



NORTH CAROLINA'S INTERNATIONAL CITY™

DBE PROGRAM

City of High Point
Transit System
PO Box 230
211 S Hamilton St
High Point, NC 27261

Revised March 24, 2014

Revisions Control Page

Date	Summary of Changes Made	Changes Made By (Name)
March 2014	Small Business Element, administrative changes	Angela W Wynes

**CITY OF HIGH POINT
DEPARTMENT OF TRANSPORTATION
DBE PROGRAM**

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of High Point 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 High Point has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of High Point has signed an assurance that it will comply with 49 CFR Part 26. The City of High Point has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of High Point has signed an assurance that it will comply with 49 CFR Part 26. The City of High Point shall not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with award and performance of any contract on the basis of race, color, gender, or national origin. In administering the program, the City will not directly or through contractual or other arrangements use criteria or methods of administration that have the effects of defeating or impairing accomplishments of the objectives of this program with respect to individuals of a particular race, color, gender, or national origin.

It is the policy of the City of High Point to ensure that DBEs are 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 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 Transit Manager has been delegated as the DBE Liaison Officer. In that capacity, the Transit Manager 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 High Point in its financial assistance agreements with the Department of Transportation.

City of High Point has disseminated this policy statement to the 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 mailing out the policy to local trade organizations, Chambers of Commerce, and organizations representing women- and minority-owned businesses as well as small businesses.

City Manager

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

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

Section 26.3 Applicability

The City of High Point 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.

Section 26.7 Non-discrimination Requirements

The City of High Point 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 City of High Point 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

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

City of High Point will report DBE participation to the relevant operating administration [FTA] using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Subrecipients who receive FTA pass-through grants will report to the City of High Point DBE participation on a semi-annual basis (May 15 and November 15) each year, using the Uniform Report of DBE Awards/Commitments and Payments, Form 4630. These reports will capture DBE participation for DOT-assisted for contracts awarded by subrecipients and actual DBE attainments based on payments made to DBEs on DOT-assisted contracts closed within the respective reporting period. The City of High Point's June 1 report shall include subrecipient information from October 1 through March 31. The December 1 report shall include subrecipient information from April 1 through September 30. Subrecipients shall comply with this section until all contracts awarded with FTA grant funds are completed, exhausted and/or returned to the City of High Point.

Bidders List: 26.11(c)

The City of High Point 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.

We will collect this information in the following ways:

1. Including a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;
2. Perform a recipient-directed survey of a statistically sound sample of firms on a name/address list to get age/size information; and/or

3. Include a notice in all solicitations, and otherwise widely disseminated notices, requests to firms quoting on subcontracts to report information directly to the City of High Point.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

City of High Point 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 City of High Point 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 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.

Enforcement:

If a contractor, subrecipient, or subcontractor fail or refuse to include the 26.13(a) and/or 26.13(b) assurances verbatim in all DOT – assisted contracts, subcontracts or subrecipient agreements, the City of High Point may impose penalties and administrative sanctions for non-compliance as contained in Subpart C, Monitoring and Enforcement Mechanisms, Section 26.37, in the Contract Compliance Manual (Federal), and as applicable the Subrecipient Agreement.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.25

DBE Liaison Officer (DBELO)

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

Angela W. Wynes
Transit Manager
716 West Kivett Drive
High Point, NC 27262
(336) 883-3424
Angela.Wynes@highpointnc.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of High Point 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 A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 1 to assist in the administration of the program. The duties and responsibilities include the following:

4. Gathers and reports statistical data and other information as required by DOT.
5. Reviews third party contracts and purchase requisitions for compliance with this program.
6. Works with all departments to set overall annual goals.
7. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
8. 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.
9. Analyzes City of High Point's progress toward attainment and identifies ways to improve progress.
10. Advises the CEO/governing body on DBE matters and achievement.
11. Participates in pre-bid meetings.
12. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
13. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
14. Plans and participates in DBE training seminars.
15. Acts as liaison to the Uniform Certification Process in North Carolina.
16. Provides outreach to DBEs and community organizations to advise them of opportunities.
17. Maintains the City of High Point's updated directory on certified DBEs.

Duties and responsibilities of the assistant to the DBELO are as follows:

1. Types correspondence to DBEs and potential DBEs.
2. Updates Bidder Directory as instructed by DBELO.
3. Arranges logistics of meetings and training sessions with DBEs.
4. Provides information on DBE program to interested parties.

The Chief Executive Officer (CEO)

The CEO designates the DBELO, grants to that DBELO direct, independent access to him or her concerning DBE matters and ensures the DBELO has sufficient resources to implement the DBE program in compliance with the provisions of 49 CFR Part 26.

The City Attorney

1. Addresses small business matters relating to procurement and the implementation of the DBE program; and
2. Renders legal opinions regarding the interpretation of DBE solicitation and contract provisions; and
3. Advises the DBELO or his/her designees and the CEO regarding imposition of administrative sanctions against contractors that fail to comply with DBE requirements; and
4. Represents the City of High Point in all legal actions involving DBE issues; and
5. Provides the DBELO with legal opinions relevant to DBE certification.

Shared Responsibility

The following departments have a shared responsibility to achieve the City of High Point's Overall Goal and ensure compliance with the DBE Program.

Grants Management

The Grants Manager assists the DBELO in compiling federal funding data to calculate the City's overall DBE goal.

Purchasing

1. Provides up-to-date information about the City of High Point contracting opportunities, upcoming events at the City of High Point and current program information; and
2. Provides technical assistance over the telephone to firms requesting to be placed on the mailing list, provides City of High Point Vendor database information, including detailed step by step instructions on how to register on the City's Vendor database, and responds to questions about doing business with the City.

Project Managers

1. Provides the DBELO with draft scopes of work and engineering estimates to enable the DBELO to actively engage in goal setting, outreach and the development of appropriate DBE language in solicitation documents; and
2. Develop a working knowledge of the DBE program's policies, practices and procedures including race neutral and race conscious methods of achieving DBE participation, by reading the DBE program, and/or the project's solicitation documents and/or the contract manual and by attending DBE orientation sessions presented by the DBELO and staff members; and
3. Notify the DBELO in a timely manner of their project's Pre-Proposal or Pre-Bid conferences and "Kick-Off" Meetings; and
4. Structure individual contracting actions to create a level playing field and participation by DBE firms wherever possible. This includes dividing a contract statement of work, where possible, into portions that will enable DBE firms to compete as prime contractors. Proper use of this structuring for DBE participation shall not result in the avoidance of proper approval authority. This also includes, if not prohibited by state law, waiving or reducing bonding requirements or allowing for incremental bonding; and
5. Participate with the DBELO in monitoring that DBE firms are used and DBE records and reports are prepared and submitted in accordance with the terms of the contract; and
6. Identify and refer potential DBE utilization problems promptly to the DBELO.

Section 26.27 DBE Financial Institutions

It is the policy of the City of High Point 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 contacted the area chambers of

commerce and searched the Internet to identify and use such institutions. We will also re-evaluate the availability of DBE financial institutions every 5 years.

To date we have identified the following such institutions:

Mechanics and Farmers Bank
770 Martin Luther King, Jr. Blvd.
Winston Salem, NC 27101
(336) 722-0200

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

The City of High Point 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 City of High Point. 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 High Point. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees 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 City of High Point. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

The City of High Point has established the following process to monitor and enforce that prompt payment and return of retainage is in fact occurring.

The City of High Point will require the prime contractor to submit copies of all invoices from and payments to subcontractors in order to ensure that the prime contractor is in compliance with this clause. Failure of the prime contractor to pay subcontractors for satisfactory work or return retainage payments within the allotted time will result in the City of High Point withholding payment on all pending and/or future invoices.

Should there be a dispute between the prime contractor and subcontractor, the prime contractor shall notify the City of High Point. The City will assemble a board composed of qualified individuals to help resolve the dispute. The decision of the board shall be final. Unless otherwise directed by the City of High Point, the contractor and subcontractor shall continue performance while matters in dispute are being resolved.

Section 26.31 Directory

The State of North Carolina has established a Unified Certification Program for the state and the DBE directory may be found at <http://apps.dot.state.nc.us/vendor/directory/>. See Attachment 2 for screen shot of directory location.

Section 26.33 Overconcentration

City of High Point has not identified that overconcentration exists in the types of work that DBEs perform.

We will re-evaluate for overconcentration every 3 years.

Section 26.35 Business Development Programs

City of High Point has not established a business development program. We will re-evaluate the need for such a program every 3 years.

Section 26.37 Monitoring and Enforcement Mechanisms

The City of High Point 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 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 or subsequently (e.g. as the result of modification to the contract) is actually performed by the DBEs to which the work was committed for each contract/project on which DBEs are participating. This will be accomplished by

Notification of Reporting Requirements

Prior to execution of all contracts containing DBE goals the prime contractor shall be verbally directed to the City of High Point's Compliance Manual (Federal) for specific requirements of the DBE Program. Contractors shall be specifically advised of DOT requirements for prompt payment and retention covering all DBE and Non-DBE subcontracts.

Pre-Construction (Kick-off) Meeting

Both the Contractor and the DBE Subcontractor(s) or a representative of each firm shall attend the kick-off meeting to be informed of DBE requirements and other matters, prior to or immediately after Notice to Proceed is issued. If a kick-off meeting is not scheduled, the prime contractor will be notified in writing of DBE requirements. The Contractor shall be responsible for informing the Subcontractors of all DBE requirements as specified by the City of High Point herein.

Monthly Expenditure Plan

A monthly expenditure plan in calendar form for each of its approved DBE Subcontractors/Suppliers shall be submitted within 30 days of Notice to Proceed. The planned expenditures shall equal the dollars committed to each DBE Subcontractor/Supplier and shall be developed according to the approved project schedule. The plan shall be updated to incorporate any schedule changes and executed Changed Notices and Work Authorization Change Notices affecting the DBE's work. A revised plan shall be submitted within 30 days from the incorporation of the change.

Executed Subcontract Agreements

The Contractor shall submit to The City of High Point copies of all executed DBE and non-DBE subcontract agreement, supplier agreement, and/or purchase orders (PO) within fourteen (14) working days after the Contractor executes their contract or PO with The City of High Point. The

contractor is required to incorporate the prompt payment and dispute resolution provisions in all executed subcontract agreements. Further, the Contractor shall report its failure to execute subcontractor agreements for any of the listed DBE subcontractors within 14 working days of signing the contract with the City of High Point.

On-Site Performance Monitoring

During the course of the contract, the City of High Point will conduct on-site monitoring to ensure that work committed to DBEs is actually being performed by the DBEs. This monitoring effort is fully incorporated into the City of High Point's DBE On-site Compliance field observation process. This observed work will be reconciled against the DBE subcontractor agreement(s) and Form DBE-IS.

Written Certification

Worksite monitoring, review of contracting records and written certification of DBE performance will be conducted on all City of High Point contracts, within the state, in which a DBE firm(s) is performing. This review will be in accordance with the City of High Point's DBE Compliance Close-Out and/or Commercially Useful Function report process.

4. After bid award and work on the project has begun, prime contractors will submit copies of payments to DBEs to the City of High Point. These payments will be matched against the Schedule of DBE Participation and tallied per contract to ensure compliance with the program and good faith effort to attain the established overall or if applicable, contract goal. Contractors will report DBE expenditures to the City of High Point per §26.55.

Section 26.39 Small Business Participation

The City has incorporated the following non-discriminatory element(s) into its DBE program, in order to facilitate competition by small businesses in DOT/FTA funded projects to help eliminate obstacles to small business participation:

In order to ensure a "level playing field" and foster equal opportunity in the DOT federally-assisted contracts and to reduce burdens on small businesses, the City will use the following strategies:

1. Attempt to meet the overall goal through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform;
2. Require bidders to clearly identify the project "Point of Contact," preferably the Contract Estimator or Project Manager, to allow small businesses, including DBEs, an individual to contact to start developing a business relationship;
3. 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;
4. Projects that may be multi-year design build or in excess of \$2,000,000 are considered "mega projects" and bidders on a prime contract of a mega project will specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBE's, can reasonably perform.
5. Support prime contractors in finding small businesses to subcontract. This will be done by referring contractors to the following recourses and assisting contractors in using these resources.
 - a. NCDOT Directory of Firms: <https://partner.ncdot.gov/VendorDirectory/default.html>
 - b. NC Department of Administration Office for Historically Underutilized Businesses: www.doa.nc.gov/hub/

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

In accordance with Section 26.45, the City of High Point will submit its triennial overall DBE goal to FTA on August 1 of the year specified by FTA for Group A.

City of High Point will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

The process generally used by City of High Point to establish overall DBE goals is as follows:

The overall DBE goal represents the amount of FTA-assisted funds the City of High Point anticipates expending over the three Federal Fiscal Year period. The two-step goal setting process required by the 26.45 will be used to determine the City of High Point's base figure. The two steps for setting an overall goal are:

- Establish a base figure for the relative availability of DBEs
- Determine the base figure adjustment, if necessary

The base figure is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all ready, willing and able businesses to perform the recipient's anticipated FTA-assisted contracts in the City of High Point's market area. Data on the total number of firms and the number of minority- and woman-owned firms in the Transportation, Utilities and Communications, Retail Trade, and Service Industries NAICS codes in the Greensboro, High Point, Winston-Salem MSA will be collected from the most recent Census Bureau data available.

In the Step Two base figure adjustment, the City of High Point will examine relevant and reliable data in the market area to determine if an adjustment to the base figure is warranted. The consideration of an adjustment is intended to account for any impact the relevant factors may have on DBEs' contracting opportunities with the City of High Point. The following factors will be considered for the Step Two adjustment:

- Past DBE participation
- Certified DBEs compared to non-certified DBEs
- Documented private-sector discrimination, if available
- Results of disparity studies, if available.

Before establishing the overall goal each year, City of High Point will consult with groups not limited to area Chambers of Commerce, City of High Point Human Relations Commission, City of High Point Finance Department, and area groups representing disadvantaged firms to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of High Point's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that the City of High Point and DOT will accept comments on the goals for 45 days from the date of the notice. The notice of the proposed goal will be published in the High Point Enterprise and on the City of High Point website. Normally, we will issue this notice by June 1 of each year. The notice will 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: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions 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. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on the City of High Point'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;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Maintain the analysis and corrective action plan on file.

Section 26.49 Transit Vehicle Manufacturers Goals

City of High Point 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, City of High Point 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.

Section 26.51 Meeting Overall Goals/Contract Goals

The City of High Point will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. The City of High Point uses the following race-neutral means to increase DBE participation:

1. arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation,
2. ensuring distribution of the DBE directory to widest feasible universe of potential prime contractors,
3. providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g. simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids and providing services to help DBEs and other small businesses obtain bonding and financing)
4. providing technical assistance and other services,
5. carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on mailing lists for bidders; ensuring the dissemination to bidders on prime contractors of lists of potential subcontractors; provision of information in languages other than English, where appropriate),
6. implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses,
7. providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve self-sufficiency,
8. establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low, and

9. assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

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

We will establish contract goals only on those DOT-assisted contracts that have 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.

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 High Point 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 5), 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 26.53 Good Faith Efforts Procedures

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

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, City of High Point will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) & (c)

The DBELO and a representative from the Purchasing Division 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.

Bidders/offerors will be required to denote what actions they took in order to use certified DBE firms to meet the contract goal. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The bid of bidders/offerors failing to show a bona fide good faith effort to subcontract with DBE firms will be deemed non-responsive.

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

Information to be Submitted: 26.53(b)

City of High Point 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/offers 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 2 days of being informed by City of High Point that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offers may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official:

Director of Human Relations
City of High Point
P.O. Box 230
211 S. Hamilton Street
High Point, NC 27261
Al.Heggins@highpointnc.gov
(336) 883-3125

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

As part of this reconsideration, the bidder/offers 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/offers 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. We will send the bidder/offers a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

City of High Point requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without City of High Point's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

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

In those instances where “good cause” exists to terminate a DBE’s contract, City of High Point will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.

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

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

Section 26.55 Counting DBE Participation

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

SUBPARTS D & E– CERTIFICATION

Section 26.81 Unified Certification Programs

The City of High Point is the 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. The City of High Point will use and count for DBE credit only those DBE firms certified by the North Carolina UCP.

The purpose of the UCP is to provide "one-stop shopping" for applicants to apply for DBE certification, such that an applicant is required to apply only once for a DBE certification that and it will be honored by all agencies that are recipients of Federal DOT funding in the state.

State and local recipients of Federal Department of Transportation money often set DBE participation goals on their contracts. Prime bidders must either meet or make a good faith effort to meet these goals. When a DBE is certified through the UCP, it is included in the UCP Directory. Prime bidders needing to perform outreach to DBEs for their bid can use the UCP Directory to locate potential DBE subcontractors and suppliers.

Information on the UCP and certification can be found at <http://connect.ncdot.gov/business/SmallBusiness/Pages/UCP%20Certification%20Process%20for%20DBE%20firms.aspx>. The North Carolina UCP document is available at <https://connect.ncdot.gov/business/SmallBusiness/Documents/UCP%20DBE%20Program%20Plan.pdf>.

Upon verification of certification in another state UCP that complies with the requirements of 49 CFR Part 26, the City of High Point will accept an out-of-state certification.

Section 26.83-26.91 Procedures for Certification Decisions

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

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

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Per §132-1.2 of the North Carolina General Statutes, confidential information (i.e. trade secrets) disclosed or furnished to the City of High Point in connection with the application for DBE eligibility is confidential information and not subject to public record laws.

Notwithstanding any contrary provisions of state or local law, we 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

We 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 of High Point 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 Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies

Attachment 4: Goal Setting Methodology

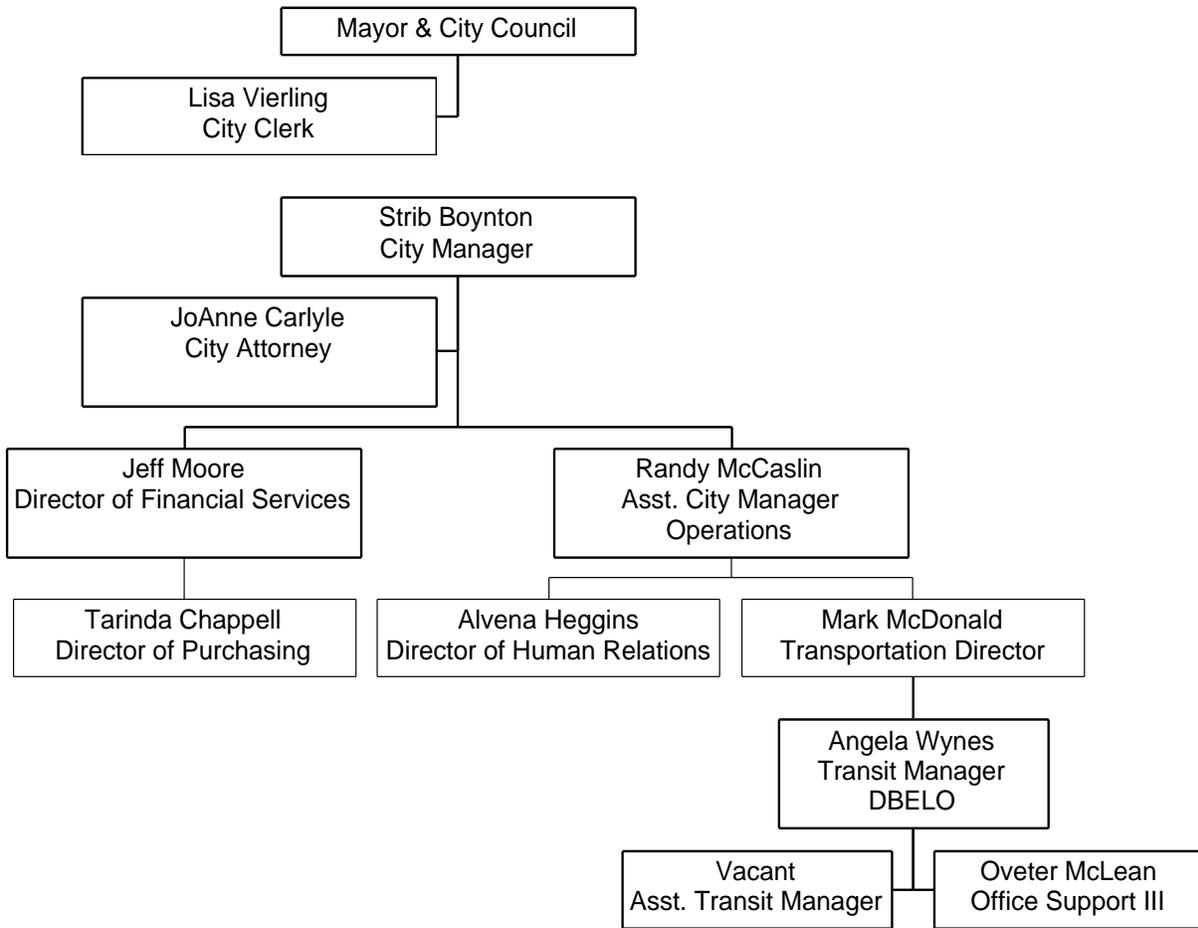
Attachment 5: Good Faith Efforts Forms

Attachment 6: Certification Forms

Attachment 7: DBE Regulation, 49 CFR Part 26

Attachment 1

Organizational Chart



Attachment 2

DBE Directory

The North Carolina UCP DBE Directory can be found at <https://partner.ncdot.gov/VendorDirectory/default.html>

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

The City of High Point 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. Debarring firms from doing business with the City of High Point for a minimum of one (1) year.
3. Subrecipients in violation of the DBE Program requirements will have funding withheld until compliance is achieved.

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 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. City of High Point's overall goal for the following time period 2010 – 2013 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.
2. \$1,151,924 is the dollar amount of DOT-assisted contracts that City of High Point expects to award during FFY2010-2013. This means that City of High Point has set a goal of expending \$69,115.44 with DBEs during this fiscal year/project.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

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

$$\frac{\text{Ready, willing, and able DBEs Base figure}}{\text{All firms ready, willing and able}} = \frac{4}{219}$$

The data source or demonstrable evidence used to derive the numerator was from certified DBE firms in the City of High Point vendor database that have bid on FTA funded procurements. The data source or demonstrable evidence used to derive the denominator was the total number of firms in the City of High Point vendor database that have bid on FTA funded procurements:

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was 2%.

Step 2: 26.45(d)

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

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 4%.

The data used to determine the adjustment to the base figure was previous DBE goal attainment and the type of contracting opportunities occurring in the three year period. The reason we chose to adjust our figure using this data was because this more accurately reflects the actual spending versus simply measuring the number of DBE firms in the vendor file against the larger vendor file. From this data, we have adjusted our base figure to 6%.

Attachment 4

Public Participation

We published our goal information in these publications:

High Point Enterprise, High Point, NC:

We received no comments from individuals or organizations.

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

City of High Point will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City of High Point uses the following race-neutral means to increase DBE participation:

1. Limiting certain small contracts to bids by small firms only;
2. Unbundling contracts to allow and encourage DBEs to bid as prime contractors or quote on subcontracts;
3. Reducing bonding requirements when possible;
4. Arranging all possible aspects of solicitations, including delivery schedules, in ways that facilitate DBE participation;
5. Providing guidance on obtaining business assistance in areas such as business management, record keeping, and technical assistance;
6. Upon request, provisions of information to bidders in languages other than English;
7. Ensuring inclusion of DBEs on mailing lists to bidders; and
8. Ensuring potential prime contractors are aware of the North Carolina UCP DBE directory.

We estimate that, in meeting our overall goal of 6%, we will obtain 2 % from race-neutral participation and 4 % through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: Historically, the City of High Point has not had much success in prime contractors using DBE firms on projects unless project goals have been set.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Attachment 5

Forms for Demonstration of Good Faith Efforts

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

Attachment 5

AFFIDAVIT A

CITY OF HIGH POINT "GOOD FAITH EFFORT"

County of _____

Affidavit of _____
(Name of Bidder)

I have made a good faith effort to comply under the following areas checked:

BIDDER MUST EARN AT LEAST 50 POINTS FROM THE GOOD FAITH EFFORT LIST FOR THEIR BID TO BE CONSIDERED RESPONSIVE.

(Y/N)

____ (1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. **(10 POINTS)**

____ (2) Making the construction plans, specifications and requirements available for review by prospective minority businesses or providing these documents to them at least 10 days before the bid or proposals are due. **(10 POINTS)**

____ (3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. **(15 POINTS)**

____ (4) Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and in the bid documents that provide assistance in recruitment of minority businesses. **(10 POINTS)**

____ (5) Attending any pre-bid meetings scheduled by the public owner. **(10 POINTS)**

____ (6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. **(20 POINTS)**

____ (7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Any rejection of minority business based on lack of qualification should have the reasons documented writing. **(15 POINTS)**

____ (8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily is required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. **(25 POINTS)**

____ (9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. **(20 POINTS)**

____ (10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands. **(20 POINTS)**

In accordance with 49 CFR Part 26 the undersigned will enter into a formal agreement with the firms listed in the Identification of Disadvantaged Enterprise Businesses Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certified that he or she has read the terms of the disadvantaged business enterprise commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: _____ Name of Authorized Officer: _____

Signature: _____

Title: _____

State of North Carolina, County of _____
Subscribed and sworn to before me this _____ day of _____ 20____
Notary Public _____
My commission expires _____

Attachment 5

LETTER OF INTENT

Attachment 5

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

CONTRACT:	NAME OF BIDDER:
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The undersigned intends to perform work in connection with the above contract upon execution of the bid and subsequent award of contract by the City of High Point as:

Name of DBE Subcontractor _____

Address _____

City/State _____ Zip _____

Please check appropriate ethnicity/gender category:

- Non-Minority Women Owned
- Black American
- Hispanic American
- Native American
- Subcontinental Asian American
- Asian-Pacific American
- Other

The DBE status of the above named subcontractor is certified by the North Carolina Department of Transportation. The above named subcontractor is prepared to perform the described work listed on the attached DBE Commitment Items sheet, in connection with the above contract upon execution of the bid and subsequent award of contract by the City of High Point. The above named subcontractor is prepared to perform the described work at the estimated Commitment Total for Subcontractor Price identified on the DBE Commitment Items sheet and amount indicated below.

Commitment Total based on estimated Unit Prices and Quantities on the "attached" Listing of DBE Subcontractors sheet:

Amount \$ _____

The above named bidder and subcontractor mutually accepts the Commitment Total estimated for the Unit Prices and Quantities. This commitment total is based on estimated quantities only and most likely will vary up or down as the project is completed. Final compensation will be based on actual quantities of work performed and accepted during the pursuance of work. The above listed amount represents the entire dollar amount quoted based on these estimated quantities. No conversations, verbal agreements, and/or other forms of non-written representations shall serve to add, delete, or modify the terms as stated.

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontractor agreement will describe in detail the contractual obligations of the bidder and the DBE subcontractor.

Affirmation

The above named DBE subcontractor affirms that it will perform the portion(s) of the contract for the estimated dollar value as stated above.

Name of DBE Subcontractor

Name of Bidder

Signature/Title

Signature/Title

Date

Date

Attachment 6

Certification Forms

The City of High Point is committed to ensuring that all businesses have the opportunity to participate in our projects. If you are a business owned by a minority, woman, or otherwise disadvantaged individual or group, information on certification can be found at <https://connect.ncdot.gov/business/SmallBusiness/Pages/default.aspx>.

Attachment 7

Regulations: 49 CFR Part 26

The text of 49 CFR Part 26 can be found at http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl or in a printable .pdf format.