02632	0.0000
20	237310	Signs and post	0.00084	x	0.82813	0.0007
21	237310	Installation	0.00054	x	0.82813	0.0005
22	0	Salaries & Benefits	0.04213	x	0.00000	0.0000
23	485111	Preventative Maintenance & Operatio	0.07079	x	0.00000	
24	485111	Preventative Maintenance & Operatio	0.70794	x	0.00000	
25	485991	ADA services	0.10891	x	0.00000	
					Total	0.0399
					Expressed as a % (*100)	3.99%
					Rounded, Weighted Base Figure:	4%

3. Adjusting Base Figure

- a. Identify the median achieved DBE participation (if not available can use the DBE goal projections) for the last three fiscal years. Then the City calculates the averages between the “new weighted base DBE goal” and this historic median percentage. This average is the “DBE goal”.

Year	Overall DBE achieved
2013	17.89%
2014	13.54%
2015	1.19%
Median	13.54%
Rounded Weighted Base Figure:	4%
Historical Median:	14%
Sum	18%
Divided by Two	9% DBE Goal

4. Determining Race- neutral and race-conscious split
 - a. City will review the previous three year’s “contracts completed” and calculate the total percentage of DBE participation and break it down, to determine what percent of the total was achieved through race-neutral participation vs. race conscious means. This percentage of race neutral participation will be divided by the total DBE participation. This percentage of the total that is race-neutral participation will then be multiplied by the new “DBE Goal” to determine the new race neutral/conscious split.

Determining Race Neutral and Race Conscious split			
	Total	Neutral	Conscious
Actual achieved Goal for 2013-15	10%	7.05%	5.55%
Percent projected for receive neutral	72.17%		
DBE Goal Race Neutral	6%		
DBE Goal Race Conscious	2%		

5. Consult with interested parties.
 - a. City will contact the below interested parties to obtain information concerning the availability of disadvantaged and nondisadvantaged businesses, the effects of discrimination on opportunities for DBE’s, and the City’s efforts to establish a level playing field for the participation of DBE’s.
 - i. Green Opportunities, Asheville, 828-398-4158
info@greenopportunities.org, www.greenopportunities.org

- ii. Eagle Market Streets Development Corporation (EMSDC), Asheville, (828) 281-1227 / stephanie@eaglemarketsts.net, rolettie@eaglemarketsts.net.
 - iii. Mountain BizWorks, 153 Lexington Avenue, Asheville, NC 28801, (828) 253-2834 / www.mountainbizworks.org / Nathan@mountainbizworks.org.
 - iv. Clark Fields, SBTDC at WCU, Asheville, 828.251.6025, cfields@email.wcu.edu, www.nc-ptac.org
 - v. Michael Arriola, Small Business Administration, Asheville, (828) 225-1844, Michael.Arriola@sba.gov, www.sba.gov.
 - vi. Andrea M. Robel, Council of Independent Business Owners, Asheville, (828) 713-7845, ibconline@gmail.com, www.ibconline.info
 - vii. Michael McKoy, NCDOT, Contractual Services Unit, Raleigh,, (919)707-4810, MMcKoy@ncdot.gov
 - viii. Brenda Mills, Admin. Service Manager, Office of Economic Development, (828) 259-8050, minoritybusiness@ashevillenc.gov
- b. During this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection 8am-5pm Monday- Friday at City Hall, Transportation Department, for 30 days following the date of the notice. The public will be informed that the City and DOT will accept comments on the published goal for 45 days from the date of the notice. The publication will be placed in the following media locations (see **Attachment E**):
- i. City transit website,
 - ii. Asheville Citizen Times,
 - iii. the Mountain Express,
 - iv. La Voz (local Spanish language paper), and
 - v. The Urban News (Gateway to the Multicultural Community).
- Normally, we will issue this notice by June 1. The notice will inform the public that the DBE goal proposals can be reviewed at www.ridetheheart.com. The notice will ask the public to submit comments to iride@ashevillenc.gov or to the City Transportation Department, City Hall, 70 Court Plaza, P.O. Box 7148, Asheville, NC 28802.
6. Goal submission to DOT will include: the goal (including the breakout of estimated race neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during the public participation process and our responses; and proof of publication of the goal in media outlets listed above.

7. City will begin our efforts to meet our overall goal on October 1 of the specified year. City will use project based goal for each DOT-assisted contract. City's goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 Goal Setting and Accountability

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Keep on file the analysis and milestones.

Section 26.49 Transit Vehicle Manufacturers Goals

City will require each transit vehicle manufacturer, as a condition of being authorized to bid on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section and is listed on the FTA's TVM website.

Section 26.51 Meeting Overall Goals/Contract Goals

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

1. make bids attractive to DBE's,
2. simplify and reduce bonding requirements,
3. provide technical assistance,
4. make DBE's aware of opportunities, and
5. distribute DBE directory to prime contractors.

The City will use contract goals to meet the portion of the overall goal that we do not expect to be 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. City will establish contract goals only on those DOT-assisted contracts.

The contract goal will be establish using the same methodology as the Overall Goal set out in Section 26.45, steps 1 & 2. This Rounded weighted base goal for the project will then be added to the race-conscious Overall Goal of 3% and then divided by two (2), this will be the project goal. As has been the practice in the past, the DBE goal will apply to the entire contract, not just the federal portion. Contracts that do not have sub-contracting opportunities will most likely not have a DBE goal, nor will contracts of a small dollar amount.

COA will express its contract goals as a percentage of total amounts of DOT-assisted contracts.

Section 26.53 Good Faith Efforts Procedures

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

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

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

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

1. Bid / RFQ / RFP Project Manager
2. Purchase Department Representative
3. Disadvantage Business Enterprise staff
4. Minority Business Program Coordinator

The City of Asheville will make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. The City of Asheville will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The determination concerning the sufficiency of the firm's good faith efforts is a judgment call: there is no quantitative formula. The following actions are examples of good faith efforts. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

The following guidance will be used to determine whether a good-faith effort has been made by a bidder:

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 DBE's who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBE's to respond to the solicitation. The bidder must determine with certainty if the DBE's are interested by taking appropriate steps to follow up initial solicitations.
2. Selecting portions of the work to be performed by DBE's in order to increase the likelihood that the DBE 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 DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

4. Negotiating in good faith with interested DBE's.
 - a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE's 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.
 - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE's is not in itself sufficient reason for a 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 DBE's if the price difference is excessive or unreasonable.
5. Not rejecting DBE's 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) are 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 DBE's in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available community organizations; contractors groups; local, state, and Federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE's.
9. In determining whether a bidder has made good faith efforts, the average DBE participation obtained by other bidders, in conjunction with other factors, may be reviewed as evidence of the apparent successful bidder having made good faith efforts.

City will ensure that all information is complete and accurate and adequately documents the bidder/offerer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be Submitted: 26.53(b)

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

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information (See **Attachment A and B**):

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

Administrative Reconsideration: 26.53(d)

Within five business (5) days of being informed by City that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official:

Mariate Echeverry
Transportation Planning Manager
Transportation Department
PO Box 7148
Asheville, NC 28802
Phone: (828) 232-4528
mecheverry@ashevillenc.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with City's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. City will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

City requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without notifying the DBELO nor without 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 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 City prior to consideration of the request to terminate. The DBE will then have five (5) business days to respond and advise City of why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity (e.g., safety).

In those instances where “good cause” exists to terminate a DBE’s contract, 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.

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

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

When a DBE goal is established by the City as part of a contract, the sample bid specification (below) can be used to notify bidders/offerors of the requirements to make good faith efforts. The sample specification is intended for use in both nonconstruction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established. Attachment A and B will be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements.

Sample Bid Specification:

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

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

Section 26.55 Counting DBE Participation

City will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. Actual achievements are not counted toward goals until DBE's receive payment for their work. If the actual achievements of particular contractors or a recipient's program in general, fall short of commitments, this is an indication that corrective action should be taken to improve program performance.

SUBPARTS D & E- CERTIFICATION

Section 26.61 – 26.73 Certification Process

The City is not a certifying entity. The City DBELO can provide guidance through the certification process, but NCDOT is best equipped to assist in the certification process.

Section 26.81 Unified Certification Programs

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

www.ncdot.gov/business/ocs/dbe/

Or

North Carolina Department of Transportation

Contractual Services Unit

1509 Mail Service Center

Raleigh, North Carolina 27699-1509

Phone: (919) 707-4800

Fax: (919) 733-3584

Section 26.83-26.91 Procedures for Certification Decisions

City is the member of a Unified Certification Program (UCP) administered by North Carolina Department of Transportation (NCDOT). Certification procedures are available at: www.ncdot.gov/business/ocs/dbe/

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

U.S. Department of Transportation

Office of Civil Rights Certification Appeals Branch

1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109

Information, Confidentiality, Cooperation

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

The City of Asheville is a creature of the laws of the State of North Carolina. Chapter 132 of the North Carolina General Statutes governs access to public records with public record, being broadly defined. While as a general matter, a document meeting the definition of a public record must be made available upon request for public inspection, there are exceptions.

The exception set forth under NCGS§132-1.2, is most analogous and comparable to Section 26.109, of Title 49 of FTA regulations, permitting the City of Asheville to refuse to disclose confidential business information. Although NCGS§132-1.2, is couched in terms of “trade secret,” North Carolina case law recognize financial information submitted in connection with an application as being protected from public disclosure.

In case the City is in possession of such confidential business information, the City will comply with the federal confidentiality provision as set forth above and as allowed by NCGS §132.1.1, which exclude tax information and certain billing information from public disclosure.

Monitoring Payments to DBE’s

City will require prime contractors to maintain records and documents of payments to DBE’s 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 DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

Attachment A

Example:

City of Asheville Contractors DBE Participation Report For Requests for Qualifications

(To be returned with proposal or bid submission)

The U.S. Department of Transportation (FTA) Disadvantaged Business Enterprise Program (DBE) goals are a part of this contract. The prime bidder acknowledges the DBE overall goal for participation by Disadvantaged Business Enterprise (DBE) firms and subcontractors on this project have been set by the City of Asheville, NC at ____%, in accordance with Federal Regulation, 49CFR, Part 26, dated February 1999. DBE firms must be registered with the North Carolina Department of Transportation and listed as a DBE in there directory, found at:

<https://partner.ncdot.gov/VendorDirectory/default.html>. If bidders are having trouble using the Directory please contact The City of Asheville Transit Grants Coordinator and DBE Liaison Officer at (828) 259-594. Prime bidders are expected to break up contract as necessary into economically feasible units to facilitate DBE participation.

- I. The prime bidder understands that in order to meet this goal he/she must provide the following information with bid documents:
- II. Complete all requested fields in the chart below , including the names of all contractor and Subcontractors that are part of bid (including DBE firms) and estimated percent of total contract expenses; and
- III. Provide written confirmation from the DBE firm(s) of their participation in the contract by completing all fields in the form titled, "City of Asheville's Letter of Intent from DBE's", attached hereto;

AND/OR

IV. Provide Proof of Good Faith Effort. If the bidder is unable to meet the DBE Goal on this project, proof of Good Faith Effort (documentation showing bidders attempt to meet the DBE goal) shall be submitted within 6 (six) business days after bid opening. The City of Asheville will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. If the bidder is able to meet the DBE goal on this project, the bidder is not required to provide Good Faith Effort.

- a. The following actions are examples of good faith efforts. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. The City of Asheville will ensure that all information is complete and accurate and adequately documents the prime bidder/offer's good faith efforts before we commit to the performance of the contract by the prime bidder/offeror. Soliciting through all reasonable and available means (e.g. NCDOT Directory Search screen prints showing the date of the search, email correspondence with potential

- subcontractors, email delivery and/or read receipt, list of phone calls made with subcontractors), 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 prime bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE 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.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBEs.
 - i. It is the prime bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to meet the contract goal. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - ii. A prime bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a prime 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 prime 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.
 - e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- h. Effectively using the services of available community organizations; contractors groups; local, state, and Federal business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- i. In determining whether a prime bidder has made good faith efforts, the average DBE participation obtained by other prime bidders, in conjunction with other factors, may be reviewed as evidence of the apparent successful prime bidder having made good faith efforts.

Prime contractors must follow the following stipulations when working with DBE's, in accordance with Federal Regulation, 49CFR, Part 26, dated February 1999.

1. 26.13
 - a. The Non-discrimination clause requirement must be in all contracts with contractors and sub-contractors. Non-discrimination Clause
 - b. Non-discrimination Clause: *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 or 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.*
2. 26.29
 - a. Prompt payment: Primes must pay subs-contractors within 30 days of receiving payment.
 - b. Retainage: The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed (This is also a requirement of NCGS 143-134.1). Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the COA. This clause applies to both DBE and non-DBE subcontracts.
3. 26.53
 - a. Termination of DBE contracts: Prime contractors cannot terminate a DBE subcontractor without the City of Asheville written consent
 - b. Remedies - City of Asheville will take appropriate administrative action if prime fails to comply with DBE requirement.
4. 26.37
 - a. Monitoring and Enforcement: Must ensure that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed. DBE liaison must be invited to all project meetings to reinforce DBE requirements. Project updates must include an update on payments to DBE's and the overall DBE goal.

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

- A. _____ Primary bidder is a registered DBE.

Attachment B

Example:

**City of Asheville's Letter of Intent from DBE's
For Requests for Qualifications**

In accordance with Federal Regulation, 49CFR, Part 26.53.b.2.V, dated February 1999, written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment is required.

Name of prime bidder/offeree's firm: _____

Address: _____

City: _____ State: _____ Zip: _____ Email: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____ Email: _____

Telephone: _____

Complete list of items to be performed by DBE firm: _____

The prime bidder/offeree has committed to utilizing the above-named DBE firm for the work described above which will be _____% of the total contract.

The DBE firm, _____, affirms that it will perform the portion the percentage of the total contract as stated above.

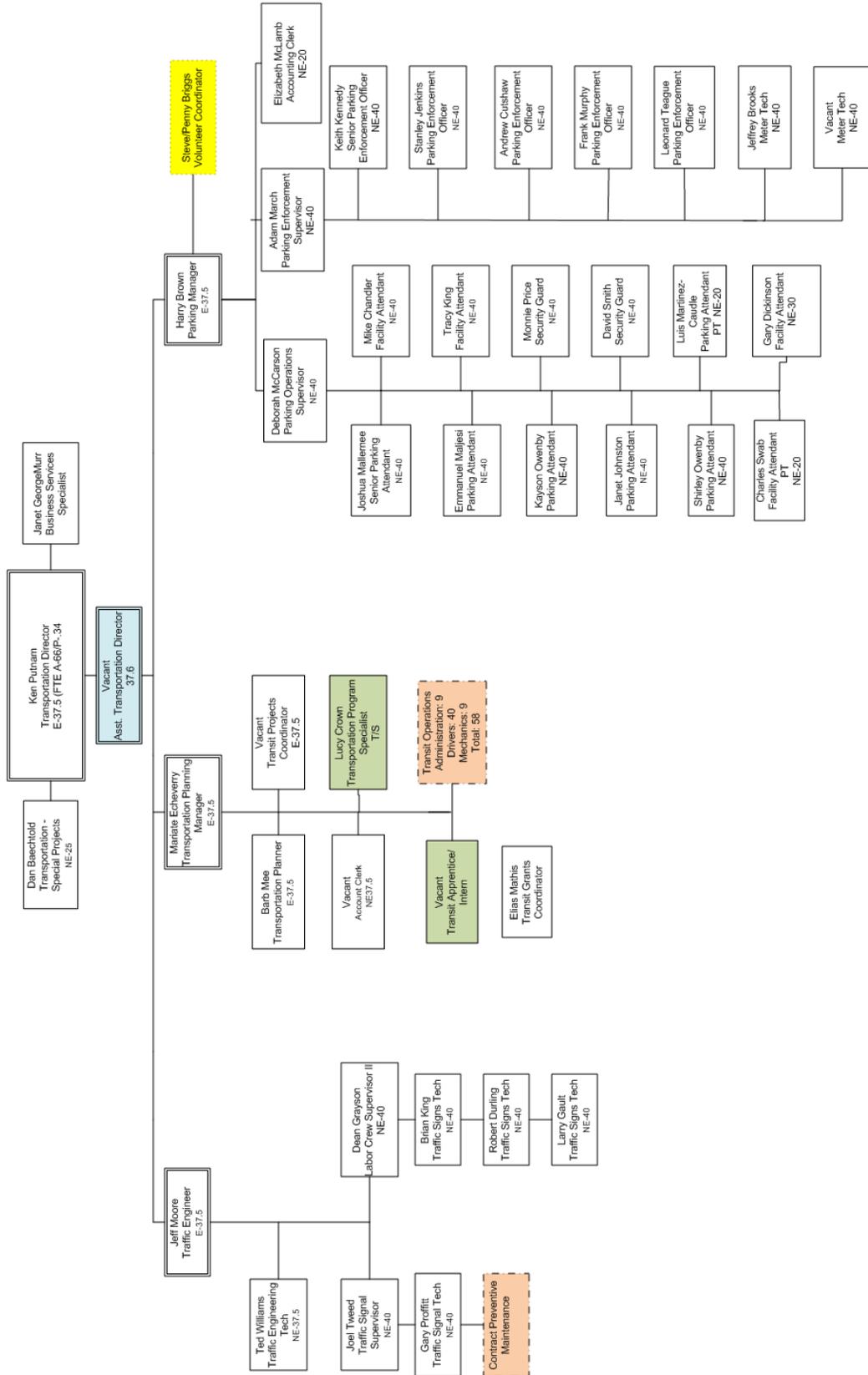
By

(Owner Signature) (Title) (Date)

If the bidder/offeree does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

Attachment C



Attachment D

Example:

COA tracking of DBE commitments

For City of Asheville internal use only.

This document is written certification that the COA has reviewed contracting records and monitored work sites for compliance with 49 CFR Part 26, specifically Section 26.37 - Monitoring and Enforcement Mechanisms requirement.

Date: _____ **Project name:** _____

Prime Name _____ DBE project goal: _____

- A. _____ Primary bidder is a registered DBE.
- B. _____ Subcontract _____ percent of the contract work to the below registered DBE(s).
- C. _____ The prime bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation as proof good faith efforts.

_____ Proof of Good Faith Effort (documentation showing bidders attempt to meet the DBE goal) shall be submitted within 6 (six) business days after bid opening.

Summary of participating DBE and non-DBE firms (please list all contractors and subcontractors)

Trade or brief description of work	Contractor/ Subcontractor Name	~ \$ Value committed at contract award	Estimate % of Contract	DBE certified ?	Actual payments to DBE	Date of Actual payment	Check # of actual payment

False, fraudulent, or dishonest conduct has been identified in connection with this contract. YES NO
If yes, attached additional records and documentation.

Contracting records Reviewed:

Date: _____ Initials: _____ Name records reviewed: _____

Scheduled meetings:

Date: _____ Initials: _____ Description: _____

Pre-contract meeting

Date: _____ Initials: _____ Description: _____

Contract progress meetings:

Date: _____ Initials: _____ Description: _____

Punch list inspection meetings

Date: _____ Initials: _____ Description: _____

Final contract meetings:

Date: _____ Initials: _____ Description: _____

Contract reports:

Date: _____ Initials: _____ Description: _____

Date: _____ Initials: _____ Description: _____

Date: _____ Initials: _____ Description: _____

Works random site visits:

Date: _____ Initials: _____ Description: _____

Date: _____ Initials: _____ Description: _____

Attachment E: Advertisement in media