

CITY OF SALEM, MA

DBE Policy Statement

Objectives/Policy Statement

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

It is the policy of Salem 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:

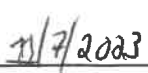
1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only 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 marketplace outside the DBE Program.

The Purchasing Agent has been delegated as the DBE Liaison Officer. Anthony Delaney, Purchasing Agent, 93 Washington St., Salem, MA. In that capacity, they are responsible for implementing all aspects of the DBE program with assistance from Accounts Payable and Project Staff. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Salem in its financial assistance agreements with the Department of Transportation.

Salem has disseminated this policy statement to City officials and all the components/ departments of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. This shall be accomplished through public notice on the City's website.



Dominick Pangallo, Mayor Signature



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

Salem is the recipient of Federal Transit Administration funds.

Section 26.5 Definitions

Salem adopts the definitions contained in Section 26.5 for this program.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site:
<http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

Section 26.7 Non-discrimination Requirements

Salem 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, Salem 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.

The City strives to ensure only firms that fully meet the eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs and to help remove barriers to the participation of DBEs in DOT-funded contracts. The DBE Program is narrowly tailored in accordance with applicable laws.

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 to FTA on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulations, CFR Part 26.

Bidders List: 26.11(c)

Salem will create a bidders list, consisting of information about all DBE and non-DBE firms that have bid or have submitted quotes on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list to identify vendors for subcontracting opportunities to calculating three year goals. The bidder list will include the following:

1. The firm (subcontractor) name
2. The firm (subcontractor) location
3. The firm's status as a DBE or non-DBE
4. Age of the firm
5. The annual gross receipts of the firm

We will collect this information in the following ways:

We shall collect the information from via a contract clause requiring prime bidders to report the names, addresses, and possibly other information, of all firms who provide quotes or proposals to them on subcontracts and/or a notice in all solicitations. Salem will include all DBEs that have submitted direct quotes/proposals or subcontract quotes/proposals on its solicitations.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

Salem 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 Salem 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 subrecipients.

Contract Assurance: 26.13(b)

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.

The City will include in each prime contract the contract clause which states that failure by the contractor or consultant to comply with ANY of the requirements of 49 CFR Part 26 is a material breach of the contract, which may result in the termination of the contract or such other remedies as the County deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since Salem 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 DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Anthony Delaney – Purchasing Agent

93 Washington St. Salem, MA

Phone Number: 978-745-9595

Email Address: adelaney@salem.com

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that Salem complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Mayor concerning DBE program matters.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one 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 three-year 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 Salem's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Council on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process in Massachusetts.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains Salem's updated directory of certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of Salem 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.

For a list of minority-owned banks in the general area, please contact the DBELO.

Section 26.29 Prompt Payment Mechanisms

Salem 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 Salem. The prime contractor agrees further to return

retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Salem. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory for DBE Participation

Salem maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We update the Directory annually based on new certified firms and make this information available on our website.

Section 26.33 Overconcentration

Salem has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

Salem has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

DBE program compliance requires regular monitoring of DBE participation on DOT-assisted projects. The City DBELO and/or staff conducts monitoring and tracking of contract payments and certified payroll records through construction management consultants and in-house personnel to validate prime contractors or consultants' proof of prompt payment to DBE firms participating on current contracts.

Salem 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 provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
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 periodic inspection of records.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business

The City will establish separate race, gender and local- neutral, per-contract SBE utilization goals on federally and non-federally funded projects as part of the DBE program when practicable. The goal will be established based on demonstrable evidence of the availability of ready, willing and able SBEs in the City's "service region" relative to all businesses ready, willing and able to participate on DOT-assisted and non-federally funded contracts and expressed as a percentage of the anticipated value of the contract. The City will evaluate each procurement for SBE prime and subcontracting opportunities. A determination will be made for the availability of small businesses. Inclusive with bid submissions, the City requires all bidders to provide a list of the DBE/SBE subcontractors to be utilized to meet the DBE/SBE goal or requires GFE documentation for bidders not meeting the DBE/SBE established contract goal. Proof of goal attainment must be provided with the bid submission, on the bid due date. All GFE submissions must adhere to the requirements specified within this policy. The City will require the successful prime contractor to report payments to SBE subcontractors as determined by the DBELO.

Additional Program elements will include the following steps:

Step 1: The City may set-aside selected federally and non-federally funded procurements for small business participation only, provided that it is determined by the DBELO that availability of SBEs is abundant relative to the applicable NAICS Code and in such numbers to satisfy public procurement competition requirements.

Step 2: The City shall research and make available to DBEs/SBEs any resources and/or tools that may increase the possibility of participation, such as bonding or insurance assistance programs, technological tools, education resources, and contractor match-making opportunities.

Step 3: Prompt Payment Mechanisms will ensure contract clause to require prime contractor to pay subcontractor for satisfactory and full payment of contracts no later than 30 days from receipt of each payment received from the City.

- i. The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the Contractor receives from the Sponsor Agency. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with the City's prior written approval. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor, deficient sub-consultant performance, and/or noncompliance by a sub-consultant.
- ii. The Contractor further agrees to release retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is completed and accepted. Any delay or postponement of payment over thirty (30) days may take place only for good cause and with Sponsor Agency's prior written approval.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

Salem does not use set-asides or 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 goal calculations can be found in Attachment 4 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) Salem will submit its overall three-year goal to DOT on August 1 of each year the three year goals are due to be posted. Before establishing the overall goal every three years, Salem will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs.

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 the City's principal office for 30 days following the date of the notice, and informing the public that the City will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of the year the goal is due. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposed goals 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 the year the proposed goals are due, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Goal Setting and Accountability

If the awards and commitments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the City will:

- Analyze in detail the reason for the difference between the overall goal and the actual

awards/commitments.

- Establish specific steps and milestones to correct the problems identified in the analysis.
- Prepare a Shortfall Plan at the end of the affected fiscal year and make it available to federal agencies if requested.

Section 26.49 Transit Vehicle Manufacturers Goals

Salem 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, Salem 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(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found when the goal calculation is updated every three years. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts). The following list shows all the race-neutral methods listed in this CFR section, but does not necessarily mean the County participates in all of them.

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses. Encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as 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);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities with pre-bid and pre-proposal meetings with prime contractors both DBEs and Non-DBEs to review the requirements of the program and assist with the bidding process. (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

5. 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;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print or electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Section 26.51(d-g) Contract Goals

Salem will use contract goals to meet any portion of the overall goal Salem 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 Federal share of a DOT-assisted contract.

As part of its goal monitoring efforts, City of Salem may make adjustments to the goal in accordance with Section 26.51(f)(2) of Part 26. This provision states that if, during the course of any three-year period in which the City is using contract goals, it determines that it will exceed its overall goals, it must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. Similarly, if City of Salem determines that it will fall short of the overall goal, we will make appropriate modifications in its use of race-neutral or race-conscious (contract) measures to allow it to meet the overall goal.

Section 26.53 Good Faith Efforts Procedures

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

These Good Faith Effort (GFE) guidelines are applicable to both federally and non-federally funded opportunities that have established small business participation goals.

It is the City's intent and policy to fulfill its small business (DBE, SBE, SLBE, DVBE, and MWBE) participation goals. If a bidder fails to meet established contract goal(s), the City must determine whether the bidder made good faith efforts (GFE) to meet the goals. Efforts that are merely pro forma shall not be deemed as made in "good faith". Documentation of the bidder's good faith effort activities, which must have been completed prior to the bid due date and time, shall be reviewed and considered part of the bid submission that does not meet the established small business participation goal. If submitting GFE, all documentation shall be made available to the City for evaluation up to but not later than seventy-two (72) hours after the designated bid due date and time. The bidder's efforts to reach out to small, local, and disadvantaged firms shall be evaluated based upon the level of effort put into achieving the factors outlined below. Failure to meet the small business participation goals will not by itself be the basis for disqualification or determination of noncompliance with the DBE Program. However, failure to meet the goal, coupled with failure to submit supporting documentation of GFE undertaken, will render the bid non-responsive. A bidder shall certify, via the Certificate of GFE by Contractor form and all backup documentation, which actions it took in order to establish that it made reasonable GFE to meet an established contract small business participation goal.

Good Faith Effort (GFE) Factors: if an established contract small business participation goal cannot be met, and a bidder includes GFE documentation as part of its bid submission, the following factors will be evaluated by the City to determine if sufficient GFE was undertaken to meet established contract small business participation goals.

Factor 1: Attendance at Pre-Bid Meeting/Job Walk

Effort: Attendance at pre-bid conference and/or job walk, if held by the Agency (and deemed mandatory) to meet potential SBEs and DBEs who can perform the contracted work.

Evidence: Name and date of person(s) attended to be verified by sign-in sheet.

Factor 2: Identify Specific Items of Work

Effort: Select portion(s) of work to be performed by DBEs, SBEs or MBEs in order to increase the likelihood of meeting the goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate utilization even when the Prime Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

Evidence: Identified scope(s) of work the Prime Bidder intends to offer to or be performed by the subcontractor to meet the goal. (See Prime Proposer & SubProposer/Supplier Report Worksheet)

Factor 3: Advertisement of Subcontracting Opportunities

Effort: Advertise, not less than fifteen (15) calendar days before bid submittal due date, in appropriate print or electronic media including, weekly or daily newspapers, trade association publications, trade journals, trade social media platforms, or other media to solicit DBE, SBE, or MBE firms interested in the project.

Evidence: Proof of advertisements placed, and /or proof of publication containing at minimum the information specific in Factor 2.

Factor 4: Written Notification of Contracting Opportunity and Request for Bids/Proposals

Effort: Issue written notice of Prime Bidder's interest in soliciting DBE, SBE, and MBE firms. Notices should be sent at least fifteen (15) calendar days prior to bid submittal due date; and must be sent to a minimum of ten percent (10%) of certified, "ready, willing, and able" firms listed under the applicable subcontracting scope of work and corresponding NAICS code(s). If ten percent (10%) of certified firms is less than ten (10) total firms, then all certified firms shall be notified.

Evidence: Copy of the solicitation notification, list of recipients grouped by each identified subcontracting area and NAICS code – including pertinent contact information, such as firm name, email address, physical address, phone number, and date contacted for all firms per subcontracting area.

City will take into account the performance and success of other Prime Bidders in meeting established small business participation contract goals.

Evidence: The City will evaluate whether or not a successful bidder made all reasonable efforts toward meeting the established small business participation goal, in lieu of submitting GFE, as compared to that of any non-successful bidders.

Good Faith Effort (GFE) Review and Evaluation: if GFE documentation is included (or expected) as part of the bidder's submission package, the review and evaluation process will be completed within three (3) business days of receipt by the Contracts Compliance Administrator. The GFE factors will be evaluated independently, and as a whole.

- a. Initial Review – the DBELO or has the primary responsibility for reviewing GFE documentation and determining whether such documentation constitutes a good faith effort in achieving established small business participation goals. A written summary of the review will be provided for inclusion in the procurement file.
- b. Administrative Appeal – if the City Attorney, after review of the GFE documentation, determines that insufficient good faith efforts have been undertaken, the bidder has the right to request an Administrative Review by submitting a bid protest (see Board Policy 468: Procurement Protest Procedures).

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

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

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

Information to be submitted (26.53(b))

Salem 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 30 days of being informed by Salem 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: City Attorney, 93 Washington St., Salem, MA. or other delegated staff. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

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

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

In this situation, The City will require the prime contractor to obtain 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, the City's Contracting Officer will issue an order stopping all or part of payment/work until satisfactory action has been taken.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [Name of Recipient] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

Section 26.55 Counting DBE Participation

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

SUBPART D & E - CERTIFICATION STANDARDS AND PROCEDURES

Section 26.83 Certification

The City does not certify a business as a DBE, the certification process is performed by the Commonwealth of Massachusetts. However, the City ensures that only DBE firms currently certified by the Commonwealth will participate as DBEs on DOT-assisted contracts.

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. Notwithstanding any contrary provisions of state or local law, the City will not release personal

financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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 make available for inspection upon request by any authorized representative of Salem 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. A documented certification of DBE use will be completed.

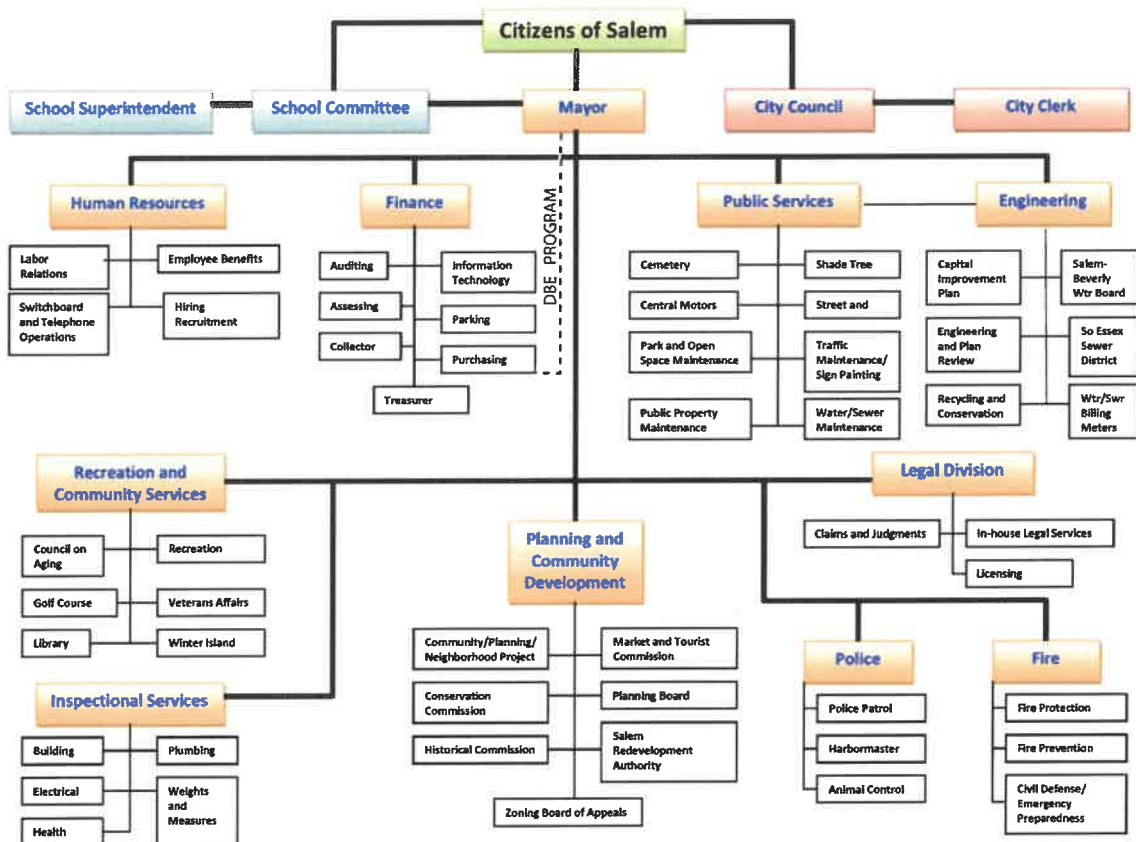
Failure by the contractor or consultant to comply with ANY of the requirements of 49 CFR Part 26 is a material breach of the contract, which may result in the termination of the contract or such other remedy as the City deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsible.

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Overall Goal Calculation
- Attachment 5 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 6 Regulations: 49 CRR part 26

Organizational Chart



DBE Liaison Officer

Serve as the DBELO with responsibility for developing, implementing and monitoring the DBE program, in coordination with other appropriate management and officials, including gathering and reporting statistical data and other information as required by DOT/FTA; reviewing third party contracts and purchase requisitions for compliance with the DBE program; working with all departments to set overall annual goals; ensuring that bid notices and requests for proposals are available to DBEs in a timely manner; identifying contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifying ways to improve progress); analyzing the City's progress toward attainment and identifies ways to improve progress; participating in pre-bid meetings; advising

management and the Board of Directors on DBE matters and achievement; ensuring that management is aware of the DBE policy and commitment to DBE participation, matters, and achievement.

Oversee DBE information tracking, data analysis, and reporting by reviewing databases, preparing and analyzing statistical reports, assessing DBE utilization, performing contract compliance with DBE regulations, preparing various DBE related program updates for Board approval, submitting reports to the City Council, management, staff, and appropriate outside agencies, and developing and maintaining data regarding the DBE Program.

Conduct outreach, encourage participation, and provide technical assistance for DBEs, including providing DBEs with information and assistance in preparing bids, such as obtaining bonding and insurance; plan and participate in DBE training seminars; act as liaison to the Unified Certification Program (UCP) in Massachusetts; provide outreach to DBEs and community organizations to advise them of opportunities; maintain the City updated directory on certified DBEs; attend related events.

Provide public information services by preparing and distributing annual goal setting documents to various organizations, responding to requests for information pertaining to the DBE program, competing for City contracts with DBE requirements, scheduling and facilitating public review of the annual DBE goal setting proposals, providing technical supports regarding all aspects of the DBE program to vendors interested in or participating in the DBE program, planning, coordinating and conducting DBE and small business outreach events and conferences; process and resolve or make recommendations to management following DBE complaints.

Monitor the City's contractors and subrecipients for DBE activities as required by the City or federal, state, or local law to ensure compliance with implementing all required aspects of a DBE program. Work with contractors and subrecipients to provide technical guidance as well as identify and correct noncompliance.

Serve as the primary contact for the City's other diversity, small, and local business programs; responsible for developing, implementing, reviewing and analyzing all aspects of such programs; conducting the City's outreach efforts to applicants and firms, employees, transportation-related organizations, and various community and business groups to advise them of contract opportunities and encourage participation; providing technical assistance; preparing reports as needed; and making recommendations for new business diversity, small business, or other similar programs.

Attachment 2 – DBE Directory

Certified M/WBEs and DBEs can be found in a searchable directory at:

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

Attachment 3 – Monitoring and Enforcement Mechanisms

Salem has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, breach of contract action, pursuant to the terms of the contract and breach of contract action, pursuant to state 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 4 – Overall Goal Calculation Methodology

STEP 1: Determine the Base Figure for the Relative Availability of DBEs (26.45)

The first step is to determine a base figure for the relative availability of DBEs available to propose on the City's DOT-assisted contracting opportunities projected to be solicited during the triennial goal period. The City followed the prescribed federal methodology to determine relative availability in our market.

The City's local market area consists of the geographic area in which a substantial majority of the City's contracting dollars are expended and/or where the substantial majority of contractor and subcontractor bids or proposals are located. Recent Bidder's List data demonstrates that most prime contractors bidding on City's contracts are from throughout the state of Massachusetts which is the City's established market area. The geographic area is limited to Essex County for fuel, automotive repair, and vehicle rental to best support operations.

To determine the base figure, the City used a combination of data sources as permitted under Title 49 of the Code of Federal Regulations, Section 26.45, subsection (c)(2). Specifically, the City identified NAICS codes for anticipate work for the period of this goal, including those shown in Table 2:

Table 1: NAICS Codes

Project Element	NAICS Code
Fuel dealers	447110, 447190
Automotive repair and maintenance	811111
Software publishers	519190
Telephone answering services	561421
Translation Services	541930
Vehicle Rental	532111, 532112

To determine the total number of firms ready, willing, and able to perform the anticipated work (the denominator), the City reviewed the most recent Census Bureau County Business Patterns for each of the above referenced NAICS codes. For fuel dealers, automotive repair and maintenance, and vehicle rentals the geographic area was limited to Essex County. For software publishers, translation services, and telephone answering services, the geographic area was set for the state of Massachusetts.

Once the types of firms that would be performing work on DOT-assisted contracts was identified, the City then relied upon a database of DBE vendors that are registered with the Commonwealth Supplier Diversity Office (SDO) to determine firms that would be reasonable to assume are ready, willing, and able to perform the anticipated work (the numerator).

The base figure for the relative availability of DBEs was calculated as follows:

Ready, willing, and able DBEs = 4

All firms ready, willing and able= 534

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was: 0.63%.

The City further applied weighting as the next step as FTA guidance suggests, because the availability of DBEs varies by NAICS code, and the anticipated amount of funding for each type of work also varies.

Table 2: Weighting of DBE by NAICS Code

NAICS Code	Project	Weight	Availability	Weighted Base Figure
447110, 447190	Fuel dealers	0.0851	0.0048	0.0004
811111	Automotive repair and maintenance	0.2128	0.0099	0.0021
519190	Software publishers	0.0851	0.0000	0.0000
561421	Telephone answering services	0.3830	0.0000	0.0000
541930	Translation Services	0.0463	0.0189	0.0009
532111, 532112	Vehicle rental	0.2340	0.0000	0.0000
Total				0.0034
Total Expressed as Percent				0.34%

The difference with weighting applied is a goal of 0.34%.

Step 2: Adjustments to the Base Figure

The City did not have sufficient contract activity to establish a DBE goal for the period of FFY2021-2023 and this is the first set of goals developed by the City on DOT projects. Therefore, there is inadequate data to adjust the base figure based on past participation.

The City reviewed and analyzed two disparity studies to determine the existence of statistical disparities in the ability of DBEs to obtain financing, bonding, and insurance and to better understand potential barriers between availability and utilization. The City acknowledges that the base figure determined in Step 1 reflects the amount of participation that DBEs would be expected to achieve in the absence of present and past effects of discrimination. Minority- and women-owned businesses experience barriers that place these businesses at a disadvantage for competing for federal contracting. Because the City does not have a sufficient statistical foundation on which to determine an appropriate adjustment for these factors, the City will not make any adjustment to the base figure to account for the continuing effects of past discrimination at this time. 49 CFR Part 26 states that there must be a rational relationship between the data used to make the adjustment and the actual numerical adjustment made. Thus, the City has not used this data to further adjust its FFY 2024-2026 base figure for its overall DBE goal.

I. Utilization of Race-Conscious and Race-Neutral Projections

Race conscious goals will be set for the Salem Skipper ride sharing service award only. The City anticipates that the prime awardee can subcontract for fuel, automotive repairs, software publishing, and customer service. There are three DBEs providing fuel and automotive repair services in the Salem area. Since the Ride Share provider will be procuring goods and subcontracts, it is the expectation that there will be a contract specific race-conscious goal of 0.34%.

The City will take affirmative steps to achieve its DBE goal using race neutral measures, which will include:

- Making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses;
- Unbundling large contracts to make them more accessible to small businesses;
- Encouraging prime contractors to subcontract portions of the work that might otherwise be performed by the prime contractor;
- Participating in or sharing information about City contracting opportunities in transportation planning industry-specific outreach events for small businesses; and
- Providing technical assistance and other support services to facilitate consideration of DBEs and other small businesses.

Attachment 5 – Form 1 & 2 for Demonstration of Good Faith Efforts

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

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION
The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):
<input type="checkbox"/> The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.
<input type="checkbox"/> The bidder/offeror (if unable to meet the DBE goal of ____%) is committed to a minimum of ____% DBE utilization on this contract a 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)
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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 – Regulations: 49 CFR Part 26

eCFR :: 49 CFR Part 26 -- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs