

WACCAMAW REGIONAL TRANSPORTATION AUTHORITY

“THE COAST RTA”

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM



WACCAMAW REGIONAL TRANSPORTATION AUTHORITY

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DBE PROGRAM

July 21, 2014

Revised January 27, 2016

49 CFR PART 26

**Objectives/Policy Statement (Sections 26.1 and 26.23)**

The Waccamaw Regional Transportation Authority has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Waccamaw Regional Transportation Authority has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Waccamaw Regional Transportation Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Waccamaw Regional Transportation Authority to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of Waccamaw Regional Transportation Authority:

1. To ensure non-discrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT 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 DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Waccamaw Regional Transportation Authority Compliance Officer has been delegated as the DBE Liaison Officer. In that capacity, the Compliance Officer is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded

the same priority as compliance with all other legal obligations incurred by the Waccamaw Regional Transportation Authority in its financial assistance agreements with the US Department of Transportation.

The Waccamaw Regional Transportation Authority has disseminated this policy statement to the Waccamaw Regional Transportation Authority Board of Directors and all the components of the Waccamaw Regional Transportation Authority organization. The Waccamaw Regional Transportation Authority has made available, this statement to DBE and non-DBE business communities that perform work for the Waccamaw Regional Transportation Authority on DOT-assisted contracts by inclusion of the DBE policy statement in proposal, bid, and contracts which receive DOT assistance.



Date: 1-27-16

Brian Piascik, General Manager

**Objectives (Section 26.1 and 6.23)**

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

**Applicability (Section 26.3)**

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

**Definitions (Section 26.5)**

The Waccamaw Regional Transportation Authority will adopt the definitions contained in Section 26.5 of Part 26 for this program. The Waccamaw Regional Transportation Authority will ensure that all definitions from the regulations are included and correct; that the Waccamaw Regional Transportation Authority will add and include any new/amended definitions as they are provided by USDOT; and not to add any definitions for terms not included. ~~in the definitions found in Section 26.5 of Part 26.~~

**Non-discrimination (Section 26.7)**

The Waccamaw Regional Transportation Authority 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 Waccamaw Regional Transportation Authority 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.

### **Record Keeping Requirements (Section 26.11)**

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

The Waccamaw Regional Transportation Authority will report DBE participation to the relevant operating administration (FTA) using the Uniform Report of DBE Awards or Commitments and Payments found in Appendix B to the DBE regulation.

DBE Uniform Reports shall be submitted Semi-Annually for the Federal Fiscal periods ending March 31 and September 30 to Region 4 RCRO and for the State Fiscal periods ending June 30 and December 31 to SCDOT.

Annual DBE goal achievement analysis (goal met or shortfall analysis) shall be completed and submitted to Region 4 RCRO annually.

### **Bidders List: 26.11(c)**

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

We will collect this information in the following ways:

We will require prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts and request firms quoting on subcontracts to report information directly to the Waccamaw Regional Transportation Authority.

### **Assurances (Section 26.13)**

The Waccamaw Regional Transportation Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration.

### **Federal Financial Assistance Agreement Assurance: 26.13 (a)**

The Waccamaw Regional Transportation Authority 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 Waccamaw Regional Transportation Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT

assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification of The Waccamaw Regional Transportation Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and could, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies act of 1986 (31 U.S.C. 3801 *et seq.*).

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

**Contract Assurance: 26.13b**

We will insure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure of 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 Waccamaw Regional Transportation Authority deems appropriate.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS DBE Program Updates (Section 26.21)**

Since The Waccamaw Regional Transportation Authority has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

**DBE Liaison Officer (DBELO) (Section 26.25)**

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

Kevin Parks, Grants & Procurement Manager, Compliance Officer

Waccamaw Regional Transportation Authority

1418 Third Avenue

Conway, SC 29526

Phone: (843) 438-3015

[kparks@coastrta.com](mailto:kparks@coastrta.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that The Waccamaw Regional Transportation Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director of The Waccamaw Regional Transportation Authority concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in conjunction with other appropriate officials. The DBELO does not have a staff. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments 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 procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes The Waccamaw Regional Transportation Authority progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings, as needed.
8. Advises the General Manager and/or governing body on DBE matters and achievement.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Receives and makes accessible, the South Carolina Unified Certification Program (SCUCP) updated directory of certified DBEs
12. Participates as a UCP partner with South Carolina Uniform Certification Program

#### **DBE Financial Institutions (Section 26.27)**

It is the policy of The Waccamaw Regional Transportation Authority 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 effort to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions: We have investigated and found there are no socially or economically disadvantaged individuals who own or control a financial institution in the Conway, SC Area. We will check the directory each year to determine if any of these types of institutions have been added to the directory.

#### **Prompt Payment Mechanisms (Section 26.29)**

The Waccamaw Regional Transportation Authority 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 seven (7) days from the receipt of each payment the prime contractor receives from The Waccamaw Regional Transportation Authority. Any delay of postponement of payment from the above referenced time frame may occur only for good cause following written approval of The Waccamaw Regional Transportation Authority. This clause applies to both DBE and non-DBE subcontracts.

Failure to do so will subject the prime contractor to sanctions and penalties according to the Waccamaw Regional Transportation Authority contract clause. The Waccamaw Regional Transportation Authority will allow for contract mediation regarding payment disputes, for which the prime and subcontractor will share in cost of the dispute resolution.

### **Retainage (Section 26.29a)**

The prime contractor agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of The Waccamaw Regional Transportation Authority. This clause applies to both DBE and non-DBE subcontracts.

### **Monitoring and Enforcement: (Section 26.29b)**

Contractor or subcontractor shall be required to furnish, either periodically or upon request, reports of DBE (Disadvantaged Business Enterprise) involvement, utilization, and payment. The solicitation of certified DBE's and the good faith efforts to do so, including replacement of DBE's is the sole responsibility of the prime contractor, and these requirements along with remedied, and enforcement provisions will become a part of the solicitation and performance contract. The Waccamaw Regional Transportation Authority will also request verification from the prime contractors that subcontractors were paid within the timeframe specified in 26.29. The Waccamaw Regional Transportation Authority will bring to the attention of the South Carolina Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the necessary steps, such as referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 26.109. The Waccamaw Regional Transportation Authority will consider similar action under own legal authorities, including responsibility determinations in future contracts. A monitoring and enforcement mechanism will verify that work committed to DBE's at contract award is actually performed by the DBE's. A Waccamaw Regional Transportation Authority representative will visit the worksite periodically and verbally and visually confirm the DBE firm is completing the work. This site visit will be done randomly until completion of the project. The Waccamaw Regional Transportation Authority will also monitor it through the bidding process, payroll reviews to include a running tally of actual payments to DBE firms, and maintenance of reports through the Finance department for quarterly DBE process to include a certification of contract reviews and will monitor at contract close-out on each contract/project which DBEs are participating. 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. All contracts between The Waccamaw Regional Transportation Authority and a contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the 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. Additionally, The Waccamaw Regional Transportation Authority may audit the prime contractor or subcontractor records, insofar as is necessary, to insure compliance with 49 CFR Part 26.

### **Directory (Section 26.31)**

The Waccamaw Regional Transportation Authority maintains a copy of the DBE Directory published and updated monthly by the Office of Business Development and Special Programs of the South Carolina Department of Transportation. The Waccamaw Regional Transportation Authority will make the directory available to interested parties by having interested parties contact our DBELO, Kevin Parks at (843) 438-3015 or email [kparks@coastrta.com](mailto:kparks@coastrta.com).

### **Overconcentration (Section 26.33)**

The Waccamaw Regional Transportation Authority has not identified that overconcentration exists in the types of work DBEs perform.

WRTA will work with SC Uniform Certification Program to identify if any overconcentration of DBES exists on an ongoing basis as needed.

### **Business Development Programs (Section 26.35)**

The Waccamaw Regional Transportation Authority will refer eligible firms as identified to the business development program established by SCDOT for the SC Uniform Certification Program.

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

The Waccamaw Regional Transportation Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26. The monitoring steps will include the following:

1. We will bring to the attention of the South Carolina Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that SCDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and

contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. Review of bid package documentation to obtain clarity if necessary.
4. Review all information on the subcontract awards made to DBE and Non-DBEs, including the name, scope of work to be performed, and contract amount.
5. Conduct necessary 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.
6. 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.
7. Monitor progress of DBEs work through on-site reviews and communications with DBEs.
8. 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.
9. 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.
10. Ensure that prime contractors and DBEs immediately notify the SCDOT and/or FTA of any changes in their firm's 'information' to include ownership, trade license(s), and areas of expertise, addresses, telephone numbers and contact person.
11. The Waccamaw Regional Transportation Authority 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 FTA. This reporting requirement also extends to any certified DBE subcontractor.
12. The Waccamaw Regional Transportation Authority will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
13. The Waccamaw Regional Transportation Authority will perform interim audits for 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.

### **Small Business Participation (Section 26.39)**

The Waccamaw Regional Transportation Authority has incorporated the following non-discriminatory element to its DBE (Disadvantaged Business Enterprise) program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses): Examples of what The Waccamaw Regional Transportation Authority will do include: removal of unnecessary and unjustified bundling of contract requirements; race-neutral small business set-asides for prime contracts below a certain value (\$10,000); requiring bidders on large contracts, for the Waccamaw Regional Transportation Authority, unforeseen contract amounts over \$50,000 to identify and/or provide specific subcontracts appropriate for small business participation; development of acquisition strategies and structuring procurements to facilitate bids by and awards to small business consortia or joint ventures; letting prime contract of a size (under \$50,000) that small businesses can reasonably compete for and perform. A small business is defined

according to the Small Business Administration (SBA) standards found in 13 CFR Part 121. To meet the size requirements of the small business program, a firm, including its affiliates, must have average annual gross receipts, over the firm's previous three fiscal years that do not exceed size standards in a particular area of work (NAICS code). The size standards and limits by NAICS code can be found at [www.sba.gov](http://www.sba.gov). The North American Industry Classification System (NAICS) codes can be found at <http://www.census.gov/eos/www/naics/>. The Waccamaw Regional Transportation Authority also utilizes the SC Small Business Enterprise Unified SBE Directory for projects which may come up for bids or to obtain quotes. We also make known to other agencies via agency meetings that Waccamaw Regional Transportation Authority staff attends, which consist of members from the areas serviced by the Authority, as we convey upcoming projects and various information.

## **SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Set-asides or Quotas (Section 26.43)**

The Waccamaw Regional Transportation Authority does not use quotas in any way in the administration of this DBE program.

### **Overall Goals (Section 26.45)**

In accordance with Section 26.45, The Waccamaw Regional Transportation Authority will submit its triennial overall DBE goal to the FTA by the August deadline of the year specified by FTA. The FTA has been informed by The Waccamaw Regional Transportation Authority that it will submit its goal every three years. The Waccamaw Regional Transportation Authority last goal submission was done in FY 2011 to expire through July 31, 2014 and the goal was approved by the FTA Region 4 Office in Atlanta, Ga.

The Waccamaw Regional Transportation Authority will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by the FTA.

The process generally used by The Waccamaw Regional Transportation Authority to establish overall DBE goals is as follows: The WRTA uses the Step 1 and Step 2 process described in 49 CFR Part 26, Section 26.45(c)- (d). Before establishing the overall goal each year, The Waccamaw Regional Transportation Authority will consult with the SCDOT Office of Business Development and Special Programs to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs (Disadvantaged Business Enterprise), and the Waccamaw Regional Transportation Authority's efforts to establish a level playing field for the participation of DBEs. Through research for our surrounding areas and with the number of projects that The Waccamaw Regional Transportation Authority has and anticipate, there are a limited number of DBE's listed which can perform the type of work, which are non-construction types. Upon communicating with many DBE firms, they feel that the playing field is not level due to the amount of resources it has to compete with the larger firms, thus they try to

get business with the larger firms. To aid in combating this, The Waccamaw Regional Transportation Authority incorporates solicitations directly to the small businesses and DBE's so that they too can be aware of the project opportunities as they become available.

Following the consultation, we published a notice of the proposed overall goal in the local newspapers The Sun News and The Georgetown Times, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our office located at 1418 Third Avenue, Conway, SC 29526 for 30 days following the date of the notice. The Waccamaw Regional Transportation Authority and SCDOT will accept comments on the goals for 45 days from the date of the notice. Comments addressed to The Waccamaw Regional Transportation Authority can be mailed to 1418 Third Avenue, Conway, SC 29526 or via email at [kparks@coastrta.com](mailto:kparks@coastrta.com). Comments for SCDOT can be addressed to SCDOT, Office of DBE Program Development, 955 Park Street, Columbia, SC 29201. We routinely issue this notice by June 1. Our overall goal submission to FTA and SCDOT 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 any comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by the FTA.

### **Goal Setting and Accountability (Section 26.47)**

If the awards and commitments shown on The Waccamaw Regional Transportation Authority 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. Submit the plan to FTA within 90 days of the end of the affected fiscal year. *[Note: submission to DOT operating assistance is only required if you are a state DOT; one of the largest 50 transit authorities as determined by FTA, or an Operational Evolution Partnership Plan airport or other airport designated by FAA. However, please also note that recipients for whom submission/approval is not required must still perform the analysis, establish and implement a corrective action plan, and maintain information/records regarding the analysis and efforts made.]*

### **Transit Vehicle Manufacturers Goals (Section 26.49)**

The Waccamaw Regional Transportation Authority 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 Waccamaw Regional Transportation Authority may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### **Meeting Overall Goals/Contract Goals (Section 26.49a)**

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

1. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that offer greater participation by DBEs and other small businesses, and by making contracts more accessible to small businesses.
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g. ensuring the inclusion of DBEs and other small businesses, on The Waccamaw Regional Transportation Authority's mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
3. Attempt to establish endorsement of and assist new, local start-up firms, particularly in fields in which DBE participation has historically been low.
4. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

The Waccamaw Regional Transportation Authority will use contract goals to meet any portion of the overall goal, that the Waccamaw Regional Transportation Authority 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.

We will establish contract goals only on those DOT-assisted contracts that have sub-contracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

### **Good Faith Efforts Procedures (Section 26.53)**

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

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, The Waccamaw Regional Transportation Authority 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)**

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:

### **DBELO and Chief Financial Officer with SCDOT Consultation (26.53a)**

The process used to determine whether good-faith efforts have been made by a bidder is as follows:

- I) When The Waccamaw Regional Transportation Authority establishes a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II) In any situation in which we have established a contract goal, part 26 requires us to use the good faith efforts mechanism of this part. As a recipient, it is up to The Waccamaw Regional Transportation Authority to make a fair and reasonable judgment whether a bidder did or did not make adequate good faith efforts. It is important for us to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. Determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III) The Department also strongly cautions us against requiring that a bidder meet a contract goal (*i.e.* obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV) The following is a list of types of actions which should be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory

checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 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) **Two Parts:**
  - i) Negotiating in good faith with interested DBEs. 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 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 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 bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 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 minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

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

**Information to be submitted: ( 26.53b)**

The Waccamaw Regional Transportation Authority 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/offerors 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment 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.
6. If the contract goal is not met, evidence of good faith efforts.

**Administrative Reconsideration: ( 26.53c)**

Within 5 working days of being informed by The Waccamaw Regional Transportation Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official:

General Manager  
Waccamaw Regional Transportation Authority  
1418 Third Avenue  
Conway, SC 29526

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 our reconsideration official to discuss the issue of whether it met the goal or

made adequate good faith efforts to do. The Waccamaw Regional Transportation Authority 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 to the Department of Transportation.

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

The Waccamaw Regional Transportation Authority requires that prime contractors not terminate a DBE subcontractor listed on a contract with a DBE contract goal without The Waccamaw Regional Transportation Authority 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.

**NOTE:**

For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CPR Parts 180, 215 and 1,200 or applicable state law;
6. You have determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to The Waccamaw Regional Transportation Authority, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed

termination of its subcontract and why The Waccamaw Regional Transportation Authority should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (i.e., safety), The Waccamaw Regional Transportation Authority may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, The Waccamaw Regional Transportation Authority requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

We must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

The Waccamaw Regional Transportation Authority must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, we count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

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

*[Note: 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 the WRTA will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

### **Sample Bid Specification:**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of The Waccamaw Regional Transportation Authority 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 (Attachment 1), 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.

[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found at Attachment 5 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction 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.]

### **Counting DBE Participation (Section 26.55)**

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

### **SUBPARTS D & E CERTIFICATION**

#### **Certification Process (Section 26.61 – 26.73)**

The Waccamaw Regional Transportation Authority does not certify DBEs. The Waccamaw Regional Transportation Authority utilizes DBEs who have been certified by the Unified Certification Program of the State of South Carolina which is a part of the South Carolina Department of Transportation.

### **Unified Certification Programs (Section 26.81)**

The Waccamaw Regional Transportation Authority is the member of a Unified Certification Program (UCP) administered by the South Carolina Department of Transportation. The UCP will meet all of the requirements of this section. The Waccamaw Regional Transportation Authority will use and count for DBE credit only those DBE firms certified by the South Carolina UCP.

### **Procedures for Certification Decisions (Section 26.83-26.91)**

The Waccamaw Regional Transportation Authority will follow the certification processes of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of South Carolina UCP is available at:

DBE Program and Compliance Supervisor  
Office of DBE Program Development  
South Carolina Department of Transportation  
955 Park Street Columbia, SC 29201  
Phone (803) 737-1372

Any firm or complainant may appeal a South Carolina UCP 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, 7<sup>th</sup> Floor  
Washington, D.C. 20590

The Waccamaw Regional Transportation Authority will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT- assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

### **SUBPART F – COMPLIANCE AND ENFORCEMENT Section 26.109 Information, Confidentiality, Cooperation**

The Waccamaw Regional Transportation Authority will safeguard from disclosure to third parties, any information that may be reasonably regarded as confidential business information, consistent with Federal, state, and local law. The South Carolina Freedom of Information Act (SCFOIA), South Carolina Code of Laws Section 30-4-50, declares as public

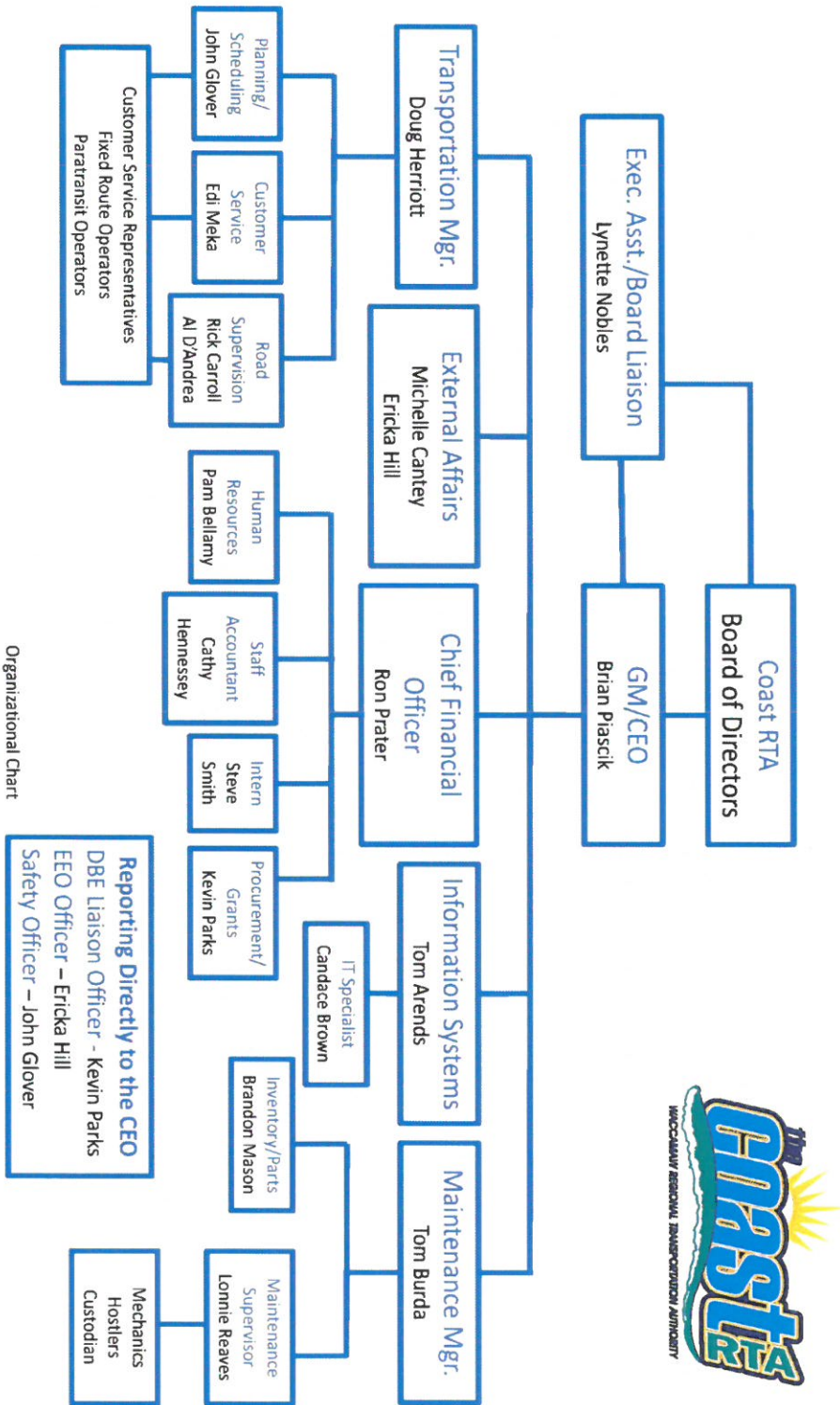
information that information contained in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies. Notwithstanding any contrary provisions of the SCFOIA, The Waccamaw Regional Transportation Authority will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

The Waccamaw Regional Transportation Authority will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of The Waccamaw Regional Transportation Authority or DOT. This reporting requirement also extends to any certified DBE subcontractor. The Waccamaw Regional Transportation Authority will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### **Attachments**

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



Organizational Chart  
January 1, 2016



## **Attachment 2**

The South Carolina DBE Directory is updated weekly. The current issue is available at this link. [http://www.scdot.org/doing/businessDevelop\\_SCUnified.aspx](http://www.scdot.org/doing/businessDevelop_SCUnified.aspx).



### **Attachment 3**

#### Monitoring and Enforcement Mechanisms / Legal Remedies

The Waccamaw Regional Transportation Authority has several remedies available to enforce the DBE requirements contained in its contracts, including, but not limited to the following:

1. Breach of contract action, pursuant to the terms of the contract
2. Breach of contract action, pursuant to South Carolina Code Section 11-35-4230
3. 49 CFR Part 26 and 25A SC Code Ann. Regs 63-700 to 63-718 (Supp. 2007)

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

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

**Attachment 4**

Section 26.45: Overall Goal Calculation

The Waccamaw Regional Transportation Authority will be using the Step One process.

**Amount of Goal:**

The Waccamaw Regional Transportation’s overall goal for FY 2015 – FY 2017 is the following:

- a. 1 % of the Federal financial assistance will be expended in DOT - assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles and operations.

[FTA recipients add: exclusive of FTA funds to be used for the purchase of transit vehicles and operations.

Or

- a. \_\_\_\_\_% of the Federal financial assistance will be expended DOT - assisted contracts.

[FTA recipients add: exclusive of FTA funds to be used for the purchase of transit vehicles and operations.

- b. \$\_\_\_\_\_ dollar amount of DOT assisted contracts that Waccamaw Regional Transportation Authority expects to award during FY 2014-FY 2015.

This means that The Waccamaw Regional Transportation Authority has set a goal of expending \$\_\_\_\_\_ during this fiscal year/project.

**Methodology used to Calculate Overall Goal**

**Step 1: 26.45(c)**

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows: Ready, willing, and able DBEs

Base figure = .0092

All firms ready, willing and able with DBEs

The data source or demonstrable evidence used to derive the numerator was: first to define the market areas for each project, then utilize the DOT UCP DBE Directory to count all firms who can handle the project work in that market area. This process was done for each project individually.

The data source or demonstrable evidence used to derive the denominator was: the business census data was taken from the website- [www.censtats.census.gov](http://www.censtats.census.gov). The number of firms per project was defined by the market area and the NAICS code, which was established prior to utilizing the census website. Then, the number of firms was added together per each market area for that particular project. This was done for each project.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was 1%.

### **Step 2: 26.45(d)**

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

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0%, we used the rounded weighted base figure.

The data used to determine the adjustment to the base figure was: no adjustment made due to the past participation figure being similar to our Step One base figure.

The reason we chose to adjust our figure using this data was because: N/A

From this data, we have adjusted our base figure to: N/A

### **Public Participation**

DBE goal information will be published and viewed in at least, the regional The Sun News newspaper.

Public meetings were held in August 2014, comments received by individuals or organizations or members of the public were captured.

Our responses to these comments are: N/A

### **Section 26.51: Breakout of Estimated**

#### **Race-Neutral & Race Conscious Participation**

The Waccamaw Regional Transportation Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Waccamaw Regional Transportation Authority uses the following race-neutral means to increase DBE participation: Solicit directly to DBEs from the UCP DBE directory to those firms who perform the needed type of work, solicit through internet company searches,

Chamber of Commerce's small business listing, and advertisements through the South Carolina Business Opportunity website.

We estimate that, in meeting our overall goal of 1%, we will obtain 1% from race-neutral participation and 0% through race-conscious measures.

**Attachment 5**

Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

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

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

\_\_\_\_\_The bidder/offeror is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_The bidder/offeror (if unable to meet the established goal of \_\_\_\_\_% DBE participation) is committed to a minimum of \_\_\_\_\_% DBE participation on this contract and submits documentation demonstrating good faith effort.

Name of Bidder/Offeror's

Firm: \_\_\_\_\_

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

City, State, Zip \_\_\_\_\_

Firm's Federal ID# \_\_\_\_\_ - \_\_\_\_\_

Name of Firm Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FORM 2: LETTER OF INTENT**

Name of Prime Bidder/Offeror's

Firm: \_\_\_\_\_

Address \_\_\_\_\_

City, State,

Zip \_\_\_\_\_

Firm's Federal ID# \_\_\_\_\_ - \_\_\_\_\_

Name of DBE:

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_

Affirmation:

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

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

**(Submit this page for each DBE subcontractor)**

## **Attachment 6**

DBE Certification forms may be obtained by contacting the following:

South Carolina Department of Transportation

Office of DBE Program Development

955 Park Street

Columbia, SC 29201

Phone: (803) 737-137

**Attachment 7**

The DBE Regulation, 49 CFR Part 26, is available at the following link:

<http://osdbu.dot.gov/DBEProgram/>