



**City of Fayetteville
Fayetteville Area System of Transit**

**Disadvantaged Business Enterprise Program
Pursuant to 49 Code of Federal Regulations Part 26**

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Fayetteville (City) and the Fayetteville Area System of Transit (FAST) have established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), in compliance with 49 C.F.R. Part 26. The City has received Federal financial assistance from the Department of Transportation for FAST, and as a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 C.F.R. Part 26.

It is the policy of the City of Fayetteville and FAST to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

1. To ensure nondiscrimination 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 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. To help to remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Shanelle Harris has been delegated as the DBE Liaison Officer (DBELO) for FAST. In that capacity, Ms. Harris is responsible for implementing all aspects of the FAST DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.



The City has disseminated this policy statement to the City of Fayetteville City Council, and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by posting it on our website and providing it to interested persons upon request.

Douglas J. Hewitt, City Manager

Date



SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Fayetteville is the recipient of federal funds authorized by Federal transit laws in Title 49 US Code Chapter 53, as amended by HR 4348 the “Moving Ahead for Progress in the 21st Century Act” or “MAP-21.”

Section 26.5 Definitions

The City will adopt the definitions contained in 49 C.F.R. § 26.5 for this program.

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: § 26.11(b)

We will submit annually DOT Form 4630, as modified for use by FTA recipients.

Bidders List: § 26.11(c)

To comply with § 26.11, the City will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The



bidders list will include the name, address, DBE / non-DBE status, age, and annual gross receipts of firms.

The City will collect this information directly from bidders/offerors at the time of registration, or no later than submittal, and from subcontractors through the use of a notice in all solicitations, and otherwise widely disseminated, requesting firms quoting on subcontracts to report information directly to the City.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: § 26.13(a)

The City 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 C.F.R. Part 26. The City shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City DBE Program, as required by 49 C.F.R. Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 *et seq.*).

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

Contract Assurance: § 26.13b

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

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



SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the City has received a grant of \$250,000 or more for City planning or development, we will continue to carry out this program until all DOT financial assistance has been expended. We will provide to DOT updates representing any significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

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

Shanelle B. Harris
Civil Rights Program Analyst/DBELO
Transit Department
455 Grove Street
Fayetteville, NC 28301-5537
910.433.1157
sharris@ci.fay.nc.us

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other City DBELOs and appropriate officials. The FAST DBELO has no staff to assist in the administration of the program; however the City may contract for certain services to assist. FAST DBELO duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with the Purchasing Department to ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
3. 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.



4. Analyzes FAST's progress toward attainment and identifies ways to improve progress.
5. Participates in pre-bid/pre-proposal meetings.
6. Advises the City Manager and the City Council on DBE matters and achievement.
7. Participates with legal counsel and project directors to determine contractor compliance and good faith efforts to meet goals.
8. Provides DBEs and small firms with information and assistance in preparing bids, obtaining bonding and insurance and accessing information about programs to assist their businesses.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs, small firms and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

We have investigated North Carolina-chartered institutions. To date we have identified no such institutions. We will re-evaluate the availability of DBE financial institutions every 3 years.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the City of Fayetteville. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Fayetteville. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

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



Monitoring and Enforcement: 26.29(d)

All contractors must provide evidence that all subcontractors have been paid within the required time period. A signed and notarized “Affidavit of Payments of Debts and Claims form” and a copy of each cancelled payment check for each subcontractor must be submitted with each Standard Form for Payment Request.

Failure of any entity to make prompt payment as defined herein may result in the City: (1) Withholding payment or a percentage thereof from the Contractor due for work performed by that entity in the next partial payment until the necessary assurances are made consistent with this specification; or (2) Removing an approved contractor from the prequalified bidders' list; or (3) Termination of existing and future City contracts; or (4) Referral to USDOT as specified in 26.37(1), including suspension and debarment.

Failure by the Contractor to comply with the City's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this Program, which include the prompt payment of subcontracts, and return of retainage payments.

Section 26.31 Directory

The City is a participant in the North Carolina Uniform Certification Program. Information about the NC-UCP can be downloaded at <http://www.ncdot.gov/business/ocs/ucp>.

Section 26.33 Overconcentration

The City has identified one potential area of overconcentration in our market area in the types of work that DBEs perform. That specific area is highway, street, and bridge construction (NAICS 237310). At this time, we are not aware of any work that will be done in this area.

Section 26.35 Business Development Programs

FAST has developed a public participation plan and will partner with the City of Fayetteville and NCDOT to increase the number of certified DBE's in the service area.



Section 26.37 Monitoring and Enforcement Mechanisms

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

1. FAST will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT 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. FAST will consider similar action under our own legal authorities, including suspension of work pending corrective action(s), withholding payments or a percentage thereof pending corrective action(s), responsibility determinations in future City contracts, and/or termination of existing and future City contracts.
3. FAST will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the implementation of an electronic monitoring and tracking program.
4. FAST will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business Participation

To meet the requirements of § 26.39, in addition to its current efforts, the City will take the following actions to foster the participation of small businesses in its federally-assisted contracts and subcontracts.

1. Adopt the following statement of the policy objectives of the Small Business Enterprise (SBE) elements:

The City's Small Business Enterprise elements are an integral part of our DBE Program for federally-assisted contracts. These elements seek to facilitate the participation of small business concerns in our contracting activities; to meet the maximum feasible portion of the City's annual DBE goal through race-neutral means; and to comply with the requirements of 49 C.F.R. § 26.39. The elements are active, effective steps to increase race-neutral DBE participation, by fostering competition for the City's contracts by increasing the capacities of small businesses and DBEs to perform as prime vendors and to increase opportunities for small businesses and DBEs to perform as subcontractors. It is also the City's objective to establish DBE contract goals to meet any portion of the overall goal it is unable to meet using race-neutral means alone.

2. Determine SBE Eligibility



A small business is a business that is independently owned and operated, is organized for profit with a place of business located in the United States, and is not dominant in its field. A small business may be in the legal form of an individual, proprietorship, partnership, limited liability company, corporation, joint venture, association, or cooperative. Where the form is a joint venture there can be no more than 49 percent participation by foreign business entities.

Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121). Certified DBEs are presumptively eligible to participate in the small business element of the DBE Program. There are no geographic or local preferences or limitations imposed on FTA-assisted contracts and the DBE Program is open to small businesses regardless of their location. There are no limits on the number of contracts awarded to firms participating in the DBE Program.

In addition to the standards above, the City plans to utilize the current Personal Net Worth standards of the DBE program, presently capped at \$1.32 million. The City will accept the following certifications for participation in the small business element of the DBE Program:

- NC-UCP DBE Certification.
- North Carolina Department of Transportation Small Business Enterprise (SBE).
- SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124).

The City currently provides the following support for small firms on a race-neutral basis:

- The City reviews all City projects, regardless of amounts, to determine the possibility of unbundling contracts. Where feasible, requests for bids and proposals to provide equipment or services will be subdivided into contractual work elements small enough to make possible DBE and SBE participation.
- Where feasible, on certain large contracts that do not have a DBE goal (race conscious), prime contractors may be required to provide subcontracting opportunities to qualified small businesses, as defined herein, without regards to race or gender of the business owner. The City will assist potential prime contractors by reviewing projects in advance of the solicitation and by suggesting potential subcontracting opportunities.
- The City will sponsor small business events. Exhibiting partners may include the Fayetteville Downtown Alliance, Fayetteville-Cumberland County Chamber of Commerce, the Fayetteville Business Center, the Women's Business Center of Fayetteville, the North Carolina Military Business Center, the Small Business Technology and Development Center, Fayetteville Technical Community College Small Business Center and more.



- The City provides outreach and training to SBEs and other small firms, including networking sessions; attendance at other agencies' vendor outreach and fairs; training on doing business with the City; and referrals for assistance.
- All construction contracts, formal and informal, invitations for bids, and purchase orders contain language that encourages minority participation, assures equal treatment in the review process of bids, and requires the vendor/contractors to be equal opportunity employers and provide equal consideration to minority subcontractors and/or suppliers.
- Provide training for City personnel and contractors on the SBE elements policies and procedures.

The City will publicize its current and new SBE elements through the use of its website; newsletters; press contacts; social media; networking events; outreach to DBE and small business groups; and direct solicitation of firms.

Race-neutral participation by certified DBEs on FTA-assisted contracts achieved through the SBE elements will be tracked and reported to FTA in the same way the City reports race-neutral DBE participation obtained through other methods. The City will collect full contract data on the implementation of the SBE elements. This will include contract information and prime contractor and subcontractor information, including whether the firm is an SBE.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

FAST used the single step method to calculate the overall goal for the next three years. This method focuses on the identification of a weighted base figure using the planned projects with associated NAICS codes, and then identifying the number of DBE and all firms registered with those codes. The base figure is 1.08% (race conscious) plus 4.91% (race neutral) for a total goal of 5.99%.

A detailed description of the methodology to calculate the current overall goal and the goal calculations can be found in Attachment 4 to this program. In accordance with § 26.45(f), FAST is to submit its overall goal to DOT on August 1 at three-year intervals, based on a schedule



established by the FTA, and posted on that agency's website. A new goal was submitted as required by the FTA on August 1, 2015 for the upcoming three federal fiscal years.

Before establishing the overall goal, the City will consult with the following groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs.

State of North Carolina
Department of Transportation
Public Transportation Division
PO Box 25201
Raleigh, NC 27611
919-733-4713

North Carolina Small Business and
Technology Development Center
333 Fayetteville Street Mall
Suite 1150
Raleigh, NC 27603
919-715-7272

Small Business Center Network
Department of Community Colleges
Caswell Building
200 West Jones Street
Raleigh, NC 27603
919-733-7051

North Carolina Institute of Minority
Development
505 South Duke Street
4th Floor
PO Box 27702
Durham, NC 27702



Following this consultation, we will publish a notice on our website of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the FAST main office for 30 days following the date of the notice, and informing the public that we and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will include the address to which comments may be sent and the addresses of the office and website where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Goal Setting & Accountability

If the awards and commitments shown on The City of Fayetteville'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, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; Establish specific steps and milestones to correct the problems identified in the analysis; and Maintain information/records regarding the analysis and efforts made and the effectiveness of those measures.

The City of Fayetteville understands that we cannot be penalized, or treated by the Department as being in noncompliance because our DBE participation falls short of our overall goal, unless we have failed to administer our program in good faith.

Section 26.49 Transit Vehicle Manufacturers

The City will require each transit vehicle manufacturer ("TVM"), 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.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

FAST will meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. In order to do so, FAST will review all contracts and will unbundle where feasible. FAST will encourage prime contractors to subcontract portions of work that they might otherwise perform themselves; and will distribute our DBE directory through electronic means to the widest feasible universe of potential prime contractors. FAST



will also aid in introductions and communication between potential DBE subcontractors and primes. FAST will provide services to help DBEs improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency through outreach, training, and participation and sponsorship of small business events. In all construction contracts FAST will include language that encourages minority participation and requires vendors and contractors to be equal opportunity employers and provide equal consideration to minority subcontractors and suppliers.

FAST will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation pursuant to §26.51(f) and will track and report race-neutral and race-conscious participation separately. The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program. This section of the program will be updated when the goal calculation is updated.

Section 26.51(d-g) Contract Goals for Race-Conscious Participation

The City will use contract goals to meet any portion of the overall goal we do 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 subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (*e.g.*, type and location of work, availability of DBEs to perform the particular type of work.)

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

A sample bid specification is included as Attachment 5.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts: 26.53(a) & (c)

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

The DBE Liaison Officer (DBELO) is 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. If the DBELO initially determines the bid/offer to be in compliance, he/she will recommend award of the contract to the Transit Director (or



designee) and Purchasing Department. If the DBELO determines the bid/offer to be in non-compliance, he/she will confer with the Transit Director or City Attorney prior to making a recommendation to reject the bid/offer.

The City 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: 26.53(b)

The City treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness. During bid/proposal review, the City will make a determination of DBE compliance. If the apparent low bid or highest ranked offer is found in non-compliance or fails to provide the required documentation, the operating department, with the concurrence of the DBELO, may make a recommendation for rejection of the bid or proposal and recommend award to the next lowest responsive bidder/offeror.

The City may provide forms for documenting good faith efforts.

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 DBEs 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 (Letter of Intent);
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

To demonstrate the bidder's/offeror's participation by DBEs, all bidders/offerors must submit the following items with their bid/offer. Failure to do so may result in a bid being determined to be non-responsive.

1. A complete list of subcontractors and material suppliers in the form provided by the City as part of the bid/offer, on forms to be provided by the City, with all required information and attachments. The subcontractor list must include the names and addresses of the firms, a contact person, a list of bid items of work to be performed or materials to be supplied by the firms, the dollar value of the work to be performed or materials to be supplied by the firms, and the DBE status of the firm. For each DBE firm listed on the subcontractor list, verification of the firm's DBE certification must be provided. More specifically, the name of the certifying agency, the date of the firm's most recent certification and the firm's certification number must be provided. The Contractor must execute subcontracts



with those firms (DBE and Non-DBE) listed on the subcontractor list and submit copies of subcontracts to the City's Project Manager prior to issuance of a Notice to Proceed by the City.

2. A "Letter of Intent to Perform as a Subcontractor and/or Material Supplier" (see Attachment 3) executed by each DBE subcontractor and material supplier proposed in connection with the Work.

The Contractor's Good Faith Efforts Report and Statement (see Attachment 4), which are required submittals only when the Bidder has not met the contract goals in its bid/proposal. All the information provided must be accurate and complete in every detail. The apparent low bidder's attainment of the DBE goal or demonstration of good faith efforts will be evaluated to determine if the apparent low bidder is responsive.

3. Verification of subcontractor proposal documentation. The Contractor shall provide to the City's DBE Liaison Officer and Project Manager itemized pricing quotes from each of the subcontractors and material suppliers named on the subcontractor list. The level of detail shall be consistent with the pricing schedule under the Contract Documents.

Administrative reconsideration: 26.53(d)

Within 7 calendar days of being informed by the City 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 a Reconsideration Committee, consisting of the Project Manager, Purchasing Department and City Attorney or designee. The Reconsideration Committee 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 the Reconsideration Committee to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The City will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.



The Reconsideration Committee:

Project Manager as assigned by Director of E&I City of Fayetteville	Office: 910.433.1691 ljernigan@ci.fay.nc.us
Kimberly Toon, Purchasing Manager City of Fayetteville	Office: (910)-433-1942 ktoon@ci.fay.nc.us
Lisa Harper, Assistant City Attorney City of Fayetteville	Office: (910) 433-1221 LHarper@ci.fay.nc.us

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

The City 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. A prime contractor cannot terminate a DBE subcontractor or an approved substitute DBE without the City’s prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE, or with another DBE. The City will require the prime contractor to notify the DBELO and the project manager in writing immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation. The prime contractor must obtain our prior approval of the substitute DBE and provide copies of new or amended subcontracts, or documentation of good faith efforts. The City will provide written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm.

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 to 2 C.F.R. Parts 180, 215 and 1200 or applicable state law;
6. The City has determined that the listed DBE subcontractor is not a responsible contractor;



7. The listed DBE subcontractor voluntarily withdraws from the project and provides to the City 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; or
10. Other documented good cause that the City determines 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 the City 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 City, 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 the City and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the City may provide a response period shorter than five days.

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

If the contractor fails or refuses to comply in the time specified, the City will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City FAST will consider similar action under our own legal authorities, including suspension of work pending corrective action(s), termination of existing and future City contracts, and/or all remedies as specified in Section 26.37 Monitoring and Enforcement Mechanisms.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Fayetteville 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.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. The City does not certify firms itself, but participates in the NC-UCP and accepts firms certified pursuant to that process.

Information about the certification process or certification applications is available at: <http://www.ncdot.gov/business/ocs/ucp>.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City is a member of a Unified Certification Program (UCP) administered by the North Carolina Department of Transportation. The UCP will meet all of the requirements of this section.



Section 26.83 Procedures for Certification Decisions

Re-certifications: § 26.83(a) and (c)

The City, as a member of the NC-UCP, follows the processes established pursuant to that program.

“No Change” Affidavits and Notices of Change: § 26.83(j)

The City, as a member of the NC-UCP, follows the processes established pursuant to that program.

Section 26.85 Denials of Initial Requests for Certification

The City, as a member of the NC-UCP, follows the processes established pursuant to that program.

Section 26.87 Removal of a DBE’s Eligibility

The City, as a member of the NC-UCP, follows the processes established pursuant to that program.

Section 26.89 Certification Appeals

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

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

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (*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 City will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

Monitoring Payments to DBEs and SBEs

The City will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or USDOT. This reporting requirement also extends to any certified DBE subcontractor. The City will keep a running tally of actual payments to DBEs and SBEs for work committed to them at the time of contract award.

We 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

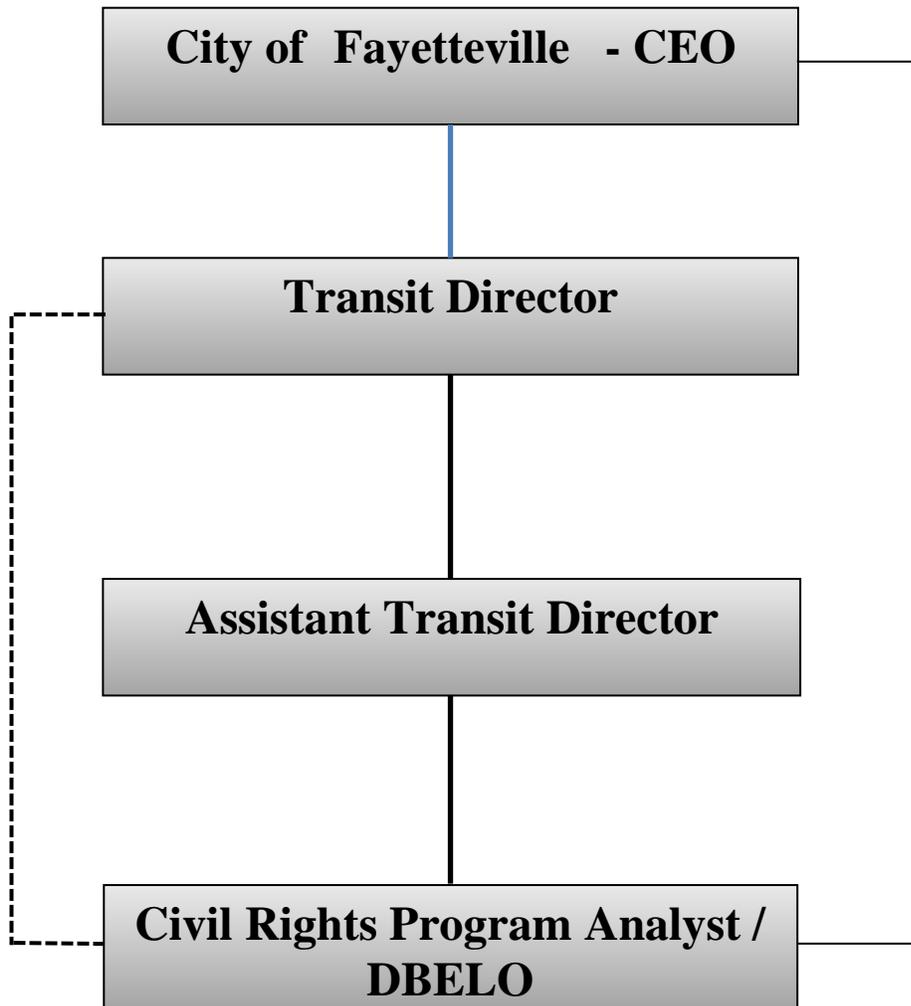
Attachment 1	Organizational Chart
Attachment 2	DBE Directory (web link)
Attachment 3	Examples of Monitoring and Enforcement
Attachment 4	Overall Goal Calculation
Attachment 5	Sample Bid Specification with Good Faith Efforts Forms
Attachment 6	Electronic Link to Current Version of 49 CFR Part 26 (Current #4)



Attachment 1

Organizational Chart

Fayetteville Area System of Transit (FAST)
Effective February 1, 2010





Attachment 2

DBE Directory

<https://www.ebs.nc.gov/VendorDirectory/default.html>



Attachment 3

Examples of Monitoring and Enforcement



B. Sample DBE Monitoring and Enforcement Tracking Sheet



DBE Monitoring and Enforcement Tracking Sheet

Project: _____

DATE	NOTES



Attachment 4

Section 26.45:

Overall Goal Calculation for Federal Fiscal Years 2019-2021



**Federal Fiscal Years 2019-2021
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM METHODOLOGY**

For



Fayetteville Area System of Transit

Fayetteville, North Carolina

June 2018



Methodology for Establishing the Federal Fiscal Years 2019-2021 Overall Disadvantaged Business Enterprise (DBE) Goal for the

Fayetteville Area System of Transit, Fayetteville, North Carolina
June 2018

In fulfillment of the requirements of 49 C.F.R. Part 26, the Fayetteville Area System of Transit (FAST) has developed a proposed Overall Goal for Federal Fiscal Years (FFYs) 2019-2021 for Federal Transit Administration (FTA) projects for the System.

I. Goal Methodology

A. Amount of Goal

The Transit System's overall goal for FFYs 2019-2021 is 5.99% of the Federal financial assistance it will expend in FTA-assisted contracts.

The amount of FTA-assisted contracts the Transit System expects to let during these FFYs is \$ 14,592,540. Of that, \$5,250,200 have an opportunity for DBE participation. This means that the Transit System has set a goal of expending \$314,487 with DBEs during these FFYs.

B. Overall Goal Setting Methodology

49 C.F.R. § 26.45 requires the Transit System to set an overall, annual DBE goal "based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination."¹

To determine a "base figure for the relative availability of DBEs."² The Transit System chose to use DBE directories and Census Bureau data to estimate its base figure:

Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all ready, willing and able businesses available in your market that perform work in the same SIC codes. (Information about the CBP database may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all

¹ 49 C.F.R. § 26.45(b).

² 49 C.F.R. § 26.45(c).



businesses to derive a base figure for the relative availability of DBEs in your market.

C. Determination of the Base Figure

1. Determination of the Transit System’s Market Area

Based upon a review of substantially similar and recent project types bid for the Transit System, the market area for the Fayetteville Area System of Transit includes the following counties: Bladen, Cumberland, Harnett, Hoke, Lee, Johnston, Moore, Robeson, Sampson, and Wake. This market area is based upon past work for services similar to those projected in the DBE Base for FYs 2019-2021 (Table 1).

Table 1: Locations of Vendors on Recent Similar Purchases/Projects at Fayetteville Area System of Transit (FAST) for FFY 2016-2018

State	Percent of Total Dollars Spent	Number of Contractors
Florida	9.09%	2
Georgia	4.55%	1
New Jersey	4.55%	1
North Carolina	77.27%	17
South Carolina	4.55%	1
Totals	100%	22

SOURCE: Transit Department Staff

2. Determination of Relevant NAICS Codes

Based on the proposed projects for these fiscal years, a list of NAICS codes corresponding to these projects was developed and is shown below.



Table 2: Proposed FYs 2019-2021 Projects- Fayetteville Area System of Transit

Type of Work	NAICS Code	NAICS Description	Estimated Expenditures
Sidewalks	238110	Poured concrete foundation and structure contractors	516,000.00
Bus Stops & Shelters	236220	Commercial and institutional building construction	120,000.00
Equipment (Technology)			142,120.00
Bus Parts	336399	All Other Vehicle Parts Manufacturing	248,000.00
Technology (Software)	541511	Custom Computer Programming Services	40,000.00
Safety/Security (Capital)	561621	Security systems services (except locksmiths)	48,000.00
Consultants (Planning)	541611	Administrative management and general management consulting services	144,000.00
Preventive Maintenance			364,099.27
Vehicle Parts	423120	Motor vehicle supplies and new parts merchant wholesalers	591,661.31
Vehicle Labor	811121	Automotive Body, Paint, and Interior Repair and Maintenance	561,319.71
Operating (Fuel)	45431	Petroleum and petroleum products merchant wholesalers	2,224,650.00
Operating - Security Services	561612	Security Guards and Patrol Services	250,350.00
Total			5,250,200.29

SOURCE: Transit Department Staff

3. Determination of the Relative Availability of DBEs In the Transit System’s Market Area

The County Business Patterns data was used as the source to determine the denominator, or the number of all firms in the market area. The North Carolina Unified Certification Program’s DBE Directory was used to determine the numerator, or the number of DBEs in the market area.



Table 3: All Firms and DBEs - Fayetteville Area System of Transit, by Relevant NAICS Codes for FYs 2019-2021 Projects

Type of Work	NAICS Code	NAICS Description	Estimated Expenditures	% of Total	# DBE Firms	# All Firms	DBE %	Relative Availability
Sidewalks	238110	Poured concrete foundation and structure contractors	516,000.00	3.54%	17	108	15.74%	0.56%
Bus Stops & Shelters	236220	Commercial and institutional building construction	120,000.00	0.82%	15	238	6.30%	0.05%
Equipment (Technology)			142,120.00	0.97%	0	0	0.00%	0.00%
Bus Parts	336399	All Other Vehicle Parts Manufacturing	248,000.00	1.70%	0	6	0.00%	0.00%
Technology (Software)	541511	Custom Computer Programming Services	40,000.00	0.27%	9	497	1.81%	0.00%
Safety/Security (Capital)	561621	Security systems services (except locksmiths)	48,000.00	0.33%	2	46	4.35%	0.01%
Consultants (Planning)	541611	Administrative management and general management consulting services	144,000.00	0.99%	27	540	5.00%	0.05%
Preventive Maintenance			364,099.27	2.50%	0	0	0.00%	0.00%
Vehicle Parts	423120	Motor vehicle supplies and new parts merchant wholesalers	591,661.31	4.05%	1	70	1.43%	0.06%
Vehicle Labor	811121	Automotive Body, Paint, and Interior Repair and Maintenance	561,319.71	3.85%	3	165	1.82%	0.07%
Operating (Fuel)	45431	Petroleum and petroleum products merchant wholesalers	2,224,650.00	15.25%	1	67	1.49%	0.23%
Operating - Security Services	561612	Security Guards and Patrol Services	250,350.00	1.72%	2	72	2.78%	0.05%
							Total	1.08%

SOURCES:

1. 2011 County Business Patterns database, US Census Bureau, June 2015
2. NCDOT-DBE Directory, May 2015

4. Determination of the Weighted DBE Base Figure

The DBE Base Figure was derived by weighting the percentage of dollars spent in the anticipated NAICS codes by the percentage of relevant DBEs to all firms as indicated in Table 3. This resulted in a DBE Base Figure of 1.08%

5. Evidence from Disparity Studies

No disparity study relevant to the types of contracts the Transit System expects to award has been conducted within the last five years in its market area. Therefore, no evidence from disparity studies will be used to adjust the DBE base figure.

6. Evidence from Related Fields

The Transit System is not aware of any evidence from related fields that affect the opportunities for DBEs to form, grow and compete.



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

The Transit System will meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. Table 5 summarizes the Transit System’s breakout of race-neutral and race-conscious DBE participation for FFY’s 2015-2018.

Table 5: DBE Participation Obtained Through Race-Conscious and Race-Neutral Measures for FFYs 2013-2015

<i>Federal Fiscal Year</i>	<i>Race-Conscious Participation</i>	<i>Race-Neutral Participation</i>
<i>2015</i>	<i>0.00%</i>	<i>5.92%</i>
<i>2016</i>	<i>0.57%</i>	<i>2.36%</i>
<i>2017</i>	<i>0.00%</i>	<i>6.71%</i>
<i>2018</i>	<i>0.00%</i>	<i>3.90%</i>
<i>Median</i>	<i>0.00%</i>	<i>4.91%</i>

The Transit System proposes a race-conscious goal of 1.08% (Table 3 above), and a race-neutral goal of 4.91% (median of 2015-2018 actual participation) for a total goal of 5.99%.

The Transit System will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation pursuant to §26.51(f) and will track and report race-neutral and race-conscious participation separately.

III. Public Participation

FAST posted a notice on www.ridefast.net on June 1, 2018 and will hold a public meeting on June 18, 2018 to solicit information from interested stakeholders about the draft goal, including additional statistical evidence, the availability of bonding, access to capital, anecdotal evidence of discrimination, etc.

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



Attachment 5

Sample Bid Specification

Including DBE Subcontractor Letter of Intent, Demonstration of Good Faith Efforts Checklist and Good Faith Efforts Contacts Log Form

DISADVANTAGED BUSINESS ENTERPRISE PROVISION

Description

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

Definitions

Additional DBE Subcontractors - Any DBE submitted at the time of bid that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

Committed DBE Subcontractor - Any DBE submitted at the time of bid that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

Contract Goal Requirement - The approved DBE participation at time of award, but not greater than the advertised contract goal.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

Disadvantaged Business Enterprise (DBE) - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

Goal Confirmation Letter - Written documentation from FAST to the bidder confirming the Contractor's approved, committed DBE participation along with a listing of the committed DBE firms.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

Municipality - The entity letting the contract.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and

petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

Forms and Websites Referenced in this Provision

DBE Goal

The following DBE goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises %

(A) *If the DBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percent of the contract as set forth above as the DBE goal.

(B) *If the DBE goal is zero*, the Contractor shall make an effort to recruit and use DBEs during the performance of the contract. Any DBE participation obtained shall be reported to Fayetteville Area System of Transit (FAST).

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with FAST and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory can be found at the following link. <https://partner.ncdot.gov/VendorDirectory/default.html>

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of DBE Subcontractors

At the time of bid, bidders shall submit all DBE participation that they anticipate to use during the life of the contract. Only those identified to meet the DBE goal will be considered committed, even though the listing shall include both committed DBE subcontractors and additional DBE subcontractors. Additional DBE subcontractor participation submitted at the time of bid will be used toward the overall race-neutral goal. Only those firms with current DBE certification at the time of bid opening will be acceptable for listing in the bidder's

submittal of DBE participation. The Contractor shall indicate the following required information:

Blank forms will not be deemed to represent zero participation. Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. FAST will not consider these bids for award and the proposal will be rejected.

(A) *If the DBE goal is more than zero,*

(1) Bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names on the *DBE Utilization Commitment Form* contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract.

(2) If bidders have no DBE participation, they shall indicate this on the *DBE Utilization Commitment Form* by entering the word "None" or the number "0." This form shall be completed in its entirety.

(3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the DBE goal.

(B) *If the DBE goal is zero,* bidders, at the time the bid proposal is submitted, shall enter the word "None"; or the number "0"; or if there is participation, add the value on the *DBE Utilization Commitment Form* contained elsewhere in the contract documents.

DBE Prime Contractor

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all of the work that is performed by the DBE bidder and any other DBE subcontractors will count toward the DBE goal. The DBE bidder shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE bidder will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A or B listed on the *DBE Utilization Commitment Form* just as a non-DBE bidder would.

Written Documentation – Letter of Intent

The bidder shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the bidder's commitment to use the DBE in the contract. This documentation shall be submitted on the FAST's form titled *Letter of Intent*.

The documentation shall be received in the office of the FAST's DBE Liaison Officer no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the FAST's DBE Liaison Officer no later than 12:00 noon on the next official state business day.

If the bidder fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e. both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the Contractor shall submit evidence of good faith efforts, completed in its entirety, to the FAST's DBE Liaison Officer no later than 12:00 noon on the eighth calendar day following opening of bids, unless the eighth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the FAST's DBE Liaison Officer no later than 12:00 noon on the next official state business day.

Submission of Good Faith Effort

If the bidder fails to meet or exceed the DBE goal, the apparent lowest responsive bidder shall submit to FAST documentation of adequate good faith efforts made to reach the DBE goal.

A complete set of the good faith efforts documentation shall be received in the office of the FAST's DBE Liaison Officer no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the FAST's DBE Liaison Officer no later than 12:00 noon on the next official state business day.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. The list by itself will not be considered adequate to meet good faith effort requirements – you must also show where specific efforts were made to contact companies directly. Documentation of DBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be

expected to obtain sufficient DBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

FAST will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goal and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices through the use of the NCDOT Directory of Transportation Firms) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the DBEs to respond to the solicitation. Solicitation shall provide the opportunity to DBEs within the Division and surrounding Divisions where the project is located. 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)
 - (1) 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.
 - (2) 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. Bidding 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 bidder's standing within its industry, membership in specific groups, organizations, or associates 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 bidder'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 bidder.
- (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; Federal, State, and local 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. Contact within 7 days from the bid opening FAST's Business Development Manager in the Business Opportunity and Work Force Development Unit to give notification of the bidder's inability to get DBE quotes.
- (I) Any other evidence that the bidder submits which shows that the bidder has made reasonable good faith efforts to meet the DBE goal.

In addition, FAST may take into account the following:

- (1) Whether the bidder's documentation reflects a clear and realistic plan for achieving the DBE goal.
- (2) The bidders' past performance in meeting the DBE goals.
- (3) The performance of other bidders in meeting the DBE goal. For example, when the apparent successful bidder fails to meet the DBE goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the DBE goal, but meets or exceeds the average DBE participation obtained by other bidders, City of Fayetteville may view this, in conjunction with other

factors, as evidence of the apparent successful bidder having made a good faith effort.

If FAST does not award the contract to the apparent lowest responsive bidder, FAST reserves the right to award the contract to the next lowest responsive bidder that can satisfy to FAST that the DBE goal can be met or that an adequate good faith effort has been made to meet the DBE goal.

Non-Good Faith Appeal

The Purchasing Agent for FAST will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Reconsideration Committee. If a contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the FAST's DBE Liaison Officer. The appeal shall be made within 7 business days of notification of the determination of non-good faith.

Counting DBE Participation Toward Meeting DBE Goal

(A) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to FAST. FAST's decision on the rebuttal of this presumption is subject to review by the Federal Transit Administration but is not administratively appealable to USDOT.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

(E) Suppliers

A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(F) Manufacturers and Regular Dealers

A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) DBE Utilization

The Contractor may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, FAST will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

- (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.
- (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.
- (5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE contract requirement.
- (6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

DBE Replacement

When a Contractor has relied on a commitment to a DBE firm (or an approved substitute DBE firm) to meet all or part of a contract goal requirement, the contractor shall not terminate the DBE for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the Contractor's own forces or those of an

affiliate. A DBE may only be terminated after receiving the FAST's DBE Liaison Officer's written approval based upon a finding of good cause for the termination.

All requests for replacement of a committed DBE firm shall be submitted to the DBELO for approval on Form "FAST Request for Change of DBE Compliance Plan." If the Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of a committed DBE:

(A) Performance Related Replacement

When a committed DBE is terminated for good cause as stated above, an additional DBE that was submitted at the time of bid may be used to fulfill the DBE commitment. A good faith effort will only be required for removing a committed DBE if there were no additional DBEs submitted at the time of bid to cover the same amount of work as the DBE that was terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
 - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) A list of reasons why DBE quotes were not accepted.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

- (1) When a committed DBE is decertified by the NCDOT after the Notice to Proceed has been received by City of Fayetteville, City of Fayetteville will not require the Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.

- (2) When a committed DBE is decertified prior to the City of Fayetteville receiving the Notice to Proceed for the named DBE firm, the Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to FAST (see A herein for required documentation).

Changes in the Work

When the City's Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the City's Engineer makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the City's Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the FAST DBELO.

When the City's Engineer makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the City's Engineer.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Reports and Documentation

A FAST Subcontractor Payment Form and copies of cancelled checks shall be submitted for all work which is to be performed by a DBE subcontractor. FAST reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the Subcontract Approval Form (SAF). The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the FAST DBE Liaison Officer a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

Reporting Disadvantaged Business Enterprise Participation

The Contractor shall provide the DBE Liaison Officer with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the DBE Liaison Officer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner, including copies of all cancelled checks from payments to subcontractors.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the contractor and any affiliate companies being disqualified from being approved for work on future projects for the City of Fayetteville.

Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the FAST's DBE Liaison Officer can request written verification of subcontractor payments.

The Contractor shall report the accounting of payments on the FAST Subcontractor Payment Form with each invoice. Invoices will not be processed for payment until the FAST Subcontractor Payment Form is received.

Failure to Meet Contract Requirements

Failure to meet contract requirements may be cause to disqualify the Contractor from bidding on City of Fayetteville projects for up to 6 months.

CERTIFICATION FOR FEDERAL-AID CONTRACTS:

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(A) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(B) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

U.S. DEPARTMENT OF TRANSPORTATION HOTLINE:

To report bid rigging activities call: **1-800-424-9071**

The U.S. Department of Transportation (DOT) operates the above toll-free hotline Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the hotline to report such activities.

The hotline is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.



REQUEST FOR CHANGE OF UTILIZATION PLAN

No changes to the Utilization Plan are permitted after submittal of the bid or proposal without the prior written approval of the DBE Liaison Officer and the Project Manager.

The Request must be submitted for **any** change to the Utilization Plan. A prime contractor may add or delete a subconsultant, subcontractor or supplier during the performance of the contract, with the prior written consent of the City. The written request must state specific reasons for the proposed change or substitution. The facts supporting the request must not have been known nor reasonably should have been known by the prime contractor and the subconsultant, subcontractor or supplier prior to the submission of the Utilization Plan.

SUBSTITUTIONS OF SUBCONTRACTORS

The City 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. A prime contractor cannot terminate a DBE subcontractor or an approved substitute DBE without the City's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE, or with another DBE.

The City will require the prime contractor to notify the DBE Liaison Officer and the project manager in writing immediately of the DBE's inability or unwillingness to perform and provide reasonable explanation and documentation. The prime contractor must obtain our prior approval of the substitute DBE and provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE.

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 to 2 C.F.R. Parts 180, 215 and 1200 or applicable state law;

6. The City has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to the City 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; or
10. Other documented good cause that the City determines 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 FAST 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 FAST, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five business days to respond to the prime contractor's notice and advise FAST and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why FAST should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), FAST may provide a response period shorter than five business 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.

If the contractor fails or refuses to comply in the time specified, FAST will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, FAST may issue a termination for default proceeding or other remedies are provided by contract or at law.

ADDITIONS OF SUBCONTRACTORS

If a prime contractor seeks to add a subconsultant, subcontractor or supplier to the project and, considering the pending addition and any previous changes, the DBE goal will not be otherwise met, the prime contractor must make new good faith efforts to meet the goal by adding a DBE to meet the goal. If the new good faith efforts to add a DBE have been made to the satisfaction of the DBELO and the project manager, then a non-certified firm may be added.

A prime contractor is required to submit a signed Letter of Intent (LOI) from the DBE identified on the Request for Change of Utilization Plan Form to be added onto the contract. The signed LOI must be attached with the Form.



Monitoring and Enforcement Mechanisms

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

1. FAST will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT 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. FAST will consider similar action under our own legal authorities, including suspension of work pending corrective action(s), withholding payments or a percentage thereof pending corrective action(s), responsibility determinations in future City contracts, and/or termination of existing and future City contracts.
3. FAST will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the implementation of an electronic monitoring and tracking program.
4. FAST will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.



FAST DBE FORMS



Fayetteville Area System of Transit

DBE UTILIZATION COMMITMENT FORM

Prime Proposer: _____

Project title: _____

Solicitation number: _____ Total bid: _____

Will expend a minimum of _____% of the total dollar amount of the contract with NCDOT Certified Disadvantaged Business Enterprise's (DBE) in accordance with CFR 49 Part 26.29.

Such work will be subcontracted to the following firms listed below. Use additional sheet if necessary.

Name and contact information of DBE <small>(Must include phone or email address.)</small>	Description of Work	Dollar Value of Subcontract	Percent of Contract

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Printed Name

Title

Signature

Date



Fayetteville Area System of Transit

LETTER OF INTENT
BETWEEN PRIME PROPOSER
AND DBE SUBCONSULANT, SUBCONTRACTOR OR SUPPLIER
Submit a Letter of Intent for each DBE Subconsultant/Subcontractor/Supplier

Project name: _____

Solicitation number: _____

Prime proposer: _____

Address: _____

Telephone: _____ Fax: _____ E mail: _____

Proposed contract amount \$: _____

Proposed subcontract amount \$: _____ Percent of contract for DBE: _____%

DBE Name: _____

Address: _____

Telephone: _____ Fax: _____ E mail: _____

DBE Certification Number: _____ (DBE must be certified by the NC UCP)

Type of DBE (please circle):

African American Hispanic Asian Native American Woman Other

Work to be performed by DBE:

The prime proposer and the DBE listed above hereby agree that upon the execution of a contract for the above-named project between the prime proposer and the City of Fayetteville, a subcontract will be executed for the scope of work and the price as indicated above.



Fayetteville Area System of Transit

LETTER OF INTENT (Page 2 of 2)
BETWEEN PRIME PROPOSER
AND DBE SUBCONSULTANT, SUBCONTRACTOR OR SUPPLIER

Prime Proposer:

DBE Subcontractor:

Printed name

Printed name

Signature

Signature

Date

Date



Fayetteville Area System of Transit Demonstration of Good Faith Efforts

If the DBE goal was not achieved, the good faith efforts checklist and documents must be submitted with the proposal. Failure to do so will render the proposal non-responsive and cause it to be rejected. Additional efforts after proposal submission will not be considered in determining award of this contract.

Good Faith Efforts Checklist

___ Solicited through reasonable and available means (e.g., written notices, advertisements) DBEs certified in the anticipated scopes of subcontracting of the contract, within sufficient time to allow them to respond.

Attach Contacts Log.

___ Provided timely and adequate information about the plans, specifications and requirements of the contract. Followed up initial solicitations to answer questions and encourage DBEs to submit proposals or bids.

Attach evidence of information provided, e.g., letters, e mails, telephone logs, etc.

___ Negotiated in good faith with interested DBEs that submitted proposals or bids and thoroughly investigated their capabilities. **Attach evidence of negotiations such as the names, addresses, email addresses and telephone numbers of DBEs with whom the bidder negotiated; a description of the information provided to DBEs regarding the work selected for subcontracting; and explanations as to why agreements could not be reached with DBEs to perform the work.**

___ Selected those portions of the contract consistent with the available DBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation even when the bidder would prefer to perform those scopes with its own forces. **Provide description of work selected.**

___ Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by FAST or the bidder for performance of the contract (if applicable).

___ Effectively used the services of FAST; DBE assistance groups; local, state, and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of DBEs. **Attach evidence of contacts, including contacts log, attendance at meetings, etc.**



**GOOD FAITH EFFORTS CONTACTS LOG FOR SOLICITING
DBE SUBCONSULTANT, SUBCONTRACTOR OR SUPPLIER PARTICIPATION**

Use this form to document all contacts and responses (telephone, e mail, fax, etc.) regarding the solicitation of subconsultants, subcontractors and suppliers. Duplicate as needed.

Project Name: _____

Project/Contract Number: _____

Prime Contractor Name : _____

Name and Contact Information of DBE (Must include phone or email address.)	Date & Method of Contact	Scope of Work Solicited	DBE response? If written, attach.	If DBE responded, reason agreement was not reached.



Fayetteville Area System of Transit

DOCUMENTATION FOR SUBCONTRACT PAYMENTS

This form must accompany each pay request. Please include a copy of the cancelled check(s) made payable to the subcontractor for any payments listed below. Failure to do so will result in a delayed payment. Use additional sheets if necessary.

Prime Contractor: _____ Contact Person: _____

Address: _____

Phone: _____ Email: _____

Project Name: _____ Reporting Period (month/year): _____

Contract Number: _____ Contract Title: _____

Current Contract Value: _____ Supplemental Agreement Number (if applicable): _____

Pay Request Number: _____

Table with 7 columns: Subcontractor Name and Contact Information, Vendor Number, DBE Firm? (Yes or No), Description of Work Performed, Subcontract Award Amount, Amount Previously Paid, Payment Amount This Period.

Authorized Signature

Date

For FAST Personnel Only
Approved/Certified By: _____
Name / Title Date



Fayetteville Area System of Transit

REQUEST FOR CHANGE OF UTILIZATION PLAN

Date: _____

Contract Number: _____

Project Name: _____

Project Manager: _____

Prime Contractor: _____

Current Total Contract Price: \$_____

DBE Goal State in Solicitation: _____%

DBE Participation Prior to Proposed Change: _____%

DBE Participation After Proposed Change: _____%

PROPOSED DELETION: Attach Good Faith Efforts documentation, if applicable. A statement from the DBE to be substituted stating why it cannot perform on the project may be submitted to support the request.

Name of DBE subconsultant, subcontractor or supplier: _____

Contact Person: _____ Phone: _____

Email: _____

Amount of Subcontract: \$_____ / _____%

Brief Description of Work: _____

Reasons for Requesting Change (Attach supporting documentation as necessary): _____



Proposed Addition (Attach Good Faith Efforts documentation, if applicable): _____

Name of subconsultant, subcontractor or supplier: _____

DBE _____ (Yes) _____ (No) Amount of Subcontract: \$_____ / _____%

Contact Person: _____ Phone: _____ Email: _____

Brief Description of Work: _____

Reasons for Requesting Change (Attach supporting documentation as necessary): _____

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that this affidavit shall become a part of my contract with the FAST / City of Fayetteville.

Name and Title (Print): _____

Signature: _____ Date: _____

Project Manager (Print & Sign): _____ Date: _____

(Check One) I approve the substitution: _____ I do not approve the substitution: _____

DBELO (Print & Sign): _____ Date: _____

(Check One) I approve the substitution: _____ I do not approve the substitution: _____



Fayetteville Area System of Transit

LIST OF SUBCONTRACTORS AND SUPPLIERS
FOR DAVIS BACON ACT COMPLIANCE

Prime Proposer: _____

Project Title: _____

Prime proposer must list **ALL** subcontractors that will be working on the project. Any change to this list after initial bid submission must be submitted in writing to FAST and to the Project Manager prior to work being performed. (If prime contractor is a DBE – please complete the first line before listing any subcontractors. Please make copies if additional lines are needed.)

Name and contact information of Subcontractor / Supplier (Must include phone or email address.)	Type of Work / Material	Estimated Dollar Value of Subcontract	DBE? Yes/No	If DBE, NCDOT Reporting Number	If DBE, Ethnicity / Gender

Printed Name

Title

Signature

Date



Attachment 6

49 C.F.R. Part 26 can be viewed and downloaded at
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl