



## DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

UPDATED  
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US DEPARTMENT OF TRANSPORTATION

DBE PROGRAM - 49 CFR PART 26

FOR

THE PIEDMONT AUTHORITY FOR REGIONAL TRANSPORTATION, NORTH CAROLINA

I. Objectives /Policy Statement (26.1, 26.23)

The Piedmont Authority for Regional Transportation, 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. PART has received direct Federal financial assistance from the USDOT, as well as indirect Federal financial assistance as a sub-recipient through the North Carolina Department of Transportation (NCDOT).

As a condition of receiving this assistance, PART has signed an assurance that it will comply with 49 CFR Part 26. Should any other PART 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 PART 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.
7. To review and/or update this policy and overall program on an annual basis.

The Office of the PART Administration and Financial Management shall maintain the original DBE Program document. PART shall assign a Disadvantaged Business Enterprise Liaison Officer (DBELO) who is responsible for implementing all aspects of PART's USDOT DBE Program for the overall PART Organization. Day to day DBE responsibilities will be the responsibility of the PART DBELO.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by PART in its financial assistance agreements with both the Federal Aviation and Federal Transit Administrations, as well as municipal agreements with NCDOT where Federal financial assistance is involved. PART establishes annual goals as a direct recipient of USDOT funding, monitor the DBE projects throughout the federal fiscal year and report on achievements.

PART will disseminate this policy statement to the governing PART Board of Trustees and their respective units of local government that make up the territorial jurisdiction of PART, and all the relevant departments of the PART organization. PART will maintain copies of this Policy Statement in the office of PART Administrative office and operating hubs, 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.

\_\_\_\_\_  
PART Chairperson                      Date

\_\_\_\_\_  
PART Executive Director              Date

Seal:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Primary industry classification** means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).

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

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

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

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

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

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

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

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

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

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

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttable presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, 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).

### III. Program Compliance Elements

#### A. Nondiscrimination. (26.7)

PART 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, PART 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.

#### B. DBE Program Updates (26.21)

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

#### C. Quotas & Set-Asides (26.43)

The use of quotas is prohibited in the administration of this DBE Program. Set-Asides on USDOT- assisted contracts can only be considered in limited, extreme circumstances when no other methods can reasonably be expected to attain DBE participation. As extreme circumstances are definitely identified, PART will seek the USDOT approval before implementing any quota and set-aside processes.

#### D. DBE Liaison Officer: (26.25)

PART has designated individuals as departmental DBE Liaison Officers (DBELO). Refer to Appendix 3 to view the per department DBELO directory.

Each DBELO shall be responsible for implementing all aspects of the DBE Program and ensuring that PART complies with all provisions of 49 CFR Part 26 in their respective departments. Each DBELO has direct, independent access to their department head or **Key Business Executive (KBE)** and PART Executive Director, 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 their KBE 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 PART's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.

8. Advises their respective KBE/PART Executive Director on DBE matters and achievement.
9. Completes DBE language on agenda items prior to going to PART 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.

#### E. Federal Financial Assistance Agreement Assurance (26.13)

PART has signed the following assurance, applicable to all USDOT-assisted contracts and their administration (when PART 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 Piedmont Authority for Regional Transportation 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 PART 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.). "*

#### F. DBE Financial Institutions

It is the policy of PART 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 USDOT-assisted contracts to make use of these institutions. Refer to Appendix 4 for a directory of local DBE Financial Institutions.

#### G. Directory (26.25)

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](http://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.

#### H. Overconcentration (26.33)

PART has not, at this time, identified any overconcentration in one or more types of work at the organization. PART 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. PART will then propose appropriate measures to remedy the concerns, and submit the measures to the appropriate USDOT agency for review.

#### I. Business Development Programs (26.35)

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

#### J. Required Contract Clauses (26.13, 26.29)

##### 1. Contract Assurance (26.13)

PART will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

*"The contractor 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 USDOT-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 (i.e. PART) or USDOT deems appropriate."*

##### 2. Prompt Payment (26.29)

PART will include the following clause 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 fifteen (15) days from the receipt of each periodic or final payment the full amount the prime contractor receives from The Piedmont Authority for Regional Transportation 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 PART. This clause applies to both DBE and non-DBE subcontractors. "*

## K. Monitoring and Enforcement Mechanisms (26.37)

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

All contracts between PART and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with PART'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 BELO.

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.

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

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

To ensure that all obligations under the contracts awarded to DBEs are met, PART will review the participant's DBE involvement efforts during the performance of the contract. The participant shall bring to the attention of PART 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 PART of any changes in their firm. This includes ownership, trade license(s), areas of expertise, address, telephone number and contact person(s).

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

#### L. Small Business Participation Plan (26.39)

Effective July 1, 2012, PART will implement a Small Business Participation Plan ("Plan"). The Plan effects contracts that fall within the DBE regulation and is not meant to replace PART's Small Business Enterprise Program. Under the Plan, and when commercially and operationally reasonable to do so, PART will undertake certain efforts intended to increase the opportunities for small businesses that shall include but not be limited to the following strategies:

- A. In multi-year design-build contracts or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontractors that are of a size that small businesses, including DBE's, can reasonably perform.
- B. Ensuring that a reasonable number of prime contracts are a size that small businesses, including DBE's, can reasonably perform.

#### M. Overall Goals (26.45)

##### 1. Amount of Goal

Pursuant to 49 CFR 26.45, PART will establish separate overall goals for participation of DBEs in USDOT-assisted projects. 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 PART will be calculated and documented tri-annually as an attachment to the DBE Plan appendix. Refer to Appendix No. 2 for the percentage goal of Federal financial assistance PART will expend in USDOT-assisted contracts.

PART, 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 cap PART 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 appendix. Refer to Appendix No. 1 for the step-by-step methodology utilized by PART.

Appendix No. 1 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 capa PART 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.

## 2. Consultations and Public Participation

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

## 3. Transit Vehicle Manufacturers (26.49)

Consistent with the provisions of 49 CFR, 26.49, The Piedmont Authority for Regional Transportation 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 Piedmont Authority for Regional Transportation 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 section. If PART does not establish project-specific goals on FTA-assisted projects, the TVM, according to 49 CFR Part 26:49 (b), must establish and submit for FTA approval, an overall percentage goal consistent with the general principles of 49 CFR Part 26.45.

## 4. Process

The Piedmont Authority for Regional Transportation 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, PART will inform local minority, women's, and general contractor, supplier, and development groups as well as any Association of Minority Contractors, 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 PART's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, PART 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 PART offices for 30 days following the date of the notice, and informing the public that PART 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. PART 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.

PART's overall goal submission to the FAA/FTA will include a summary of information and comments received (if any), during this public participation process. PART will begin using the overall goal on October 1 of each year, unless PART 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.

#### 5. Determining Race-Neutral and Race-Conscious Participation

PART will meet the maximum feasible portion of its overall annual goal by using race-neutral means of facilitating DBE participation (49 CFR Part 26.51). Race-conscious activities have specific goals focusing on the provision of business opportunities for DBE firms whereas race-neutral activities do not have specific goals, but are designed to benefit all small businesses, including DBEs. PART will use a combination of the following race-neutral means to attain 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.

PART will document annually as an attachment to the DBE Plan an appendix showing the race-neutral and race-conscious breakout for each fiscal year's overall goal (excluding the purchase of transit vehicles). Refer to Appendix No. 2 for the goal calculation and subsequent goal breakdown.

The following is a synopsis of the basis used to estimate the breakout of race-neutral and race-conscious DBE participation for PART:

Historical information on DBE participation is evaluated to determine the average annual percent of DBE accomplishment that is attained through only DBE Prime contracts. This calculation provides a confirmed percentage of the dollar value of all DBE contracts/subcontracts that are derived from DBE primes. This percent is an indication of the race-neutral potential for USDOT-assisted projects of similar type.

The historical data suggests that whenever overall DBE participation goals are in effect in The Piedmont Triad, the goals can possibly be met through a combination of both DBE subcontract and/or prime contract participation. Therefore, the average percent/dollar value of the DBE Overall Goal projected to be achieved through race neutral means is a "factor" of the level of DBE prime participation attained in past fiscal years.

PART will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (49 CFR26.51(f)) and PART will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

#### 6. Contract Goals (26.51)

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

PART will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. PART 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)

PART will express its contract goals as a percentage of a USDOT-assisted contract.

#### N. Good Faith Efforts (26.53)

##### 1. Information to be submitted

PART treats bidder/proposers compliance with good faith effort requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information at the time of submission of bid:

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.

2. 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.

PART will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before PART commits to the performance of the contract by the bidder/proposer.

3. Administrative reconsideration

Within three (3) days of being informed by The Piedmont Authority for Regional Transportation that it is not responsive 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:

Brent McKinney, PART Executive Director  
7800 Airport Center Drive, Suite 102  
Greensboro, North Carolina 27409  
Phone: (336) 626-0002  
Fax: (336) 662-9253

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. PART 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.

4. Good Faith Efforts when a DBE is replaced on a contract

PART will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. PART will require the prime contractor to notify the DBELO immediately of the DBEs inability or unwillingness to perform and provide reasonable documentation. Initial notification shall occur verbally followed by a written report within two (2) workdays. In this situation, PART will

require the prime contractor to obtain its prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, 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.

O. Counting DBE Participation (26.55)

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

P. Certification (26.61 - 26.91)

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

Q. Information Collection and Reporting-Bidders List

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

PART 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 PART seeking bid information, and/or who attend pre-bid meetings, conferences, etc.

R. Monitoring Payments to DBEs

PART 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 PART or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

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

PART 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.

#### S. Reporting to USDOT

PART will report DBE participation to USDOT as follows:

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.

Report DBE participation on a per project basis to the NCDOT as a sub-recipient of USDOT-assistance through municipal agreements. PART shall follow PART 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 PART 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) PART 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 PART is listed as one of the 50 largest transit authorities as determined by the FTA; or if PART 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 PART 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.

#### T. Confidentiality

PART 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, PART 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.

#### U. Attachments

Appendix No. 1: USDOT-FAA-FTA Approved Methodology for Annual Goal Setting

Appendix No. 2: Tri-Annual Calculation of Overall DBE Goals

i. Piedmont Authority for Regional Transportation (PART)

Appendix No. 3: Directory of designated (DBE Liaison Officers) DBELOs.

Appendix No. 4: Directory of local minority financial institutions.

## Appendix No. 1

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

The Piedmont Authority for Regional Transportation DBE Program, Charlotte, North Carolina (49 CFR Part 26)

Preface:

Pursuant to CFR 49 Part 26 requirements, The Piedmont Authority for Regional Transportation (PART) has developed a Methodology that shall be the basis for calculating the annual, Overall DBE Goals for USDOT-FAA-FTA-funded projects in the PART territorial jurisdiction. 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 the Piedmont Authority for Regional Transportation (PART), 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 ten (10) county Burlington, Greensboro-High Point-Winston-Salem Metropolitan Statistical Area (MSA), which includes:  
Alamance, Guilford, Forsyth, Davidson, Randolph, Stokes, Davie, Yadkin, Rockingham, Surry
2. Second, the Capital Improvement Program Budget (CIP) for proposed projects or any other relevant documents is examined from PART 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 PART 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 urbanized area and the greater Piedmont Triad MSA, as defined by the US Census, includes ten 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 PART 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 PART'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 PART 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 PART'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 Capa PART of DBEs to Perform Work on USDOT-assisted Contracts.

Determining Current Capa PARTof 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 PART 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.

Report Period - Number of – DBE – Subcontracts - Tot. DBE Pct. - Achieved from - DBE Subcontracts

No. of DBE - Prime - Contracts - Pct Dollar Value - of DBE Prime – Contracts - Combined - DBE Percent

Achieved\*

The Piedmont Authority for Regional Transportation and the respective departments 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, PART 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 capa PART 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.

PART 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 capa PART to perform on USDOT-assisted contracts.

The historic DBE achievement levels in The Piedmont Authority for Regional Transportation 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.

### Appendix No. 3

The Office of PART shall maintain the original DBE Program document. PART shall assign a Disadvantaged Business Enterprise Liaison Officer (DBELO) who is responsible for implementing all aspects of the PART's USDOT DBE Program in their respective Program departments. Day to day DBE responsibilities will be delegated to the DBELO: for PART Administration, the DBELO is the PART Executive Director.

DBE Liaison Officer: (26.25)

PART has designated the following individuals as DBE Liaison Officers:

**\*\*Note:** To be updated on an annual basis.

#### Appendix No. 4

##### Minority Financial Institutions in the Recipient's Area.

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

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

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