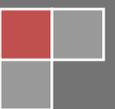


# Town of Cary (GoCary) DBE PROGRAM



TOWN OF CARY, NORTH CAROLINA



**Town of Cary, North Carolina  
Disadvantaged Business Enterprise (DBE) Program  
(Town of Cary referred to as the “TOWN”)**



**DBE Program Policy Statement**

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

It is the policy of the TOWN 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:

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

Kelly A. Blazey has been delegated as the DBE Liaison Officer (DBELO). In this capacity, Kelly A. Blazey is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the TOWN in its financial assistance agreements with the Department of Transportation.

The TOWN has disseminated this policy statement to the TOWN 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 the statement on the TOWN website and the NC E-Procurement system, and by requiring our service contractor to distribute this statement to vendors with whom they do business.

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Signature of Sean R. Stegall, Town Manager

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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 TOWN is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The TOWN is the recipient of federal funds authorized by Federal transit laws in Title 49 US Code Chapter 53, as amended by the “Moving Ahead for Progress in the 21st Century Act” or “MAP-21” and the “Fixing America’s Surface Transportation Act” or “FAST Act.”

### **Section 26.5 Definitions**

The TOWN will adopt the definitions contained in Section 26.5 for this program.

### **Section 26. 7 Non-discrimination Requirements**

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

In administering its DBE program, the TOWN 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 report DBE participation to DOT as follows:

We will report DBE participation on a semi-annual basis using DOT form “Uniform Report of DBE Commitments/Awards and Payments.” The reports will reflect payments actually made to DBEs on DOT-assisted contracts. To ensure accuracy of records and timeliness of reporting, the DBELO will follow the TOWN’s Grant Management Procedures. The TOWN’s financial operating system documents all prime contractor activity and prime contractors will submit monthly vendor activity reports to the DBELO to document sub-contracting activities.

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

- The TOWN will create a bidders list, maintaining information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. This list will include the name, address, email address, phone number, DBE/non-DBE status, age and annual gross receipts. This information will be required at the time of bid. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. We will collect this information from bidders at the time of submittal and from subcontractors thru the use of a notice in all solicitations, and otherwise widely disseminated, requesting all firms quoting on subcontracts to report this information directly to the TOWN,

### **Section 26.13 Federal Financial Assistance Agreement**

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

#### **Assurance: 26.13(a)**

The TOWN shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the TOWN 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.

[Note: This language is to be used verbatim, as it is stated in 26.13(a).]

#### **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 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

[Note: This language is to be used verbatim, as it is stated in 26.13(b)]

## **SUBPART B • ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since the TOWN receives grants from FTA in the amounts of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT any updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

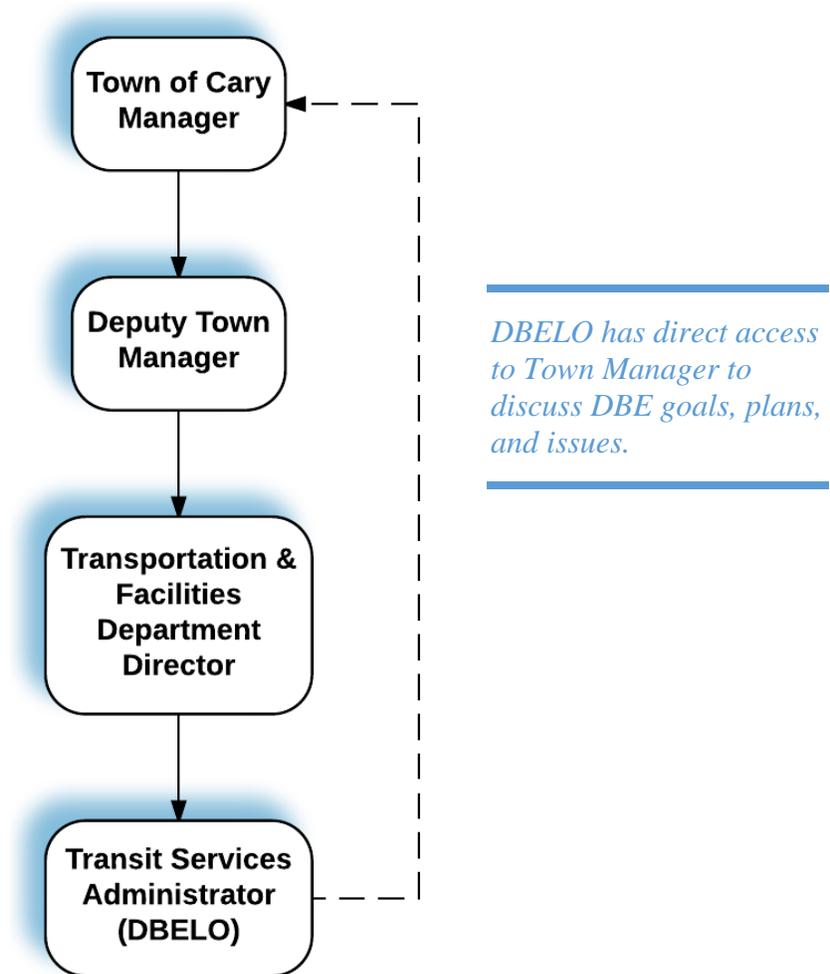
The Policy Statement is elaborated on the first page of this program.

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

The Town of Cary has designated the following DBE Liaison Officer:

Kelly A. Blazey  
Town of Cary  
316 N. Academy Street  
Cary, NC 27513  
(919) 462-2080 phone  
(919) 380-6426 fax  
[kelly.blazey@townofcary.org](mailto:kelly.blazey@townofcary.org)

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the TOWN complies with all provisions of 49 CFR Part 26. An organizational chart displaying the DBELO's position in the organization is provided. The DBELO has direct, independent access to the TOWN Manager concerning DBE program matters.



The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with the Purchasing Division of the Finance Department to ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
- 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.
- Analyzes TOWN of Cary's / GoCary's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid/pre-proposal meetings.
- Advises the CEO\governing body on DBE matters and achievements.

- Provides DBEs with information about programs to assist their business, or that may offer assistance in preparing bids/proposals.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Maintains the TOWN's updated directory on certified DBEs.

The DBELO has the following administrative support provided by the Transit Planner (Grants & Special Projects): researches, reviews and compiles reports, data, vendor activity and other information as required for DBE goal analysis, good faith efforts; and semi-annual UCR submittals.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the TOWN to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community; to make reasonable efforts to use the institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. The TOWN encourages the use of these institutions during outreach events with vendors and contractors. The TOWN will re-evaluate the availability of DBE financial institutions on an annual basis. The TOWN has identified no minority financial institutions that have been certified through the state of North Carolina. The TOWN will continue to explore the possibility of using DBE financial institutions.

### **Section 26.29 Prompt Payment Mechanisms**

The TOWN 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 TOWN. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the TOWN. This clause applies to both DBE and non-DBE subcontracts. In the event that a DBE firm does not receive payment for services or products delivered, then that firm can appeal or meet with the TOWN's DBELO and the TOWN's prime contractor to resolve the dispute expeditiously. In the event that the DBE firm does not receive prompt payment after the appeal, the firm can meet with the TOWN Manager or designated mediator.

### **Section 26.31 Directory**

NCDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number; date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

NCDOT revises the Directory annually. We make the Directory available as follows:

NCDOT DBE Directory - website link:

[https://partner.ncdot.gov/NendorDirectory/vendor\\_listings.html](https://partner.ncdot.gov/NendorDirectory/vendor_listings.html)

All recipients are required to participate in a combined statewide directory under the Uniform Certification Program.

### **Section 26.33 Overconcentration**

The TOWN has identified one potential area of overconcentration in our market area in the types of work that DBEs perform. That specific area is NAICS 237310 (construction).

### **Section 26.35 Business Development Programs**

The TOWN has not established a business development program.

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

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 1 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We 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 reviewing subcontracted vendor activity reports and consulting listed DBEs on a regular basis.
4. We 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**

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

- A. In multi-year design-build contracts or other large contracts requiring bidders on the prime contract to specify elements of the contract or specific subcontractors that are of a size that small businesses, including DBE's, can reasonably perform.
- B. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- C. Ensuring that a reasonable number of prime contracts are a size that small businesses, including DBE's, can reasonably perform.

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

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

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

### **Section 26.45 Overall Goals**

The TOWN uses a two-step process to calculate its three-year DBE goal in accordance with the federal regulations on "Participation of DBEs in the Department of Transportation Financial Assistance Program", as outlined in 49 CFR Part 26. A full description of the methodology used to calculate the overall goal can be found on the TOWN's website or by request to the DBELO.

In accordance with Section 26.45(f) the TOWN will submit its overall goal to DOT every three years, or when requested by FTA. Before establishing the overall goal each year, the TOWN will consult with DBE certified firms, prime contractors, minority, women's and general contractor groups, and community organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the TOWN's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the TOWN will publish a notice of the proposed overall goal(s), informing the public that the proposed goal(s) and rationale are available for inspection during normal business hours at town hall for 30 days following the date of the notice, and informing the public that the TOWN and DOT will accept comments on the goals for 45 days from the date of the notice. The TOWN will advertise DBE goals in the Cary News, Que Pasa and on the TOWN's website. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

The TOWN will begin using the overall goal on July 1st 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 TOWN'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:

- A. 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 TOWN 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 Goals**

The TOWN will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the TOWN may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program. The TOWN will report vehicles purchased to FTA using the online form.

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

The TOWN intends to use race-neutral means to meet the goals of this program. The breakout of estimated race-neutral and race-conscious participation can be found on the TOWN's website or by request to the DBELO.

#### **Section 26.51(d-g) Contract Goals**

The TOWN will use contract goals to meet any portion of the overall goal the TOWN does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The TOWN 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 Federal share of a DOT-assisted contract.

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

### **Demonstration of good faith efforts (26.53(a) & (c))**

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

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

Kelly A. Blazey - Transit Services Administrator/DBELO  
CJ Loomis - General Manager for MV Transit

The TOWN 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. If the DBELO determines the bid/offer to be in non-compliance, he/she will confer with the TOWN's Attorney prior to making a recommendation to reject the bid/offer.

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

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

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and

6. If the contract goal is not met, evidence of good faith efforts.

### **Administrative reconsideration (26.53(d))**

Within 45 days of being informed by the TOWN that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Ishani Padmaperuma, PE, LEED AP  
Town of Cary  
316 N. Academy Street  
Cary, NC 27513  
(919) 653-7110 phone  
(919) 380-6426 fax  
Ishani.Padmaperuma@townofcary.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

### **Good Faith Efforts when a DBE is replaced on a contract (26.53(f))**

The TOWN 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. We will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

We will require the prime contractor to obtain our prior written approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The TOWN will provide written consent only if we agree 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 TOWN 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 TOWN 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 TOWN 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 TOWN 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 TOWN, 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 TOWN and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the TOWN should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the TOWN 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 TOWN 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 TOWN 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 [Name of Recipient] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

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

### **Section 26.55 Counting DBE Participation**

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

## **SUBPART D • CERTIFICATION STANDARDS**

### **Section 26.61- 26.73 Certification Process**

To be certified as a DBE, a firm must meet all certification eligibility standards. The TOWN relies on the certification process implemented by the North Carolina Department of Transportation (NCDOT), which utilizes the standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT - assisted contracts. For information about the certification process or to apply for certification, firms should contact:

North Carolina Department of Transportation  
Unified Certification Program  
1509 Mail Service Center  
Raleigh, NC 27699-1509

<https://connect.ncdot.gov/business/SmallBusiness/Pages/Become%20a%20Certified%20DBE%20Business.aspx>

## **SUBPART E -CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

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

The North Carolina Department of Transportation and the TOWN of Cary have agreed to be a partner in the UCP since 2004. NCDOT assists in this effort with all transit systems in the State of North Carolina who receive assistance from the FTA.

### **Section 26.83 Procedures for Certification Decisions**

#### **Re-certifications: § 26.83(a) and (c)**

The TOWN, 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 TOWN, 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 TOWN, 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 TOWN, 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

The TOWN 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**

NCDOT and the TOWN 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, NCDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

The TOWN 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 available for inspection upon request by any authorized representative of the TOWN or DOT. This reporting requirement also extends to any certified DBE subcontractor. The TOWN will keep a running tally of actual payments to DBEs and SBEs for work committed to them at the time of contract award.

The TOWN 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.

## **Attachment 1: Monitoring and Enforcement Mechanisms**

The TOWN of Cary has available several remedies to enforce the DBE requirements contained in its contracts. All participants are hereby notified that pursuant to 49 CFR, Part 26 and the TOWN's DBE Program, they must affirmatively ensure that in any contract entered into with the TOWN for applicable projects; DBEs will be afforded equal opportunity to participate in subcontracting activities.

All contracts between the TOWN and its Contractor, MV Transportation, shall contain an appropriate provision to the effect that failure by the Contractor to comply with the TOWN's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this Program.

All documentation submitted at the time of bid, as well as additional data provided by the successful bidder, is considered to be part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of bid must have prior approval of the applicable department DBELO. Should a DBE firm not certified by the NCDOT UCP be proposed by a potential Contractor as a part of his/her DBE plan efforts, replacement with a properly certified DBE firm or review and certification procedures must be conducted prior to award of any contract.

Agreements between a Contractor and a DBE in which the DBE promises not to provide subcontracting quotations to other participants are prohibited. In contracts with a DBE contract goal, bids submitted which do not meet the DBE contract goal, and which do not show that a meaningful good faith effort was made to achieve the stated goal, will be considered nonresponsive bids, and bidders will not be eligible for award of the contract.

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

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

To ensure that all obligations under the contracts awarded to DBEs are met, the TOWN will review the participant's DBE involvement efforts during the performance of the contract. The participant shall bring to the attention of the TOWN any situation in which regularly scheduled progress payments are not made to DBE participants. Records of all progress payments made by prime contractors are required on a monthly basis. To verify the truthfulness and accuracy of

representations made by bidders, as well as to ensure their compliance with contract requirements, the following steps will be taken:

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

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

**Attachment 2: Forms 1 & 2 for Demonstration of Good Faith Efforts**

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

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

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

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

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

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

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**Affirmation**

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

By \_\_\_\_\_

(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)