

CITY OF SUFFOLK

SUFFOLK TRANSIT DBE PROGRAM PLAN

September 2020



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UNITED STATES DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26
CITY OF SUFFOLK
for Suffolk Transit
Suffolk VA

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

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

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-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 USDOT 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 market place outside the DBE Program.
8. To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

Maria Ptakowski, Transit Manager, Suffolk Transit, 800 Carolina Road, Suffolk, VA 23434, Phone: 757-514-7641, Email: mptakowski@suffolkva.us has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Transit Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in their financial assistance agreements with the US Department of Transportation.

The City has disseminated this policy statement to the City Council members and will distribute this statement to DBE and non-DBE business communities that perform work for the City on USDOT-assisted contracts in the following manner:

1. *This policy statement will be prepared as a handout, and made available at pre-bid conferences, and/or outreach meetings conducted by the City.*
2. *Copies of the policy statement will be mailed to all of the agencies/organizations consulted during the development of the DBE goal methodology. This will make the City's policy for Suffolk Transit available to additional small, minority, and women business development agencies.*

Patrick Roberts, City Manager

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Suffolk 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 City will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City 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 USDOT: 26.11(b)

The City will report DBE participation to USDOT as follows:

The City will submit, on a semi-annual basis, the *Uniform Reports of DBE Awards or Commitments and Payments*, as modified for use by FTA recipients, via the Transit Awards Management System (TrAMS). The report is due each June 1, and December 1. The form may be found at <https://faces.fta.dot.gov/suite/>.

Bidders List: 26.11(c)

The City will create and maintain an FTA-DBE program bidders' list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The

bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

The City will collect this information in the following ways:

- a. *Include a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.*
- b. *Include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report the approved information directly to the DBELO for inclusion in the bidder's list.*
- c. *Request the above information from all potential bidders who contact Suffolk Transit seeking bid information, and/or who attend pre-bid meetings, conferences, etc.*
- d. *The City may also consider the use of the Bidders List Data Collection form, as shown in **Attachment 10**.*

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

The City of Suffolk (hereafter 'the City') shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract; or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The City's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 CFR 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

The City will ensure that the following clause is placed in every USDOT-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 USDOT 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, which may include, but is not limited to:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Suffolk anticipates receiving grants for planning and/or development of transit and public transportation facilities and will award prime contracts exceeding \$250,000 in FTA funds in a federal fiscal year. The City will continue to carry out this program until all funds from USDOT financial assistance have been expended, and will provide to USDOT updates representing significant changes in the program.

The City is aware it is not eligible to receive USDOT-FTA financial assistance unless the USDOT has approved the DBE Program and is in compliance with it and this part. Further, the City will review the program periodically and will provide the FTA updates representing significant changes in the program for approval.

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 City has designated the following individual as its transit DBE Liaison Officer:

Maria Ptakowski
Transit Manager
Suffolk Transit
800 Carolina Rd, Suffolk, VA 23434
Phone: 757-514-7641
Email: mptakowski@suffolkva.us

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO, along with her staff, will administer the program. The duties and responsibilities include the following:

1. *Gathers and reports statistical data and other information as required by USDOT.*
2. *Reviews third party contracts and purchase requisitions for compliance with this program.*
3. *Works with all departments to set overall triennial goals.*
4. *Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.*
5. *Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.*
6. *Analyzes Suffolk Transit's progress toward attainment and identifies ways to improve progress.*
7. *Participates in pre-bid meetings.*
8. *Advises the City on DBE matters and achievement.*
9. *Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.*
10. *Determines compliance of bidders/offerors with good faith efforts in bid submittals.*
11. *Plans and participates in DBE training seminars.*
12. *Provides outreach to DBEs and community organizations to advise them of opportunities.*

Section 26.27 DBE Financial Institutions

It is the policy of the City 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 USDOT-assisted contracts to make use of these institutions.

In developing this DBE program, the City's efforts did not identify any such institutions within its service area. If any such institutions are established in the City's service area, the City will consider the services offered by these institutions and refer them as noted above.

Section 26.29 Prompt Payment Mechanisms

The City has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) days from receipt of each payment made to the prime contractor.

The City will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. The City will hold retainage from prime contractors and provide for prompt and regular

incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after payment to the prime contractor.

The City will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The City will provide appropriate means to enforce the requirements of this section. These means include:

1. Withholding from the contractor in violation ten percent (10%) of all future payments under the involved eligible project until it is determined that the contractor is in compliance.
1. Withholding from the contractor in violation all future payments under the involved eligible project until it is determined that the contractor is in compliance.
2. Refusal of all future bids or offers for any applicable contract until it is determined that the contractor is in compliance.
3. Cancellation of the current contract.

The City will include the following clause in each USDOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contract receives from Suffolk Transit. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Suffolk. This clause applies to both DBE and non-DBE subcontracts.

Dispute Resolution: 26.29(e) (1-3)

The City requires that prime contractors insert a contract provision in their subcontractor agreements that allows for a dispute resolution process. Pursuant to 49 CFR Part 26.29(e) (1-3), the following contract provisions will be reviewed and approved by the City:

1. A contract clause that requires prime contractors to include in their subcontractors' agreements language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes; and disputes between the prime contractor and DBE subcontractor may also be subject to

Virginia's Alternative Dispute Resolution process¹.

2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

Section 26.31 Directory

The primary Disadvantaged Business Enterprise Directory for the City comes from the Virginia Department of Small Business and Supplier Diversity (SBSD) and contains listings of certified minority- and women-owned construction firms and material suppliers from throughout the Commonwealth.

SBSD maintains an active list of certified disadvantaged businesses located throughout the state. Therefore, all of the firms listed in the directory have been certified by this state and in accordance with USDOT criteria. It should be noted also that these listings and certifications are periodically updated with some firms being added, while others are removed.

The directory should enable prime contractors for the City's transit projects to proceed more easily in their attempts to comply with overall goals regarding Disadvantaged Business Enterprises.

The City will refer potential bidders to the SBSBD directory that is available online. The link for the directory can be found in Attachment 2 to this program.

Section 26.33 Overconcentration

The City has not identified that overconcentration exists in the types of work that DBEs perform. However, the City will continue to monitor the various categories to ensure that non-DBE firms are not unduly burdened.

Section 26.35 Business Development Programs

The City has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. The City will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps

¹ <http://www.courts.state.va.us/courtadmin/aoc/djs/programs/drs/mediation/home.html>

(e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. The City will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulations, provisions, and contract remedies available to the City in the event of non-compliance with the DBE regulations by a participant in procurement activities.
3. The City will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by DBEs. This will be accomplished by the following means:
 - a. *Reviewing bid package documentation thoroughly, obtaining clarification, if necessary.*
 - b. *Reviewing monthly reports regarding employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.*
 - c. *Monitoring progress of payments to DBEs through monthly reports from prime contractors.*
 - d. *Monitoring progress of DBEs' work through on-site visits and communication with DBEs. The City will implement a monitoring and enforcement mechanism that will include written certification that the City has reviewed contracting records and monitored work sites for this purpose. This monitoring will be conducted during routine project site visits by the City's engineering consultant on a monthly basis. In addition to the engineering consultant, the DBELO will sign off on the written certifications.*
4. The City will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business Participation

The City has created an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The program element is included as Attachment 4. The City will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of the DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT/FTA-funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f), the City will submit its overall three-year FTA DBE goal by August 1 of the designated year, or as required by the FTA for the City as a new "direct recipient" of funds from the FTA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City does not anticipate awarding DOT/FTA-funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, the City will not develop an overall goal; however, this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program. This section of the program will be updated triennially.

In establishing the overall goal, the City will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the City's goal setting process, and it will occur before submitting the goal methodology to the FTA for review pursuant to paragraph (f) of this section. The City will document in the goal submission the consultation process that was utilized. Notwithstanding paragraph (f)(4) of this section, the City will not implement the proposed goal until this requirement is fulfilled.

In addition, the City will post a notice announcing the proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on the City's official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on the official internet web site. The City will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at the DBELO's office, and that the City will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1st deadline.

The City's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and responses, if any comments are received.

The City will begin using the overall goal on October 1 of each year, unless it has received other instructions from USDOT. If the City establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a USDOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrence

The City understands that it is not required to obtain prior operating administration concurrence with the overall goal. However, if the operating administration's review suggests that the overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the operating administration may, after consulting with the City, adjust the overall goal or require that the City do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

Section 26.47 Goal Setting and Accountability

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. The City will retain a copy of the analysis and corrective actions in its records for a minimum of three years, and will make it available to FTA upon request.

Section 26.49 Transit Vehicle Manufacturers Goals

The City will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 6 to this program. This section of the program will be updated when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The City will use contract goals to meet any portion of the overall goal it 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 the overall goal that is not projected to be met through the use of race-neutral means.

The City will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The City does not need to 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).

The City will express its contract goals as a percentage of the total share of a USDOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder is to make good faith efforts to meet the DBE goal. The bidder 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 49 CFR Part 26.

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

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

Information to be submitted (26.53(b))

In its solicitations for DOT/FTA-assisted contracts for which a contract goal has been established, the City will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the City, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

- (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of 49 CFR Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- (3) The City will require that the bidder/offeror present the information required by paragraph (b)(2) of 49 CFR Part 26.53 under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

This information will be collected using the forms found in Attachment 7.

Administrative reconsideration (26.53(d))

Within seven calendar (7) days of being informed by the City that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official:

Jay Smigielski, CPPO, Assoc. DBIA
City of Suffolk
Purchasing Division, Room 1086
442 W. Washington Street
Suffolk, VA 23434
Email: jsmigielski@suffolkva.us

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

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with the City's administrative reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The City will send the bidder 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 US Department of Transportation.

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

The City will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the City's written consent as provided in this paragraph 26.53(f); and

That, unless the City's consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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

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

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

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

In this situation, the City will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The City will provide such written consent only if the City agrees, for reasons stated in a concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does

- not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
 - (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (6) The City has determined that the listed DBE subcontractor is not a responsible contractor;
 - (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
 - (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
 - (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - (10) Other documented good cause that the City has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting its request to the City to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the City and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the City may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The City 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that the City established for the procurement. The good faith efforts shall be documented by the contractor. If the City requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The City will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the City deem appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, the City's 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 Suffolk, as owner and operator of Suffolk Transit, 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, including those who qualify as a DBE. A DBE contract goal of ___ percent has been established for this contract. The bidder shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder 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'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);
- (6) If the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City will refer all matters pertaining to certification to the Virginia Department of Small Business and Supplier Diversity (DSBSD) or the Metropolitan Washington Airports Authority (MWAA) in accordance with the Commonwealth's UCP program. The UCP program will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP will make all certification decisions based on the facts as a whole.

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

Virginia Department of Small Business and Supplier Diversity
101 N. 14th Street, 11th Floor
Richmond, Virginia 23219
Phone: (804) 786-6585
<http://sbsd.virginia.gov/business-certifications-2/dbe/>

Metropolitan Washington Airports Authority
Equal Opportunity Programs Department
1 Aviation Circle
Washington, DC 20001
Phone: (703) 417-8625
<http://www.mwaa.com/business/department-supplier-diversity-dsd-2>

A link to the certification application forms and documentation requirements is found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

SBSD currently manages the Unified Certification Program (UCP) for the Commonwealth of Virginia, and the City of Suffolk is a non-certifying participant. The City will use and count for DBE credit only those DBE firms certified by SBSBD or the Metropolitan Washington Airports Authority, the other certifying agency in the Commonwealth's UCP.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

The City will safeguard, from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the City will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The City will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

The City 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	Fostering Small Business Participation Plan
Attachment 5	Overall Goal Calculation
Attachment 6	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 7	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 8	Certification Application Forms
Attachment 9	Regulations: 49 CFR Part 26
Attachment 10	Bidders List Data Form

Attachment 1

Organizational Chart

City of Suffolk

Suffolk Transit

Suffolk, Virginia

Organizational Chart



Attachment 2

DBE Directory

The DBE Directory for the
Commonwealth of Virginia
may be found at

<https://www.sbsd.virginia.gov/directory/>.

Attachment 3

Monitoring and Enforcement
Mechanisms

City of Suffolk – Suffolk Transit

1. All participants are hereby notified that pursuant to Title 49 Code of Federal Regulations, United States Department of Transportation, Part 26 and the Disadvantaged Business Enterprise Participation Program for the City of Suffolk, they must affirmatively ensure that, in any contract entered into with Suffolk Transit, DBEs will be afforded *equal* opportunity to participate in subcontracting activities. It is the policy of the City to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is further the policy of the City to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.
2. All contracts between the City and a Contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the City's DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this program. Under authority granted by Virginia law, the City may impose liquidated damages, contract suspension, or even contract termination.
3. All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered part of the contract documents. Any alterations, substitutions, deletions, etc., to data provided at time of submission of bid must have prior approval of the City's DBE Liaison Officer.
4. Should a DBE firm not certified by the Virginia Unified Certification Program be proposed by a potential contractor as a part of his/her DBE plan efforts, the inclusion of said firm will not be considered a demonstration of making good faith efforts towards meeting the DBE goal.
5. In contracts with DBE contract goals, bids submitted which do not meet the DBE contract goals, and which do not show that a meaningful good faith effort was made to achieve the stated goals, will be considered non-responsive bids, and bidders will be notified of the deficiency and given opportunity to appeal to the Administrative Reconsideration Official (49 CFR 26.53). The bidder will not be eligible for award of the contract until the appeal procedures are complete. The Administrative Reconsideration Official will make the determination on the sufficiency of the good faith efforts.
6. The City reserves the right to reject any or all bids, or to re-advertise for bids. Award, if made, will be to the lowest responsive and responsible bidder. A bid will not be considered responsive unless the bidder complies with Title 49 Code of the Federal Regulations, Part 26, and the Disadvantaged Business Enterprise Program for the City of Suffolk.
7. The City shall require contractors to make good faith efforts to replace a DBE subcontractor that is terminated, or fails to complete its work on the contract for any reason, with another DBE subcontractor. If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the Contractor must notify Suffolk Transit immediately. These good

faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the established contract goal. The City shall approve all substitutions prior to contract award and during contract performance in order to ensure that the substitute firms are eligible DBEs.

Additional information on the City's Disadvantaged Business Enterprise Program can be obtained from the DBE Liaison Officer, **Maria Ptakowski, Transit Manager, Suffolk Transit 800 Carolina Rd, Suffolk, VA 23434, Phone: 757-514-7641, Email: mptakowski@suffolkva.us.**

8. The City will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. These mechanisms will include, but not be limited to, the following:
 - a. *Reviewing bid package documentation thoroughly, obtaining clarification, if necessary.*
 - b. *Reviewing monthly reports regarding employment as well as DBE participation to ensure adherence to plan as represented in bid documents and as stipulated in this program.*
 - c. *Monitoring progress of payments to DBEs through monthly reports from prime contractors.*
 - d. *Monitoring progress of DBEs work through on-site visits and communication with DBEs. The City will implement a monitoring and enforcement mechanism that will include written certification that the City has reviewed contracting records and monitored work sites for this purpose. This monitoring will be conducted during routine project site visits by the City's engineering consultant on a monthly basis. In addition to the engineering consultant, the DBELO will sign-off on the written certifications.*
9. The City will bring to the attention of the US Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
10. The City also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. In addition, the City will apply legal and contract remedies under state and local law. This includes, for example, applying liquidated damages, withholding payments, etc.
11. In its reports of DBE participation to the USDOT, the City will show both commitments and attainments, as required by the USDOT reporting form.

Attachment 9 contains a weblink to 49 CFR Part 26, which describes federal regulations, provisions, and contract remedies available to the City in the event of non-compliance by a participant.

Attachment 4

Fostering Small Business Participation
Plan

Section 26.39 – Fostering Small Business Participation

A. Purpose and Objective of this Element

This element, 49 CFR Part 26.39, is included as an amendment to the DBE program plan for the City of Suffolk (“the City”), on behalf of Suffolk Transit, and is herein referenced as the Small Business Participation Plan (SBPP). This new part calls for the inclusion of an element to

“structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation.”

The City hereby sets forth its plan to implement these requirements. The City’s SBPP is also regarded as a substantial effort toward fulfilling the overall intent of 49 CFR Part 26.51, which is to meet the maximum feasible portion of its overall goal by using race-neutral means to obtain DBE participation. Therefore, implementation of the City’s SBPP will be based on the standard of business size, without regard to race or gender of the business owner.

This element also addresses the unnecessary and unjustified “bundling” of contract requirements which may preclude or inhibit small business participation in procurements, as either prime or subcontractors.

Further, the City perceives the objectives of this section to be consistent with its DBE Program policy statement, which says in part:

*“- To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
- To help remove barriers to the participation of DBEs in DOT assisted contracts..
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.”*

The City’s policy statement and this small business element (SBPP) are consistent with the City’s mission of creating and encouraging business opportunities at all levels.

B. SBPP Strategy

The City intends to carry out the objectives of this part by employing the following strategies and supporting activities:

1. Establishment of a Race-neutral “Subcontracting Goal”

The City proposes, where feasible, on certain prime contracts that do not have a DBE contract goal, that prime contractors will be required to provide subcontracting opportunities to qualified small business concerns (SBCs), as defined herein, without regards to race or gender of the business owner. Verified business size and subcontracting opportunities will be the basis of this subcontracting goal. The opportunities must be of a size that SBCs, including some which may also happen to

be DBEs, can reasonably perform. The City, through its consultants, will assess the feasibility for race-neutral subcontracting goals on projects. The City will assist the potential primes by reviewing the project(s), in advance of the solicitation, and by suggesting potential subcontracting opportunities in the solicitation documents. This will help to establish a reasonable race-neutral subcontracting goal.

2. Consideration of “Unbundling” of Large Contracts

The City has given consideration to “unbundling” as a small business strategy. However, the City believes that, at this time, such a strategy will not be suitable. Because of the limited number and size of contracts each year, the increased total number of bid solicitations with “unbundling” could significantly increase both administrative and project costs per bid. This will reduce the necessary “economy of scale” for small transit projects. The City will evaluate projects on a yearly basis to determine if there is feasibility in “unbundling” contracts in the future.

C. Definitions for this Element

1. Small Business

For purposes of this program element, which is part of the City’s approved DBE program, “small business” shall have the same definition as “small business concerns” contained in 49 CFR 26.5:

“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). ”

For additional clarification, it is useful to include here some excerpts from the SBA regulations, 13 CFR, 121.105:

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business 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 U.S. economy through payment of taxes or use of American products, materials or labor....” and,

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

Small business concerns must meet the business size standards, as defined by the SBA. The business size standards are based upon the average annual revenues, and they vary according to the type of business. More information can be found at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.

Further, it is acknowledged that the SBA rules make allowances for the dollar amounts to be adjusted from time to time.

2. Disadvantaged Business Enterprise

Disadvantaged Business Enterprise (DBE) means a for-profit small business concern (defined by SBA rules, above) that meets the standards of 49 CFR Part 26, i.e.

- *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;*
- *Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) does not exceed the described in 49 CFR Part 26. (The current PNW cap is \$1.32 million.)*
- *Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it;*
- *Has been certified as a DBE by a certifying member of the Virginia Unified Certification Program in accordance with the full requirements of 49 CFR 26.*

It is understood that in the implementation of this element, all of the "small business concerns" may not necessarily be DBE firms. However, small businesses that are also owned and controlled by individuals who meet the DBE standard will certainly be encouraged to seek DBE certification. Only DBE certified firms who participate as small business concerns, pursuant to this element, will be counted towards DBE race-neutral participation on FTA-assisted contracts in this program.

D. Verification Standards and Procedures

For purposes of this small business element, the City will require the following verification and/or certification:

1. **Virginia Unified Certification Program DBE Certification** – DBE certification by a certifying member of the Virginia UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by a certifying member of the Virginia UCP. It should be noted that the City is a non-certifying member of the Virginia UCP and relies on certification decisions of the Virginia Department of Small Business and Supplier Diversity (SBSD), or the Metropolitan Washington Airports Authority (MWAA), who are the certifying members of the UCP. The UCP certification staff applies the standards and procedures for DBE certification applicants contained in Subparts D and E of 49 CFR 26.61 – 26.91.
2. **Small business status** - A non-DBE certified potential small business concern may have to complete a simplified application and/or provide the following information at time of response to a solicitation or a bid submittal, as evidence of the small business status:

- a. Evidence of SBA 8(a) or SBD Certification (as described in 13 CFR Parts 121 and 124);
- b. A copy of the business tax returns for the most recent three-year period indicating the gross receipts; and/or
- c. A notarized statement from a Certified Public Accountant indicating the firm's average gross receipts for the past three years.

A small business may also register with SBSD's Small, Women and Minority (SWaM) program as a Small Business Enterprise (SBE). The City will accept the certification of a registered SBE. More information can be found at <https://www.sbsd.virginia.gov/certification-division/swam/>.

3. **Use of Personal Net Worth:** The City, in addition to the standards for small business concerns described above, plans to utilize the current personal net worth standards of the DBE program (49 CFR Part 26.67), presently at \$1.32 million.

E. Supportive Services

The City is a non-certifying member of the Virginia UCP. The City does not conduct DBE certifications, but relies on certifications of SBSD and MWAA. While the City also does not provide direct supportive services or business development programs to DBEs or small businesses, the City is aware of several valuable resources in the surrounding area. The City will coordinate and make referrals to potential and qualifying small business concerns to these services. Some of the resources are listed below:

Hampton Roads Chamber of Commerce
500 East Main Street
Suite 700
Norfolk, VA 23510
Telephone: (757) 622-2312
<http://www.hamptonroadschamber.com>

SBA Micro Loan
Center for Community Development
440 High Street
Portsmouth VA 23704
Phone: (757) 399-0925

Suffolk Small Business Development Center
127 East Washington Street
Suffolk, VA 23434
Phone: (757) 664-2613
www.hrsbdc.org

Virginia Department of Business Assistance
1220 Bank Street
3rd Floor South
Richmond, VA 23219
Phone: (804) 371-8200
<http://vdba.virginia.gov/>

F. Implementation Plan and Timetable

The City proposes to have its SBPP fully implemented within 120 days of the final approval of the plan. The City will utilize the timeframe to properly set up the program in order to maximize the potential for ultimate success. These set-up activities will include:

1. Review, in coordination with the Transit Manager's office, all upcoming projects to determine which, if any, will be conducive for application of the selected SBPP strategy described in Section B, above.
2. Review, in coordination with the Transit Manager's office and with legal input, the necessary revisions and modifications to bid solicitation language, etc., prior to implementation.
3. Coordinate properly with the Virginia UCP to initiate discussions as to whether any changes/modifications are implicated in the UCP stakeholder agreement, due to verification of small business concerns.
4. Coordinate with other entities currently providing relevant supportive services and/or business development for referrals to their programs, appropriate for the small business concerns that may contact the City to increase their competitive opportunities.
5. The City, during the pre-implementation period, may also seek consultation with the representative small business community.

G. Assurances

To insure the successful implementation of the Small Business Participation Plan (SBPP), the City, by way of review, will accept the following assurances:

1. *A detailed description of the small business program, its objectives, and how it is designed to operate.*
 - a. The details of the proposed SBPP are described in sections A through G of this part.
2. *Assurance that the program is authorized under state law.*
 - a. The City's SBPP will adhere to all applicable local and state laws and regulations.
3. *Assurance that certified DBEs that meet the size criteria established under the program are **presumptively** eligible to participate in the program;*
 - a. As stated in D. 4 of this section, certified DBE firms that meet the size criteria established under the program are presumptively eligible to participate in the small business program.
4. *Assurance that there **are no geographic preferences** or limitations imposed on any federally assisted procurement included in the program.*
 - a. The City will assure that there will be no geographic preferences or limitations imposed on any federally-assisted procurement included in the City's DBE program.
5. *Assurance that there **are no limits** on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.*
 - a. The City will assure that it will not limit the number of contracts awarded to firms that are participating in the small business program. The City further assures that it will make a concerted effort to avoid creating barriers to the use of new, emerging, or untried businesses.
6. *Assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.*
 - a. The City recognizes that while some firms encountering its SBPP program may be small-business eligible, they may not be eligible to be certified as DBE firms. If, in the verification process, such firms appear to be DBE-eligible as well, they will be referred to the state UCP and encouraged to become DBE-certified. The City will also inform the firms of additional potential business opportunities if they become certified as DBEs.

7. *Assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).*

- a. The assurance stated in item 4, above, is also applicable to specifically to the City's SBPP program as well.

H. Principal Responsible Person

The principal person who is responsible for overseeing and implementing the City's SBPP will be the currently designated Disadvantaged Business Enterprise Liaison Officer (DBELO). The DBELO for the City for transit projects is **Maria Ptakowski, Transit Manager**.

Attachment 5

Overall Goal Calculation

FY 2021 – FY 2023
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM METHODOLOGY
FOR

SUFFOLK TRANSIT

SUFFOLK, VIRGINIA

SEPTEMBER 2020

METHODOLOGY for Establishing the FY 2021 – FY 2023 Overall Disadvantaged Business Enterprise (DBE) Goal for:

*Suffolk Transit
Suffolk VA*

In fulfillment of the requirements of 49 CFR Part 26, the City of Suffolk (hereafter 'the City') has developed a proposed Overall Goal for FY 2020-2022 FTA-funded projects for Suffolk Transit. The methodology used in establishing this goal is described herein.

I. Detailed Methodology: Specific Steps

A. Amount of Goal

The City's overall goal for FY 2021-2023 is **7.3%** of the Federal financial assistance it will expend in USDOT-assisted contracts.

Given the amount of USDOT-assisted contracts that the City expects to let from FY 2021-FY 2023, which is approximately **\$856,520²**, this means that the City has set a goal of expending approximately **\$62,526** with DBEs during this period.

B. Determination of the Market Area

The market area is normally derived by determining where the substantial majority of contracting dollars for FTA-funded projects were spent, and from where the majority of bidders over a given period of time have come.

The market area was determined by the area from where the substantial majority of previous bidders have come, and the area where the substantial majority of dollars were spent.

C. Determination of relevant NAICS codes

Based on information provided by the City concerning the proposed projects for this fiscal year, a list of NAICS codes corresponding to these projects was developed and is shown below:

D. Determination of Relative Availability of DBEs in Market Area, compared to all firms

² The amount to be let does not include purchases for replacement buses and para-transit vehicles, per [49 CFR Part 23.49\(a\)](#).

Table 1: Suffolk Transit—FY 2021-FY 2023 Projects & Activities

	NAICS Code	Description of Work	Amount of DOT funds on project:	% of total DOT funds (weight)
1)	236220	Bus shelter construction	\$7,000.00	0.0082
2)	485210	Inter-urban and rural bus transportation operation	\$833,000.00	0.9725
3)	561720	custodial services for bus station	\$2,520.00	0.0029
4)	237310	sidewalk, public construction	\$14,000.00	0.0163
	Total FTA-Assisted Contract Funds		\$856,520.00	1

SOURCE: City of Suffolk

Table 2: DBEs—Suffolk Transit, by Relevant NAICS Codes—FY 2021-FY 2023

	NAICS Code	Description of Work	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	561790	Power washing building exterior	8	38	0.2105
2)	485210	Inter-urban and rural bus transportation operation	1	14	0.0714
3)	561720	custodial services for bus station	9	84	0.1071
4)	237310	sidewalk, public construction	1	12	0.0833
	Combined Totals		19	148	0.1284
					<i>Overall availability of DBEs</i>

SOURCES:

1. 2017 County Business Patterns, U.S. Census Bureau, September 2020.
2. Virginia Department of Small Business and Supplier Diversity DBE Directory, September 2020

Table 3: Weighted Average

	NAICS Code	Description of Work	Weight	x	Availability of DBEs	Weighted Base Figure
1)	236220	Bus shelter construction	0.00817	x	0.21053	0.0017
2)	485210	Inter-urban and rural bus transportation operation	0.97254	x	0.07143	0.0695
3)	561720	custodial services for bus station	0.00294	x	0.10714	0.0003
4)	237310	sidewalk, public construction	0.01635	x	0.08333	0.0014
Total						0.0729
Expressed as a % (*100)						7.29%
Rounded, Weighted Base Figure:						7.3%

NOTE: The County Business Patterns data were used as the source to determine the denominator, or the number of all firms in the market area. The DBE directories listed above were used to determine the numerator, or the number of DBE firms in the market area.

E. Determination of the DBE Base Figure

The Step 1 DBE Base Figure for FY 2021-FY 2023 was derived by multiplying the weighted average by the relative availability of DBE firms as indicated in Table 3 above.

The DBE Base Figure for FY 2021-FY 2023 is 7.3%.

II. Adjustments to the DBE Base Figure

After the DBE Base Figure has been developed, the regulations (49 CFR Part 26) require that:

“...additional evidence in the sponsor’s jurisdiction be considered to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal” (26:45(d)).

A. Adjustment Factors to Consider

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

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

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

There is no data available by which to make an adjustment to the base figure.

49 CFR Part 26.45(d)(2) also states that the following must be considered for the purposes of considering an adjustment to the base figure:

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

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

The Commonwealth of Virginia Department of Minority Business Enterprise (now the Virginia Department of Small Business and Supplier Diversity (DSBSD) is conducting a disparity study to examine whether there are differences between the percentage of dollars that woman- and minority-owned (WAM) businesses received on an agency's prime contracts and subcontracts during a particular time period (*utilization*); and

the percentage of dollars that those businesses would be expected to receive based on their availability to perform on the agency's prime contracts and subcontracts (*availability*).

The study will examine prime contracts and subcontracts that the Commonwealth awarded from July 1, 2014 through June 30, 2019 in the areas of construction, services, and goods. The study will be complete in December 2020. A prior disparity study concluded the, utilization of minority firms was low relative to conservative estimates of minority business availability, and relative to utilization by other states and public agencies. The study had good statistical analysis for the Commonwealth of Virginia. However, there is no quantifiable data, relative to Fauquier's market area, to use to adjust the DBE base figure, and is therefore not included in the analysis. Also, the study is deemed too old to be used for this submittal.

The Virginia Department of Small Business and Supplier Diversity (DSBSD) was contacted to inquire about disparity information regarding access to capital, insurance, bonding, etc., but there was no information available.

The Virginia Small Business Finance Authority (VSBFA) has a program called the The *Small Business Investment Grant Fund* program (SBIG) which is designed to encourage Virginia financial investors to contribute investment capital to support Virginia small business growth and expansion.

B. Adjustment to Step 1 DBE Base Figure: Suffolk Transit, FY 2021-FY 2023

With the adjustment factors considered to this point, the City will not adjust the Step 1 base figure, so the DBE goal for FY 2021-FY 2023 is **7.3%**.

Resources: Suffolk Transit - Disadvantaged Business Enterprise Program Methodology (FY 2021 – FY 2023)

A. Resource Documents:

1. 2017 County Business Patterns, U.S. Census Bureau, September 2020.
2. Virginia Department of Small Business and Supplier Diversity SWAM and DBE Directory, September 2020.
3. Virginia DOT Construction Division Prequalified vendor directory

APPENDIX A:

PUBLIC COMMENTS

Although solicited, no public comments were received in this process.

APPENDIX B:

NOTICE TO THE PUBLIC

SUFFOLK TRANSIT

P.O. BOX 1858, SUFFOLK, VA 23439-1858 PH: (757) 514-7641/FAX: (757) 923-2491

PUBLIC ANNOUNCEMENT

Suffolk Public Transit (SPT) is seeking information about vendors and contractors for the good and services the agency purchases. SPT is partially federally funded and is attempting to build our Disadvantaged Business Enterprises (DBE) programs aimed at helping socially and economically disadvantaged companies compete in procurements that use federal funds. SPT would appreciate input from the public and DBE firms in particular. We are seeking information concerning the availability of disadvantaged businesses, how we can facilitate relationships with DBE companies, and assistance in expanding opportunities for DBE's.

Due to COVID-19 we are unable to hold an in person meeting. Instead, SPT will be holding a tele-conference meeting on October 27, 2020, at 10:00 AM.

Written comments and inputs will also be accepted until October 28, 2020.

To register for the tele-conference or to provide written comments, contact Jay Smigielski, Purchasing Agent, at jsmigielski@suffolkva.us

Attachment 6

Breakout of Estimated Race-Neutral & Race-Conscious Participation

I. Breakout of Estimated Race-Conscious/Race-Neutral Participation

The City of Suffolk will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City will use a combination of the following race-neutral means to increase DBE participation:

1. *Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);*
2. *Disseminating information communications on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors).*
3. *Ensuring that prime contractors are aware of and know how to obtain the approved DBE listing from the Virginia Department of Small Business and Supplier Diversity.*

The City estimates that, in meeting its overall goal of **7.3%** for FY 2020-FY 2022, it will achieve the goal using race-neutral measures. The City is a first-time direct recipient of FTA funds.

The City will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (26.51(f)) and it will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal, and
- DBE participation on a prime contract exceeding a contract goal.

II. Process

The City will submit its overall goal by October 1 of the designated year, or as required by the FTA for the City as a new "direct recipient" of funds from the FTA.

In establishing the overall DBE goal, the City provided for consultation and publication. The consultation included minority-, women's and general contractor groups, and small business organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, and facilitating relationships with DBEs

and assisting the City in expanding opportunities for DBEs. The consultation included a scheduled, direct, interactive exchange via a web conference with as many interested stakeholders as possible focused on obtaining information relevant to the City's goal setting process. The consultation web conference will be held on October 27, 2020, prior to the submission of the DBE goal methodology to the FTA for review pursuant to paragraph (f) of this section. The City documented in the goal submission the consultation process that was utilized (see Appendix A of Attachment 5).

Following this consultation, the City posted a notice of the proposed overall goal at <https://www.suffolkva.us/429/Suffolk-Transit>, informing the public that the proposed goal and its rationale were available for inspection during normal business hours at the office of the Transit Manager, and informing the public that the City would accept comments on the goals for 30 days from the date of the notice.

The City will begin using the overall goal on October 1 in accordance with the FTA's schedule, unless the City has received other instructions from USDOT (or, if the goal is established on a project basis) by the time of the first solicitation for a USDOT-assisted contract for the projects.

III. Contract Goals

The City will use contract goals to meet any portion of the overall goal that the City 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 its overall goal that is not projected to be met through the use of race-neutral means.

The City will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The City does not need to 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).

The City will express its contract goals as a percentage of the total share of a USDOT-assisted contract.

Attachment 7

Form 1 & 2 for Demonstration of
Good Faith Efforts

CITY OF SUFFOLK

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

____ The bidder is committed to a minimum of ____% DBE utilization on this contract.

____ The bidder (if unable to meet the DBE goal of ____%) is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Name of bidder's firm: _____

State Registration No. _____

By _____
(Signature) Title

CITY OF SUFFOLK

FORM 2: LETTER OF INTENT

Name of bidder'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 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 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 8

Certification Application Forms

The DBE certification
application for the
Commonwealth of Virginia
may be found at

[https://www.sbsd.virginia.gov/
certification-division/dbe/](https://www.sbsd.virginia.gov/certification-division/dbe/).

Attachment 9

Regulations: 49 CFR Part 26

The federal regulations, Title 49 Code of Federal Regulations Part 26, can be found at www.ecfr.gov.

Attachment 10

Bidders List Data Form

BIDDERS LIST DATA COLLECTION FORM

Firm Name	Firm Address and Phone No.	DBE or Non-DBE Status <i>(verify via SBSDBE Directory)</i>	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1M <input type="checkbox"/> \$1-2M <input type="checkbox"/> \$2-5M <input type="checkbox"/> Greater than \$5M