

## Appendix A

## Arlington County DBE Program

**POLICY STATEMENT**<sup>1</sup>**Section 26.1, 26.23****Objectives/Policy Statement**

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

It is the policy of the County of Arlington to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the County's policy:

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

The assistant County Manager, manager of the Human Rights Office, has been designated as the DBE manager/DBE Liaison Officer. In that capacity, this individual is responsible for oversight of all aspects of the DBE program. The Transit Bureau is responsible for the implementation of the DBE program. All complaints shall be directed to the Arlington County Office of Human Rights in accordance with existing policies and procedures. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the County in its financial assistance agreements with the Department of Transportation.

The County's Designated Official, the director of the Transportation Division, has disseminated this policy statement to the County of Arlington Board, the Arlington County Manager and all of the components of the County. The County has distributed this statement to DBE and non-DBE business communities that perform work for the County on DOT-assisted contracts. Materials were distributed by electronic means; additional hard copies are available in the Office of the County Manager, the division of Transportation and the Office of Human Rights.

\_\_\_\_\_  
[Signature of Recipients Chief Executive Officer]

\_\_\_\_\_  
Date

<sup>1</sup> This Policy Statement is modeled upon the US DOT sample DBE program

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

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

### **Section 26.5 Definitions**

The County of Arlington will adopt 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.).

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

**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.

**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.

**DOT/SBA Memorandum of Understanding or MOU,** refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

**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, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-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.

**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 North American Industrial 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, 1997 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

**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 and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**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 Sec. 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 is:

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are
- (3) 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 American Indians, Eskimos, Aleuts, 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), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, 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.

**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).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

## **Section 26.7 Non-discrimination Requirements**

The Arlington County will not 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, Arlington County will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11(b)

The County through the Transit Bureau will report DBE participation to DOT as follows: Arlington County receives both FTA and FHWA funds. Therefore, the county will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### Bidders List: 26.11(c)

Arlington County 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 bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms through contracts and/or subcontracts with Arlington County.

The County will collect this information in the following ways: Arlington County will include a contract clause requiring prime bidders to report required information of all firms (subcontractors) who provide a quote on a County solicitation and a notice of requirement in all solicitations.

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

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

#### Assurance: 26.13(a)

The County of Arlington or any Department/division 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.*).

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

Contract Assurance: 26.13b

The County will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

Since the Arlington County will receive a grant \$250,000 or more in FTA planning capital, assistance in a federal fiscal year, and for FHWA funds authorized by the statute for which this part applies, the County will continue to carry out this program until all funds from DOT financial assistance have been expended. The County through the Transit Bureau will provide to 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)**

The County has designated the following individual as the DBE Liaison Officer/Manager:

*Raul Torres, Assistant County Manager  
Office of Human Rights  
Office of the County Manager  
2100 Clarendon Blvd., Suite 318  
Arlington, VA 22201  
703-228-7045  
[rtorres@arlingtonva.us](mailto:rtorres@arlingtonva.us)*

In that capacity, the DBE manager is responsible for oversight of all aspects of the DBE program and ensuring that the County of Arlington complies with all provision of 49 CFR Part 26. The

County will use the Office of Human Rights which has direct access to the County Manager of Arlington to investigate and resolve all DBE complaints. The DBE manager has direct, independent access to the County Manager concerning all civil rights program matters including DBE. An organization chart displaying the DBE and the Office of Human Rights position in the organization is found in Attachment 1 to this program.

The DBE manager utilizing both Human Rights and the Transit Bureau (TB) staff is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBE manager and the Transit Bureau have a staff of three and 1/2 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. (TB)
2. Reviews third party contracts and purchase requisitions for compliance with this program. (both)
3. Works with all departments to set overall annual goals. (TB)
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner. (TB)
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals)(both)
6. Analyzes County of Arlington's progress toward attainment and identifies ways to improve progress. (both)
7. Participates in pre-bid meetings. (both)
8. Advises the County Manager\governing body on DBE matters and achievement. (DBE Manager)
9. Provides DBEs with information on resources for assistance in the Washington Metro Area in preparing bids, and obtaining bonding and insurance.
10. Plans and participates in DBE training seminars. (DBE Manager)
11. Provides outreach to DBEs and community organizations to advise them of opportunities. (NA)
12. Keep updated versions of the VDOT DBE Certified and Unified DBE Certification directories available for interested parties. (NA)

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

It is the policy of the County of Arlington to use where possible and appropriate, 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. The County will make efforts to identify and use such institutions: The County will address this element of the program by August 2008. A list of institutions identified will be part of the quarterly report due September 30, 2008.

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

The County of Arlington 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 contractor no later than 30 days from the receipt of each payment (the prime contractor receives) from Arlington County. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County DOT. This clause applies to both DBE and non-DBE subcontracts.

**Section 26.31 Directory**

The County of Arlington will not be certifying DBE firms. The County will utilize the Unified Certification Program Directory (UPC) of Washington Metropolitan Regional Transportation Authority (WMATA) and Washington DC –DOT (DDOT) and Virginia Department of Transportation (VDOT). These organizations maintain 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. The County will provide revised information on County bidders to the appropriate certifying agency at the date required for DDOT/WMATA to revise the Directory. All requests for the Directories will be fulfilled in hard copy only until the electronic version becomes available. A copy of the Directory will be sent to the FTA regional officer upon request. A copy is available for review in office of the Department of Transportation, Suite 900, The Office of Human Rights, Suite 318 and the Office of Purchasing, Suite 500 at 2100 Clarendon Blvd, Suite 900 Arlington VA, 22201.

**Section 26.33 Overconcentration**

The County of Arlington will gather information and document as to whether or not over concentration exists in the types of work that DBEs perform.

**Section 26.35 Business Development Programs**

The County of Arlington will not be establishing a business development program because of the close proximity to Washington DC and the extensive resources unique to the DC region. Links to the Office of Small Business programs for business are on the Arlington Web site. Both web sites are in English and Spanish.

**Section 26.37 Monitoring and Enforcement Mechanisms**

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

- (1) The County 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) The County will 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 field inspections and record reviews by the DBE manager and staff.
- (3) The County will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING****Section 26.43 Set-asides or Quotas**

The County of Arlington does not use quotas or set asides 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 annually.

In accordance with Section 26.45(f) the County of Arlington will submit its overall goal to DOT on August 1 of each year.

Following the goal setting the County 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 County Manager's office for 30 days following the date of the notice, and informing the public that The County and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be on the County and Department of Transportation web sites. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and the County's responses.

The County will begin using the overall goal on October 1 of each year, unless the County has received other instructions from DOT. If the County chooses to establish a goal on a project basis, the County will begin using its goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### **Section 26.49 Transit Vehicle Manufacturers Goals**

Arlington County 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, Arlington County 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**

This section is not applicable as the County will use race-neutral participation. This section of the program will be updated annually when the goal calculation is updated.

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

The County will not use contract goals to meet any portion of the overall goal. The County projects being able to meet the goal using race-neutral means. The County goals established are only on those DOT-assisted contracts.

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

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

Since the County will not be using contract goals to meet the total DBE goal, this section is not applicable. However, the County will document Good Faith Efforts procedures on the County's part to meet the County's goal.

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

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

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

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The County of Arlington will not be certifying DBE business rather using the area UCP list certified by WMATA and District Department of Transportation and the VDOT certified list. For information about the certification process or to apply for certification, firms should contact: any of the following WMATA staff.

Angela Martin  
 Manager, DBE & Business Development  
 Programs  
 202-962-2464  
[amartin@wmata.com](mailto:amartin@wmata.com)

Rachel R. Brown  
 DBE and Compliance Specialist  
 202-962-2460  
[rbrown@wmata.com](mailto:rbrown@wmata.com)

Denise D. Warner  
 DBE and Compliance Specialist  
 202-962-2485  
[dwarner@wmata.com](mailto:dwarner@wmata.com)

Aaron V. Leathers  
 DBE and Compliance Specialist  
 202-962-6507  
[aleathers@wmata.com](mailto:aleathers@wmata.com)

John H. L. Nash, Jr.  
 DBE and Compliance  
 Specialist  
 202-962-2057  
[jnash@wmata.com](mailto:jnash@wmata.com)

Tammy Paige-Sterling  
 DBE Program Assistant  
 202-962-2409  
[tpsterling@wmata.com](mailto:tpsterling@wmata.com)

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The County is a member of a Unified Certification Program (UCP) administered by WMATA. The UPC will meet all of the requirements of this section. The following is a description of the UCP: The UCP consists of the District of Columbia, Department of Transportation and WMATA who perform all of the certifications of firms in accordance with the DBE regulations. Jurisdictions such as the City of Alexandria, the Counties of Fairfax and Arlington participate as “users” of the directory only.

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

#### Re-certifications 26.83(a) & (c)

This section is not applicable as the County of Arlington will not have a certification component in the program.

#### “No Change” Affidavits and Notices of Change (26.83(j))

This section is not applicable as the County of Arlington will not have a certification component in the program.

#### **Section 26.85 Denials of Initial Requests for Certification**

This section is not applicable as the County of Arlington will not have a certification component in the program.

#### **Section 26.87 Removal of a DBE's Eligibility**

This section is not applicable as the County of Arlington will not have a certification component in the program.

#### **Section 26.89 Certification Appeals**

This section is not applicable as the County of Arlington will not have a certification component in the program.

### **SUBPART F – COMPLIANCE AND ENFORCEMENT**

#### **Section 26.109 Information, Confidentiality, Cooperation**

In accordance with applicable Federal, state and local law, The County will endeavor to safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information.

Notwithstanding any contrary provisions of state or local law, the County will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

#### Monitoring Payments to DBEs

The County will require prime contractors to maintain records and documents of payments of DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County of Arlington or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The County will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

### **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculation
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of DBE's Eligibility
Attachment 9	Regulations: 49 CRR part 26

**Attachment 1**  
**Organizational Chart**

**Attachment 2**

**DBE Directory**

Copy of the UCP List of Certified DBE's in Washington DC region is available upon request. Requests should be made to the Department of Transportation, The Office of Human Rights or the Office of Purchasing.

**Attachment 3****Monitoring and Enforcement Mechanisms**

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

- (1) Breach of contract action, pursuant to the terms of the contract;
- (2) 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:
  - a. Suspension or debarment proceedings pursuant to 49 CFR part 26
  - b. Enforcement action pursuant to 49 CFR part 31
  - c. Prosecution pursuant to 18 USC 1001.

## Attachment 4

### Section 26.45: Overall Goal Calculation

#### Amount of Goal

Arlington County overall goal for FY 2008 is the following: 7% of the Federal Financial assistance the County will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.

#### Methodology used to Calculate Overall Goal

##### **Step 1:** 26.45(c)

Determine the base figure for the relative availability of DBEs.

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

$$\text{Base figure} = \frac{2,540 \text{ Ready, willing, and able DBEs}}{34,500 \text{ All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was: The Unified Certified Program list of certified DBE/WBE companies

The data source or demonstrable evidence used to derive the denominator was: Arlington County 2007 list of contractors in the area to whom they send solicitations

##### **Step 2:** 26.45(d)

Not applicable until such time as DES transportation Division has a minimum of a year to determine actual bidding results on DOT assisted contracts.

#### Public Participation

The County will publish the County's DBE goal information in two web sites: On the Department of Transportation and County websites in both English and Spanish.

The following three areas are not applicable as the County has not approved the DBE program for submittal to FTA Office of Civil Rights.

Comment received from these individuals or organizations:

Summaries of these comments are as follows:

The County's responses to these comments are:

**Attachment 5****Section 26.51: Breakout of Estimated  
Race-Neutral & Race Conscious Participation**

The County of Arlington will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The County of Arlington will develop the race-neutral means to increase DBE participation which it will follow by January 2008

The County estimates that, in meeting our overall goal of \_7\_%, the County will obtain \_7\_% from race-neutral participation.

**Attachment 6**

**Forms 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):

\_\_\_\_\_ 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 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 7**

**Certification Application Forms**

The County of Arlington will not be certifying DBE's. DBE companies are certified by WMATA or District Department of Transportation.

**Attachment 8**

**Procedures for Removal of DBE's Eligibility**

The procedure for removal of a DBE's eligibility is determined by WMATA and District Department of Transportation.

**Attachment 9**

**Copy of Department of Transportation, DBE Rule  
49 CFR, Part 26**

Copies of the Rule, 49 CFR, Part 26 can be obtained at the County Departments of Transportation, Suite 900; Purchasing, Suite 500 and the Office of Civil Rights, Suite 318 at 2100 Clarendon Blvd, Arlington, VA 22201.

