



CITY OF HARRISONBURG
PUBLIC
TRANSPORTATION

**DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM**

February 2025
Update

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
Harrisonburg Department of Public Transportation

Objectives /Policy Statement (§§26.1, 26.23)

The City of Harrisonburg Department of Public Transportation (HDPT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. HDPT receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, HDPT certifies and assures that it will comply with 49 CFR Part 26.

It is the policy of HDPT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also HDPT 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 DBE.
5. To help remove barriers to the participation of DBEs in DOT assisted contracts.
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Director of Public Transportation has been designated as the DBE Liaison Officer (DBELO). In that capacity, Gerald Gatobu 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 HDPT in its financial assistance agreements with the Department of Transportation.

HDPT has disseminated this policy statement to the City of Harrisonburg, City Council and all the components of our organization. The policy and program are provided to DBE and non-DBE businesses through City of Harrisonburg's procurement website, in solicitations and during outreach events.



Gerald Gatobu, Director of Public Transportation

2/25/2025
Date

SUBPART A – GENERAL REQUIREMENTS

Objectives (§§ 26.1, 26.23)

The objectives are found in the Policy Statement on the first page of this program.

Applicability (§26.3)

HDPT is the recipient of federal transit funds authorized Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, [Public Law 105-178](#), Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), [Public Law 109-59](#), 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), [Public Law 112-141](#), 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) [Public Law 114-94](#); and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) ([Pub. L. 117-58](#)), [Public Law 117-58](#).

Definitions (§26.5)

HDPT adopts the definitions contained in §26.5 for this program. (Attachment 2)

Non-discrimination Requirements (§26.7)

HDPT 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, HDPT 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.

Record Keeping Requirements (§26.11)

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

HDPT 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.

DBE reports will be submitted on a semi-annual basis. The submissions will occur on June 1 and December 1 in TrAMS, the DBE reporting module.

Bidders List: 26.11(c)

HDPT 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 bidders list will include the name, address, DBE/non-DBE status, age of firm, race and gender, NACIS code, and annual gross receipts of firms.

HDPT will collect the data from all bidders for federally assisted contracts by requiring the information in [§26.11\(c\)](#) to be submitted with their bids or initial responses to negotiated procurements. HDPT will enter this data into the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to [§ 26.53\(e\)](#), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

We will collect this information in one or more of the following ways:

- a. HDPT will consult the Virginia Department of Minority Business Enterprise's (DMBE) DBE directory when establishing or updating a bid list for each new procurement opportunity. DMBE is the state agency dedicated to enhancing the participation of our small, women- and minority-owned businesses in Virginia's procurement opportunities.
- b. A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.
- c. A notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.
- d. A Bidder's List Survey requesting vendors complete the needed information.

Assurances (§26.13)

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

HDPT 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 [Recipient] 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.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

DBE Program Updates (§26.21)

As the recipient of an award of \$670,000 or more in FTA planning, capital, or operating assistance in a federal fiscal year, we will carry out this program meeting all FTA Tier I requirements until all funds from DOT assistance have been expended. We will provide DOT updates representing significant changes in the program.

Policy Statement (§26.23)

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

DBE Liaison Officer (DBELO) (§26.25)

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

Gerald Gatobu, Director, Harrisonburg Department of Public Transportation, 475 E. Washington Street, Harrisonburg, VA 22802, 540-217-4781, gerald.gatobu@harrisonburgva.gov.

In that capacity, the Director is responsible for implementing all aspects of the DBE program and ensuring that HDPT complies with all provisions of 49 CFR Part 26. An organization chart displaying the DBELO's position is found in Attachment 1 to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes HDPT's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager and City Council on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in Virginia.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Provides HDPT with information on certified DBEs.

DBE Financial Institutions (§26.27)

It is the policy of HDPT 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 contracts to make use of these institutions. At the current time the Virginia DMBE does not list any financial institutions as DBEs.

Prompt Payment Mechanisms (§26.29)

Prompt Payment: 26.29(a)

HDPT 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 20 days from the receipt of each payment the prime contractor receives from HDPT. The prime contractor agrees further to return retainage payments to each subcontractor within 20 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of HDPT. This clause applies to both DBE and non-DBE subcontractors.

Directory (§26.31)

In support of HDPT's DBE program, the Virginia Department of Minority Business Enterprise (DMBE) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, NAICS code, certification number, and the type of work the firm has been certified to perform as a DBE. DMBE updates the directory as necessary. A copy of the directory is made available at <https://www.sbsd.virginia.gov/directory>.

Overconcentration (§26.33)

HDPT has not identified that overconcentration exists in the types of work that DBEs perform. HDPT will continue to evaluate the DBE Program to determine if overconcentration exists.

Business Development Programs (§26.35)

HDPT neither elected nor been required to establish a specific business development program as part of the DBE Program.

Monitoring and Enforcement Mechanisms (§26.37)

HDPT 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.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is being performed by the DBEs. This will be accomplished by a written certification that HDPT has reviewed contracting records and monitored work sites on which DBEs are performing and will occur for each contract/project on which DBEs are participating.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of the contract award. This tally provides frequent comparison of cumulative DBE awards/commitments to DOT-assisted contracts and whether any projected shortfall exists.

Small Business Participation (§26.39)

The goal of the City of Harrisonburg is to facilitate competition by small business concerns by taking reasonable steps to eliminate obstacles to their participation in HDPT contracting opportunities per 49 CFR Part 26 Section 39.

HDPT is committed to encouraging small business participation in bidding contracts for transit projects. In implementing this element of 49 CFR 26, HDPT will use the definition of small business as defined in 13 CFR Part 121 Small Business Size Regulations, except that such concerns do not also exceed the cap on the three-year average annual gross receipts specified in 49 CFR 26.65(b) §3, currently set at \$22.41 million prior to January 6, 2022. After January 6, 2022, firms must meet both SBA and the DBE Statutory Cap, meaning they will not exceed on the five-year average annual gross specified in 13 CFR 121. Effective March 1, 2024, DBE's seeking participation in FTA-assisted contracts the annual gross threshold of contracts is \$30.72 million under 49 CFR part 26. This will ensure that all small businesses participating in contracts for HDPT (DBE's and non-DBE's) are subject to the same size standards.

All aspects of HDPT's program to foster participation in contracting opportunities will be race-neutral.

To facilitate competition by small business concerns, HDPT will make efforts to expend a portion of DOT-assisted contracts with small businesses, per 49 CFR Part 26 Section 39, using the following strategy:

1. HDPT will ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform:
2. Avoid unnecessary or unjustified bundling of contract requirements that may place a contract outside the size for participation by small businesses and structure a reasonable number of prime contracts to be of a size for small businesses can perform.
3. HDPT has limited subcontracting opportunities because of its relatively small size. The ITS Transit System Upgrade is the largest contract for HDPT, approximately \$1.5 million for the transit portion. Staff has worked with the contractor to make them aware of the both the DBE and Small Business elements of our DBE Program to be sure the contracting opportunities are identified.

Strategies:

On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

To meet the portion of the overall goal HDPT projects to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

HDPT will actively implement program elements to foster small business participation.

- Recordkeeping procedures for Small Business Participation, HDPT will implement all elements of its program to foster small business participation in HDPT contracting opportunities. The verification process to ensure that a firm is in fact a small business concern begins with the *Form: Minority and Small Business Status of Business Ownership Bidders List Information* (attached) After the form is received, the VDMBE will be searched for confirmation.

Outreach

An important part of HDPT's small business element is its outreach activities. These outreach efforts include active, effective steps to increase small business participation, such as soliciting bids/proposals from SBEs, responding to requests for information, participating at pre-bid and pre-proposal meetings, and posting bid information on the City of Harrisonburg Purchasing website.

- HDPT bid opportunities for RFP's and ITB's are posted on the City of Harrisonburg's purchasing website. This will allow small businesses the opportunity to view and respond to HDPT procurements.
- HDPT bid opportunities for RFP's and ITB's are posted on EVA - Virginia's Total Electronic Procurement System website:
[eVA - Virginia's eProcurement Marketplace - eVA](#)
- A Solicitation Notification Summary of Vendors Notified is sent to the City's Purchasing Agent who then forwards the email to HDPT. The email is filed with the procurement documents. This method reaches vendors HDPT may not be aware of.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-asides or Quotas (§26.43)

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

Overall Goals (§26.45)

In accordance with Section 26.45, HDPT will submit its triennial overall DBE goal to FTA on August 1 of each third year specified by FTA. HDPT is assigned to Group C.

HDPT will establish project-specific DBE goals as directed by FTA. If directed, the project goal will cover the entire length of the project to which it applies.

The process generally used by HDPT to establish overall DBE goals is as follows:

HDPT's overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs").

Step 1. HDPT begins the goal setting process by determining a base figure for the relative availability of DBEs. HDPT is a small urban system that is in an area that has a very small number of DBEs.

Use DBE Directories and Census Bureau Data. Determine the number of ready, willing, and able DBEs in the market from the DMBE DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing, and able businesses

available in the market that perform work in the same NAICS codes. Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in our market.

Step 2. Once HDPT has calculated a base figure, we will examine all the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal.

Evidence to be considered when adjusting the base figure:

Availability of DBEs and the current capacity of DBEs to perform work in our DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.

HDPT will consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the program.

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent HDPT can relate it to the opportunities for DBEs to perform in your program.

HDPT's overall goal will be expressed as a percentage of all FTA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that HDPT will expend in FTA assisted contracts in the three forthcoming fiscal years.

HDPT is required to submit an overall goal to FTA every three years. The overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

HDPT will include a description of the methodology you used to establish the goal, including the base figure and the evidence with which it was calculated, and the adjustments made to the base figure and the evidence HDPT relied on for the adjustments, with the overall goal submission. HDPT will also include the projection of the portions of the overall goal we expect to meet through race-neutral and race-conscious measures.

Timely submission and operating administration approval of the overall goal is a condition of eligibility for DOT financial assistance.

Public Participation In establishing an overall goal, HDPT must provide for public participation

Before establishing the overall goal, HDPT will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and HDPT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, HDPT 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 your principal office for 30 days following the date of the notice, and informing the public that HDPT and FTA, Regional Civil Rights Officer, will accept comments on the goals for 45 days from the date of the notice. The notice will be published in the *Daily News Record, Harrisonburg, Virginia*.

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

Transit Vehicle Manufacturers (§26.49)

HDPT 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 section 49 CFR Part 26.49. Alternatively, HDPT 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. For transit vehicle awards made November 3, 2014, and after, FTA recipients are required to submit, within 30 days of making an award, the name of the successful bidder for transit vehicles and the total dollar value of the contract. This notification should be submitted by using the online Transit Vehicle Award Reporting Form located on FTA's Civil Rights DBE Webpage. The online reporting form was initiated in June 2016.

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

HDPT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. HDPT uses the following race-neutral means to increase DBE and other Small Business participation:

1. HDPT will consider breaking down contracts into smaller parts, where economically feasible, prorating payments and delivery schedules.
2. HDPT will use the least complicated bid forms appropriate to each procurement solicitation, and will consider adjusting time, whenever feasible, in order to minimize bidding constraints.
3. HDPT will work closely with financial institutions, insurance and bonding companies and prime contractors in an effort to alleviate financial barriers to participation. The company will consider waiving or reducing bonding and insurance where legally possible.
4. HDPT will provide information on business opportunities for DBEs and other Small Business participation through the use of local newspaper and other media and by periodically informing the DBEs of such opportunity.
5. HDPT will encourage the formation of joint ventures among Small Business, DBEs and between disadvantaged and non-disadvantaged firms, which will provide the opportunity for Small Business and DBEs to gain experience.
6. HDPT will offer information on its organization and contractual needs.
7. HDPT will provide DBEs and Small Business with the opportunity to review and evaluate similar successful bid documents.
8. HDPT will make available the DMBE directory through electronic means to the widest feasible universe of prime contractors.
9. HDPT will hold pre-bid conferences on all major contracts to provide firms with the opportunity to have questions answered and to provide HDPT an opportunity to explain DBE and Small Business requirements.

Contract Goals (§26.51)(d-g)

HDPT will use contract goals to meet any portion of the overall goal HDPT 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.

Good Faith Efforts (§26.53)

Information to be submitted

HDPT treats bidder/offers' compliance with good faith efforts requirements as a matter of responsibility.

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 participation
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 contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

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

The following personnel 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 responsible: HDPT Director of Public Transportation.

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. In a design-build contracting situation, in which the recipient solicits proposals to design and build a project with minimal-project details at time of letting, the recipient may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in [26.53\(b\)](#) of this section that applies to design-bid-build contracts. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the recipient must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The recipient and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

Administrative reconsideration

Within five (5) days of being informed by HDPT that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following official:

Shane Smith, Procurement Manager
409 South Main Street, 3rd Floor
Harrisonburg, VA 22801

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make 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. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

We 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, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification: The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Harrisonburg 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/offers, 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 3), 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.

Counting DBE Participation (§26.55)

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

SUBPARTS D & E – CERTIFICATION

Certification Process (§§26.61 – 26.91)

HDPT relies on the Virginia Department of Minority Business Enterprise to use the certification standards of Subpart D of part 26 and the certification procedures Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

The Certification Service Area of Virginia Department of Minority Business Enterprise is responsible for the certification of eligible small, women-, and minority-owned businesses to participate in the SWaM Procurement Initiative. This service area also certifies Disadvantaged Business Enterprises (DBEs) for participation under the Virginia Unified Certification Program (as part of the federal DBE Program). Service-Disabled Veterans are also able to obtain SWaM certification upon receipt of their certification by the Department of Veterans Services and by meeting the eligibility requirements of the SWaM Program.

Certification application forms and documentation requirements can be found at www.dmb.e.virginia.gov.

For information about the certification process or to apply for certification, firms should contact:
Virginia Department of Small Business and Supplier Diversity (SBSD)
101 N. 14th Street, 11th Floor
Richmond, Virginia 23219
(804) 786-6585 or visit their website at <https://sbsd.virginia.gov/>

Unified Certification Programs (§26.81)

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

The following is a description of the UCP: The Unified Certification Program for the Commonwealth was developed to bring effectiveness and efficiencies to the various certification programs underway by state agencies and institutions. For greater customer convenience, the programs were merged and housed within the DMBE. DMBE continues to enter into various agreements to provide DBE certification to the counties, airports, cities, and other recipients of U.S. DOT funds.

Procedures for Certification Decisions (§26.83-26.91)

HDPT will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. Virginia UCP's certification procedures are available at: <https://sbsd.virginia.gov/> at the DBE Certification tab.

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

U.S. Department of Transportation
Departmental Office of Civil Rights
Disadvantaged Business Enterprise Programs Division
1200 New Jersey Avenue SE
Washington, DC 20590

HDPT 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

Information, Confidentiality, Cooperation (§26.109)

Confidentiality

We will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Virginia Freedom of Information Act (Virginia Code § 2.2-3700, *et seq.*) provides that public records are generally available for inspection and copying. However, Virginia Code § 2.2-4342 provides that "trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction" are not subject to the Virginia Freedom of Information Act.

The bidder, offeror or contractor must (i) invoke these protections prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

Except as required by the Virginia Freedom of Information Act or other law, HDPT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DMBE) 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. The records are to be made available for inspection upon request by any authorized representative of HDPT 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 stated in the schedule of DBE participation.

ATTACHMENTS

Attachment 1: HDPT Organization Chart

Attachment 2: Definitions

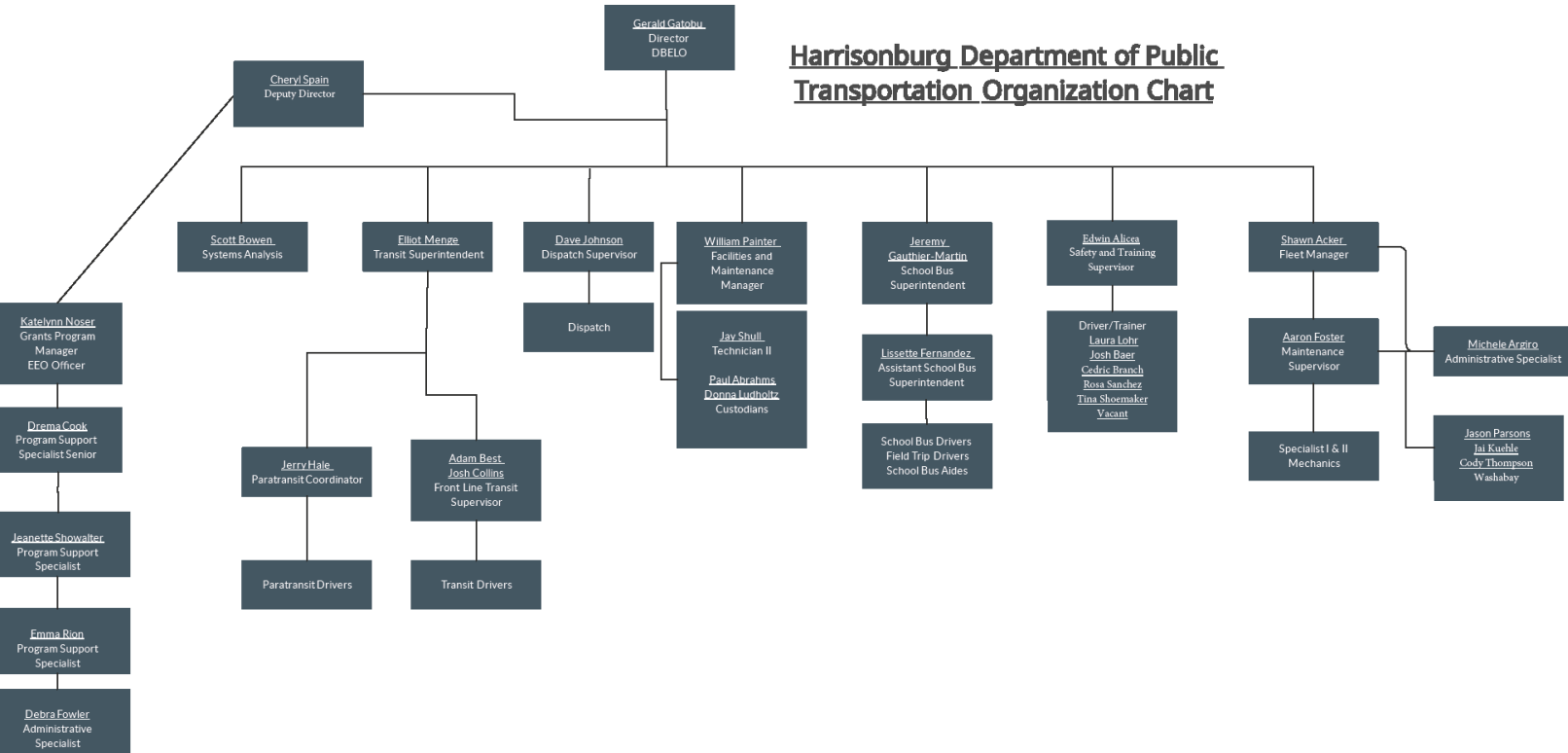
Attachment 3: Forms 1 & 2 for Demonstration of Good Faith Efforts

Attachment 4: Bidder's List Information

DBE Regulation, 49 CFR Part 26: Federal regulations setting out the Department of Transportation's DBE requirements in their entirety can be viewed on-line at [49 CFR Part 26 Sample Disadvantaged Business Enterprise Program | US Department of Transportation](#).

ATTACHMENT 1

Harrisonburg Department of Public Transportation Organization Chart



26.5 Definitions.

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 Metlakatla 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 Departmental Office of Civil Rights, 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; 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.

FTA Tier I recipient means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

FTA Tier II recipient means an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

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.

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 or *Native American Tribe* means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

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.

Notice of decision or *NOD* means determination that denies a firm's application or decertifies a DBE.

Notice of intent or *NOI* means recipients letter informing a DBE of a suspension or proposed decertification.

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 or *PNW* means the net value of an individual's reportable assets and liabilities, per the calculation rules in [§ 26.68](#).

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 online on the U.S. Census Bureau website: www.census.gov/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. The term does not include construction trailers or other temporary construction sites.

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 means 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 that has applied for such assistance.

Secretary means DOT's Secretary of Transportation or the Secretary's 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 member of a group 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 Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, 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 (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

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

Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

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).

ATTACHMENT 3

Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract 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)

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 4

APPENDIX Q

Minority Status of Business Ownership

Bidders List Information

The City of Harrisonburg Department of Public Transportation must maintain a Bidders List with information about the minority status of firms bidding on/receiving contracts/purchases with the City. Please identify your business below, and then complete the Bidders List minority status and income information about your business, by checking on the applicable line. Information provided will be confidential, and will be used only by the City of Harrisonburg to maintain bidders' records as required per 49 CFR Part 26.11.

Name of Business: _____

Address including City/State/Zip of Business Location: _____

Race and Gender of Firm's Majority Owner: _____

Type of Business: _____

Age of Business (years), Since Establishment: _____

1. Business Owned (51% or more) by a minority? Yes No

(Minorities include: Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the Small Business Administration.)

2. Is business certified as a Disadvantaged Business Enterprise? Yes No

If yes, when was the business certified, and by which agency? _____

3. NAICS Code: _____

Annual Gross Income of Business

Less than \$500,000

\$500,000 to \$1 million

\$1 million to \$2 million

\$2 million to \$5 million

\$5 million to \$10 million

\$10 million to \$15 million

\$15 million to \$19.5 million

\$19.5 million or above