

CITY OF CONCORD DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

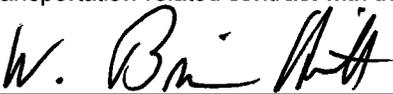
The City of Concord has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Concord has received Federal financial assistance from the Department of Transportation, and as a condition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

It is the policy of the City of Concord to ensure that DBEs as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

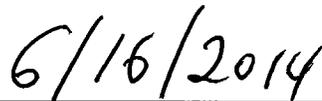
1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only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

The City's Accountant that handles grant reporting has been designated as the DBE Liaison Officer. In that capacity, The Accountant 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 City of Concord in its financial assistance agreements with the Department of Transportation.

The City of Concord has disseminated this policy statement to the Concord 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. The policy statement is available in the City Clerk's office and the DBE Liaison's office and will be mailed to all parties requesting a copy or a City transportation-related RFP, or expressing an interest in obtaining a transportation-related contract with the City.



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

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

Airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The City of Concord adopts the definitions contained in 49 CFR Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The City of Concord 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, gender, or national origin. The City also follows the N.C. General Statutes and Administrative Code.

In administering its DBE program, the City of Concord 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, gender, 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 or quarterly basis (whichever is required), using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

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

require a contract clause asking prime bidders to report the names and addresses of all firms who quote to them on subcontracts.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

The City of Concord shall not discriminate on the basis of race, color, national origin, or gender 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 City of Concord 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 (gender) 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City will follow requirements of Title 49, Section 26.21 of the Code of Federal Regulations.

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:

Dana Hood
Accountant
City of Concord
P.O. Box 308
Concord, NC 28026-0308
704-920-5229
hoodd@concordnc.gov

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has adequate staff to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes City of Concord's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager and City Council on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance if applicable.
10. Provides outreach to DBEs and community organizations to advise them of opportunities when applicable.
11. Maintains the City of Concord's bidder list and maintains access to a directory of certified DBE's. (Section 26.11 c)

Section 26.27 DBE Financial Institutions

It is the policy of the City of Concord 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.

To date we have identified no such institutions.

Section 26.29 Prompt Payment Mechanisms

The City of Concord will include the following clauses 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 thirty days from the receipt of each payment the prime contract receives from the City of Concord. The prime contractor agrees further to return retainage payments to each subcontractor within thirty 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 Concord. This clause applies to both DBE and non-DBE subcontracts.

The prime contractor agrees to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.

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

Section 26.31 Directory

The HUB Vendor Directory and the Directory of Transportation Firms may be accessed on the North Carolina Department of Transportation's web site, www.ncdot.org/business/ocr.

Section 26.33 Over concentration

The City of Concord has not identified that over concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Concord has not established a business development program. The City will re-evaluate the need for such a program every two years.

Section 26.37 Monitoring and Enforcement Mechanisms

The City of Concord will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the N.C. 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 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. 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 self-monitoring and reporting by sub-contractors, monitoring and reporting by contractors and spot checks by City construction site work supervisors
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the current goal calculations can be found in Attachment 3 of this program as it relates to DOT-assisted contracts exclusive of FTA funds. This section of the program will be updated every three years effective March 3, 2010.

In accordance with Section 26.45(f) the City of Concord will submit its overall goal to DOT by August 1 DOT-assisted contracts exclusive of FTA funds. The operating administration will determine the date of submission for FAA purposes. Before establishing the overall goal, the City of Concord will consult with community organizations including, but not limited to, minority and women's and general contractor groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Concord efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice in the Independent Tribune, Cabarrus Neighbors, La Noticia and the Charlotte Post newspapers and the City's web site of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Concord City Hall for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, the City will issue this notice by June 15 for each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) 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.

Goals for highway construction projects funded with federal aid highway funds are set by the North Carolina DOT.

Section 26.47 Goal Setting and Accountability

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

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

3. Implement a corrective action plan and maintain information/records regarding the analysis and efforts made.

Section 26.49 Transit Vehicle Manufacturers Goals

The City of Concord 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 City of Concord 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. (Applicable to FTA recipients i.e. Rider System)

Section 26.51 Meeting Overall Goals/Contract Goals

The City of Concord will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. The City of Concord will use race-neutral means by arranging solicitations, presentation of bids, quantities, specifications and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under 26.39 of the part.

The City of Concord will not use contract goals until and unless, we are unable to meet overall goal using race-neutral means and there are 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 total amount of a DOT-assisted contract.

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 should be able to demonstrate that it has done so by documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 of the CFR. The City will provide information regarding Good Faith Efforts at the preconstruction meeting when applicable for DOT assisted contracts.

The North Carolina DOT Goal Compliance Committee is responsible for determining whether a bidder/offeror has sufficiently documented good faith efforts for DOT assisted contracts.

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.

If a contract goal is used for FTA assisted projects the City will ensure that Good Faith Effort requirements are followed **per 49 CFR Part 26.53**. Good Faith Effort information is reported during the program.

Information to be submitted (26.53(b))

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

Each solicitation for which race-neutral participation 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 30 days of being informed by City of Concord 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: Brian Hiatt, City Manager City of Concord P.O. Box 308 Concord, NC 28026-0308 (704)-920-5215 hiattb@ci.concord.nc.us, the DEBELO or other designated person. 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. All Good Faith Effort information related to DOT assisted contracts will be forwarded to the North Carolina DOT Goal Compliance Committee. The DOT Goal Compliance Committee checks each Good Faith Effort for completeness and the committee will decide whether a Good Faith Effort was satisfactory or not. The City will communicate the DOT 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 subject to an administrative appeal to the N.C. Department of Transportation.

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

The City of Concord 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 race-neutral participation. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

Sample Bid Specification:

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

nondiscrimination based on race, color, sex (gender), 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 10 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 9), 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).

Section 26.55 Counting DBE Participation

The City will count DBE participation toward overall goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Concord does not certify a business as a DBE, the certification process is performed by the State of North Carolina.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Concord is the member of a Unified Certification Program (UCP) administered by the State of North Carolina. The UCP will meet all of the requirements of this section. The City of Concord will use and count for DBE credit only those DBE firms certified by the State of North Carolina UCP.

For information about the certification process or to apply for certification, firms should contact:

North Carolina Department of Transportation
Business Opportunity & Workforce Development (BOWD)
1511 Mail Service Center
Raleigh, NC 27699-1511

(919) 508-1808
Toll Free: 1(800)522-0453

Or visit the NCDOT's UCP website at:

<https://connect.ncdot.gov/business/SmallBusiness/Pages/UCP%20Certification%20Process%20for%20DBE%20firms.aspx>

Section 26.89 Certification Appeals

Any firm or complainant may appeal a North Carolina UCP's decision in a certification matter to DOT. Such appeals may be sent to:

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.103 Information, Confidentiality, Cooperation - FTA Programs

The City will follow enforcement actions contained in Section 26.103 of the CFR.

Section 26.105 Information, Confidentiality, Cooperation – FAA Programs

The City will follow enforcement actions contained in Section 26.105 of the CFR.

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. The City complies with provisions of the Federal Freedom of Information Privacy Act (5 U.S.C. 552 and 552a.), not in contradiction to the N.C. Public Records statutes found as N.C. General Statute §132.-1.2. The City may make available to the public any information concerning the DBE program which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, the City will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information, other than DOT, FTA, or FAA.

Monitoring Payments to DBEs

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 DOT. This reporting requirement also extends to any certified DBE subcontractor.

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 states in the schedule of DBE participation.

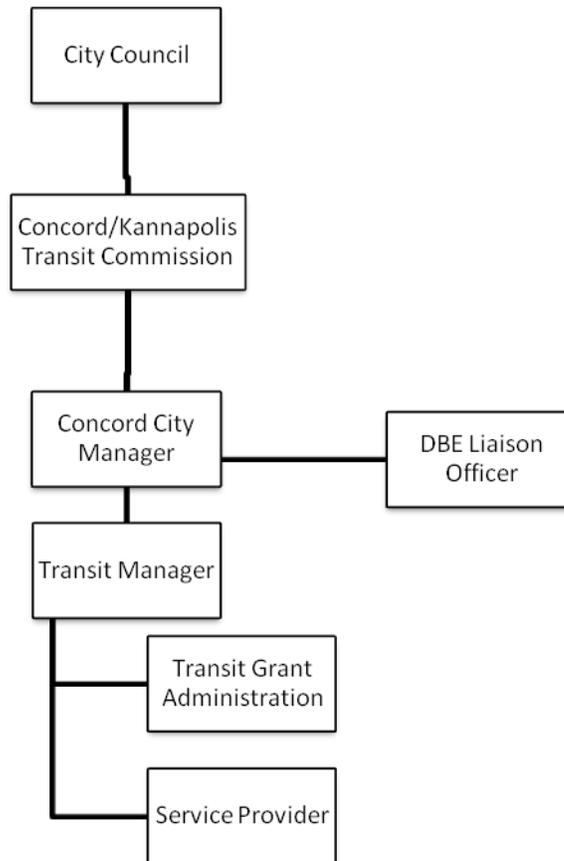
ATTACHMENTS

Attachment 1	Organizational Charts
Attachment 2	Monitoring and Enforcement Mechanisms
Attachment 3	Overall Goal Calculations
Attachment 4	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 6	Procedures for Removal of DBE's Eligibility
Attachment 7	Regulations: 49 CRR Part 26
Attachment 8	DBE Directory

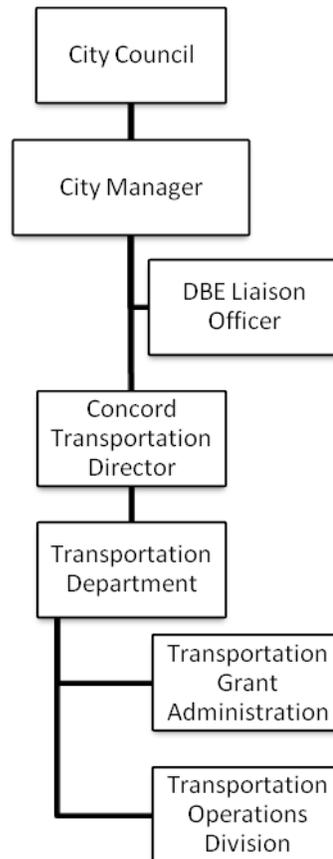
Attachment 1

Organizational Charts

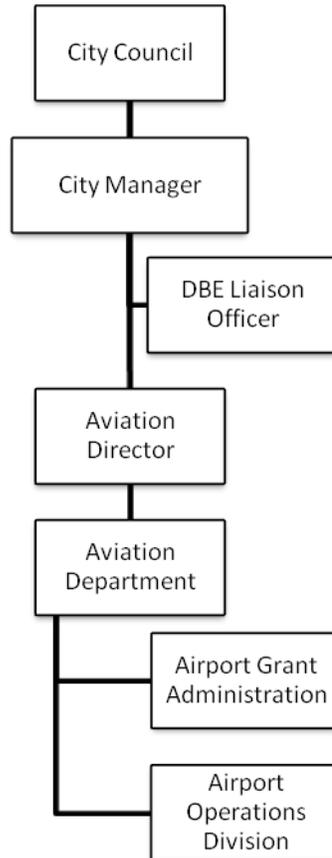
Transit Organizational Chart



Transportation Organizational Chart



Aviation Organizational Chart



Attachment 2

Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to North Carolina Law;
3. Civil rights actions pursuant to U.S. and N.C. law.

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

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

Attachment 3

Section 26.45: Overall Goal Calculation

City of Concord, North Carolina

Amount of Goal

1. City of Concord's overall goal for FY 09/10 is the following: 6% of the Federal Financial assistance we will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c) - Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

Ready, willing, and able DBE's 18
Base figure = _____

All firms ready willing and able 289

The data source or demonstrable evidence used to derive the numerator was:

- o Disadvantaged Business Directory, 2009 NCDOT
- o NCDOT Disadvantaged Enterprise Directory, 2009

The data source or demonstrable evidence used to derive the denominator was:

- o 2000 County Business Patterns, U.S. Census

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number is 6%.

Step 2: 26.45(d) - Determine any adjustments to base figure.

Past participation for DOT-assisted contracts is as follows: FY07 (45%), FY08 (8.4%), FY09 (5%). Our historical median is 8.4%. Our percentages range widely due to the small number of contracts issued each year, and the fact that our largest contract is issued every 3-5 years.

As the availability of qualified DBEs in our region is 6%, and our past participation median is 8.4%, we will continue our set goal of 6%, to be achieved by race-neutral means, as there are a number of DBEs actively competing for current contracts.

Given the amount of DOT-assisted contracts the City of Concord expects to let during this fiscal year, which is \$2,083,370, we have set a goal of expending \$125,002 with DBE's during this fiscal year.

Public Participation

The City published the goal information in these publications: Independent Tribune, La Noticia, The Charlotte Post and Concord City website. No public comments were received.

Attachment 4

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The City of Concord uses race-neutral participation to achieve its overall goal.

An excerpt (Art. XVIII) of the applicable portion of the City's Transit Policy Manual appears below.

Article XVIII Disadvantaged Business Enterprise (DBE) Program

18.1 Disadvantaged Business Enterprise Liaison Officer

The City's Purchasing Officer will administer the DBE Program; will function as the DBE liaison officer; and will be responsible for:

developing, managing, and implementing the DBE program on a day-to-day basis;
carrying out technical assistance activities for DBEs; and
disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on the Applicant's contract.

18.2 Proof of Certification

To ensure that this program benefits only firms that are owned and controlled by socially and economically disadvantaged individuals, the City will require any firm to submit proof of its certification by the N.C. DOT or the State of North Carolina.

18.3 Goal Methodology

The methodology used to establish the overall goal, including determining the relative availability of DBEs in the Transit System's market area and making any necessary adjustments, consists of a multi-step process, consistent with that outlined in the Federal Register (49 C.F.R. Part 26) Steps 1 and 2.

A. Preliminary Actions. Identify the geographic market area and project activities with NAICS Codes.

1. Determine the Transit System's normal market area for procuring goods and services, by county, because of the data format contained in the Census' County Business Patterns.
2. Select the market area based on the geographic area, where, historically, the majority of successful bidders originated, and where the substantial majority of the contracting dollars were spent. This establishes the geographic parameters for statistical analysis of the relative availability of DBEs.
3. Review the Transit System's proposed projects in order to determine the types of projects/activities involving federal funds (FTA) proposed for the fiscal year and group them according to major NAICS codes.
4. Identify the project activities and/or types of firms/services required by the major relevant NAICS codes needed to complete these projects. This action triggers the market search for both "all firms" and DBE firms within the selected geographic parameters, and for the same NAICS codes, in order to help determine the relative availability of DBEs.

5. Collect information, if available, on the engineering cost estimates or other detailed cost estimates for the project activities, in order to allocate these costs according to the identified major NAICS codes. This action may permit the availability of DBEs in each major NAICS code to be “weighted” according to the relative percent-of-project-cost by NAICS code.

B. Step 1. Determine the relative availability of DBEs in the geographic market area.

1. Examine the current census data (County Business Patterns) for the geographic market area, by county, using the previously-identified NAICS codes to determine the total number of firms that perform the types of work/activities relevant to the proposed FTA projects.
2. Determine the initial relative availability of DBEs in the geographic market area, only within the identified NAICS codes, using a variety of data sources. Some data sources for this determination include the following:
 - a. County Business Patterns,
 - b. Disadvantaged Business Directory
Architecture/Engineering/Consulting/Planning/Service & Supply Firms, N.C.
DOT,
 - c. N.C. DOT Disadvantaged Enterprise Directory, and
 - d. Local City/County Directories, where available.
3. Count only the DBE firms by relevant NAICS codes that are capable of performing work relevant to the proposed projects. Compare DBE firms to “all firms” in the same codes to determine the initial relative availability of DBE firms within the geographic market area.
4. Calculate the Step 1 DBE base figure, or the “weighted” DBE base figure to determine the relative availability of DBE firms in all the relevant NAICS codes.

C. Step 2. Adjust the DBE base figure.

In accordance with 49 C.F.R. 26, give consideration to “...additional evidence in the sponsor's jurisdiction [which should] be considered to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal” (26:45(d)).

D. Step 3. Calculate or estimate the race-neutral DBE goal.

If applicable, review the history of DBE participation on FTA projects in previous years in the City and look for factors that indicate race-neutral DBE accomplishment. This review could be, for example, quantifying the amount by which the City exceeded its established DBE goals in the past. The median amount by which the goals were exceeded could be evidence to support a projection of race-neutral participation.

18.4 City of Concord DBE Program Goal

A. Name and Location. The City is located in Cabarrus County, approximately 20 miles north of the City of Charlotte.

B. Definition of Project Service Area. The normal geographic market area was determined through consultation with engineers/planners/consultants and an assessment of historic bidders for similar projects, i.e., the area where the majority of dollars in both construction and professional services were spent. This area included the municipalities of Concord and Kannapolis.

C. Determining the Step 1 DBE Base Figure. The Step 1 DBE base figure was derived by using a weighting process by which the percentage of dollars spent on various activities (represented by NAICS codes) were multiplied by the percentage of relevant DBE firms to “all relevant firms” in the area. (This base figure also mirrors the figure used by the Concord Municipal Airport for their DBE program.) Refer to Attachment 3 of this document for current goal information.

D. Adjusting the DBE Base Figure. After the DBE base figure has been developed, the regulations (49 C.F.R. Part 26) require that:
“...Additional evidence in the sponsor's jurisdiction be considered to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal” (26:45(d)).

1. The regulations also state that several types of evidence that must be considered when adjusting the base figure. These include:

“(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.”

2. In analyzing the Step 1 DBE base figure, the regulations also require consideration of:

“Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure...” (26:45 (d)(1)(ii)),

“Statistical disparities in the ability of DBEs to get the financing, bonding, and insurance required to participate in your program,” and

“Data on employment, self-employment, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program” (26.45(d)(2)(I)(ii)).

The City has not conducted a disparity study.

3. Refer to Step 2 of Attachment 3 of this document for current goal information.

E. Race-Neutral/Race-Conscious Projections. The City proposes to accomplish its entire overall goal with race neutral goals. Due to its lack of project and/or funding history, there are no indicators of potential race-neutral or race-conscious participation levels.

F. Contract Goals. The City will use race-neutral means. The City does not use contract goals.

Attachment 5

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 _____
(Signature) Title

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:

.....
.....
.....
.....

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.)

Attachment 6

Procedures for Removal of DBE's Eligibility

Decertification Procedures

The City of Concord does not certify a business as a DBE, the certification process is performed by the State of North Carolina; therefore procedures for removal of DBE's eligibility are also performed at the State level.

Attachment 7

Regulations: 49 CFR Part 26

www.ecfr.gpoaccess.gov – 49 CFR Part 26

Attachment 8

DBE Directory

<https://partner.ncdot.gov/VendorDirectory/default.html>

AMENDMENT 1

Section 26.39 Fostering Small Business Participation

The City of Concord encourages and promotes small business participation and has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition by small business concerns, as defined in 49 CFR Part 26.5, the City will take reasonable steps to eliminate obstacles to their participation in the following ways:

1. On prime contracts greater than \$100,000, 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. The City will put the required language in all bids documents to require prime contractors to unbundle their work and to bid out smaller projects to small business concerns.
2. To meet the portion of our over all goal we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform. The City of Concord regularly puts out bids under \$300,000, and encourages and promotes small business participation on these bids.

The City of Concord will also make an effort to unbundle all large projects when feasible.

The City of Concord does not certify a business as a small business; the certification process is performed by the State of North Carolina.

Section 26.53(f) Good Faith Efforts

The prime contractor can not terminate a DBE without the prior written approval from the City of Concord. The prime contractor has to prove good cause as explained in 49 CFR part 26.53 (f)3 in order for the City to provide its written consent to do so.

Adopted by City Council of Concord on September 11, 2003
Attachment 1 amended on September 9, 2010
Amended November 11, 2010
Amended June 10, 2012
Amended June 12, 2014