

# FTA

F E D E R A L   T R A N S I T   A D M I N I S T R A T I O N

## Fairfax County Department of Transportation DBE Program Compliance Review

March 2016  
Federal Transit Administration



U.S. Department of Transportation  
Federal Transit Administration

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## Executive Summary

This report details the findings of the Compliance Review of the Fairfax County Department of Transportation's (Fairfax County) Disadvantaged Business Enterprise (DBE) program implementation. The Compliance Review examined this agency's DBE program procedures, management structures, actions, and documentation. The review team collected documents and information from the Federal Transit Administration (FTA) and Fairfax County. In addition, the review team interviewed the following entities as part of this review: Fairfax County's officials, the Virginia Hispanic Chamber of Commerce, Greater Washington Hispanic Chamber of Commerce, Asian American Chamber of Commerce, prime contractors, and subcontractors. The three-day review included interviews, assessments of data collection systems, and review of program and contract documents.

### Fairfax County's DBE Program includes the following positive program elements:

#### Positive Program Elements

- Fairfax County has established a partnering relationship with the Fairfax County's Small & Minority Business Program to assist firms gain the ability to compete successfully outside the DBE Program.
- Fairfax County has recently established a relationship with several minority and community organizations to initiate dialogue about the DBE Program.
- For FFY 2012, Fairfax County attained 100% race neutral DBE participation.

### The Program has the following administrative deficiencies:

#### Administrative Deficiencies

- Fairfax County has not circulated its DBE Policy Statement throughout the organization or to the DBE and non-DBE communities.
- Fairfax County does not have mechanisms in place to monitor DBE participation or enforce legal remedies for non-compliance.
- Fairfax County has submitted its semi-annual DBE reports late.

### The Program has the following substantive deficiencies:

#### Substantive Deficiencies

- FTA has not approved Fairfax County's DBE Program Plan.
- FTA has not approved Fairfax County's Triennial DBE Goal for the period FFY 2016 - 2018.
- Solicitation and contract documents do not contain required provisions.

Fairfax County's DBE participation has decreased over the past three fiscal years. Fairfax County's reported participation data reflects 0% DBE attainment for FY2013, 2014, and 2015. Fairfax County has four open grants dating back to 2005 with funding for a multi-year, multi-phase transit improvement project along US Route 1 (Richmond Highway). For the FY 2012 reporting period, Fairfax County had a 14.75% (100% race neutral) DBE goal. One federally-funded contract was awarded in FY2012 with 100% race neutral DBE participation. Fairfax County's triennial DBE goal for FY 2013 – 2015 was 7.9% (100% race neutral). Fairfax County did not award any federally-funded contracts in FY 2013. Fairfax County awarded a second contract funded through its grants in FY 2014, with 0% DBE participation. Due to delays in the

solicitation process, Fairfax County did not award any contracts in FY 2015. Consequently, the resulting DBE goal attainment was 0% for the past triennial reporting period.

Over the next triennial period, Fairfax County anticipates expending the remaining grant funds to complete three (3) Richmond Highway (Route 1) projects and one (1) Parking/Transit Center Project. Fairfax County designated these projects designated in its DBE goal setting methodology for FY 2016 – 2018, which was submitted in TEAM for FTA approval on September 11, 2015. Notwithstanding, this report highlights several steps to help ensure the DBE program is implemented in good faith.

## I. General Information

This chapter provides basic information concerning this Compliance Review of Fairfax County Department of Transportation. Information on Fairfax County, the review team, and the dates of the review are presented below.

<b>Grant Recipient:</b>	Fairfax County Department of Transportation
<b>City/State:</b>	Fairfax, Virginia
<b>Grantee Number:</b>	5349
<b>Executive Official:</b>	Thomas Biesiadny, Director, FCDOT
<b>On-site Liaison:</b>	Brent Riddle, Senior Transportation Planner
<b>Report Prepared By:</b>	Milligan and Company, LLC
<b>Dates of On-site Visit:</b>	October 7 – 9, 2015
<b>Compliance Review Team Members:</b>	Lillie Claitt, Lead Reviewer Habibatu Atta Allison Reed

## **2. Jurisdiction and Authorities**

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights Compliance Reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and sub recipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

The Fairfax County Department of Transportation (Fairfax County) is the recipient of one or more federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, Fairfax County is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in Fairfax County's DBE program and were the basis for this Compliance Review.

## 3. Purpose and Objectives

### 3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub recipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26. FTA has determined that a Compliance Review of the Fairfax County Department of Transportation's (Fairfax County) DBE Program is necessary.

The primary purpose of the Compliance Review is to determine the extent Fairfax County has implemented 49 CFR Part 26, as represented in its DBE Program Plan. This Compliance Review is intended to be a fact-finding process to: (1) assess Fairfax County's DBE Program Plan and its implementation; (2) make recommendations regarding corrective actions deemed necessary and appropriate; and (3) provide technical assistance.

This Compliance Review is not solely designed to investigate discrimination against individual DBE firms or complainants; or to adjudicate these issues on behalf of any party.

### 3.2 Objectives

The objectives of DOT's DBE regulations, as specified in 49 CFR Part 26, are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE Program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of federally-assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE Program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this Compliance Review are to:

- Determine whether Fairfax County is honoring its commitment to comply with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in DOT Programs."
- Examine the required components of Fairfax County's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies; and document the compliance status of each component.
- Gather information and data regarding the operation of Fairfax County's DBE Program Plan from a variety of sources, including DBE program managers, other Fairfax County management personnel, DBEs, prime contractors, and other stakeholders.



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## 4. Background Information

The purpose of this section is to provide an understanding of Fairfax County Department of Transportation's (Fairfax County) operations and scale. The section highlights Fairfax County's services, budget, and the history of its DBE program.

### 4.1 Introduction to Fairfax County Department of Transportation and Organizational Structure

The Fairfax County Department of Transportation (Fairfax County) coordinates and oversees transportation-related planning and funding efforts and services and programs for Fairfax County government, including operating a variety of multimodal programs, implementing transportation capital projects, and delivering public transportation services. The department provides recommendations on transportation-related technical and policy issues to the Board of Supervisors and the County Executive and transportation legislation before the Virginia General Assembly and the U.S. Congress.

Fairfax County consists of the Director's office and five primary divisions, including the Transportation Planning Division (TPD), the Capital Projects and Operations Division (CPOD), the Transit Services Division (TSD), the Transportation Design Division (TDD), and the Coordination and Funding Division (CFD).

Transportation Planning Division - manages transportation matters related to development in the county, transportation planning and forecasting, transit systems evaluation and service planning, and prioritization of county transportation needs.

Capital Projects and Operations Division - oversees the capital projects section, traffic operations section, and the pedestrian and bicycle programs.

Transit Services Division - oversees the Fairfax Connector bus system and transportation marketing.

Transportation Design Division - provides for design and project management of county-funded multi-modal transportation improvements, including roadway, pedestrian, bicycle, bus stop, parking, transit transfer facilities, and commercial revitalization projects.

Coordination and Funding Division - provides liaison activities between county, state, regional and federal transportation agencies, boards, bodies and commissions. CFD coordinates funding identification, allocation and applications for the County's transportation projects and services. The division also collects and maintains technical data used to analyze existing transportation systems.

The primary purpose of the Fairfax County Department of Transportation is to provide a high-performing transportation system which addresses the lifestyle and mobility needs -- access to employment, education, medical and retail sites, and connection to other modes of transportation -- of the Fairfax County community. On January 28, 2014, the County Board of Supervisors approved \$1.4 billion in Transportation Project Priorities (TPP) funding for FY2015 through FY2020. This was the most dramatic pledge to fund transportation improvements since

the 1980s. It is anticipated that the money will fund approximately 220 projects, including new roads, sidewalks, transit, and bike lanes.

Fairfax County provides a locally owned and controlled fixed route/fixed schedule bus transit system called the Fairfax Connector. Administration and oversight is provided by FCDOT through its Transit Services Division (TSD). The Fairfax Connector's available revenue vehicle fleet consists of more than 260 buses, serving over 63 routes that operate approximately 550,000 revenue hours annually. On an average weekday, the system carries more than 40,000 passengers.

Fairfax County has a very significant collaborative and coordination role within the Virginia Department of Transportation (VDOT), the entity primarily responsible for road construction and maintenance in the county. In addition to operating the Fairfax Connector, FCDOT coordinates public transportation services with other transit operators, such as the Washington Metropolitan Area Transit Authority (WMATA) and the Virginia Railway Express (VRE). WMATA provides approximately 50 percent of the bus service in the county through the Metrobus system and operates the regional Metrorail system, including six existing Metrorail stations within the county and an additional eight stations opening in the county as part of the Silver Line Metrorail extension from West Falls Church through Tysons Corner to Reston in 2013 and to Dulles International Airport and Loudoun County in late 2016/early 2017.

Fairfax County currently does not have any subrecipients and is not a subrecipient of USDOT funds.

## **4.2 Budget and FTA-Assisted Projects**

The Fairfax County Department of Transportation (Fairfax County) budget comprises local and federal funds. The County expends its federal funds exclusively on capital projects. The DBELO indicated Fairfax County will not use any of its federal funds for planning or operating expenses. Fairfax County designates its federal dollars for preliminary engineering, right of way acquisitions, and construction contracts. Fairfax County's federal budget includes the balance of funds remaining from old Section 5309 earmarked funds for bus shelters and related pedestrian access improvements along Route 1 (Richmond Highway), and overall corridor improvements initiative under the Job Access and Reverse Commute (JARC) program grants, which are scheduled to be expended over the next three fiscal years.

In FY 2013 – 2015 Fairfax County's budget was as follows:

<b>Funding Source</b>	<b>Funding Amount</b>
Federal – FTA (Non-ARRA) Capital	Total: \$1,003,527
Local:	\$ 353,526
Total:	\$1,357,053

For FY 2016– 2018 Fairfax County's budget is as follows:

<b>Funding Source</b>	<b>Funding Amount</b>
Federal – FTA (Non-ARRA) Capital	Total: \$11,039,847
Local:	\$ 3,482,647
Total:	\$14,522,494

Fairfax County has one (1) FTA-assisted project currently underway, awarded August 27, 2014:

- *Project # ST-000033-001 - Springfield Central Business District Transit Parking Facility, Preliminary Engineering* – a multi-year project for full design and construction administration services for the Springfield Community Business Center (CBC) Commuter Parking Garage located at 7039 Old Keene Mill Road, in Springfield, Virginia.

Fairfax County identified one upcoming project scheduled for FY 2016 – 2018:

- *Springfield Central Business District Parking/Transit Center* – The project will construct a five story multi-modal transportation and parking facility in the Springfield Central Business District area. The facility will include approximately 1,000 parking spaces for commuters. It will also include a bus transit transfer location on the first level with up to seven bus bays, dedicated area for passengers utilizing the extensive informal car pool system, bicycle storage, passenger waiting areas, and transit system information. The facility will include pedestrian improvements at the project site, including a pedestrian bridge over Old Keene Mill Road.

### 4.3 DBE Program

Brent Riddle, Senior Transportation Planner, is designated as the DBE Liaison Officer for Fairfax County. According to the DBE Program Plan, he has overall responsibility for monitoring and enforcing the DBE program to ensure compliance with appropriate federal and state laws and regulations. Mr. Riddle has direct access to the Director of Fairfax County's Department of Transportation, Mr. Thomas Biesiadny. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate Fairfax County staff and officials. Some of his duties and responsibilities include: coordinate with other Fairfax County departments to determine overall annual DBE goals; gather and report statistical data and other information as required by DOT; identify contracts and procurements so that DBE goals are included in solicitations; review third party contracts and purchase requisitions for compliance with the program; plan and participate in DBE training seminars; and advise the Director on DBE matters and achievements.

Fairfax County recently hired a Transportation Planner II, Mr. Benjamin Atsem, to assist the DBELO in administering the DBE Program. According to the job description provided, this position will assume the role of DBELO and ensure Fairfax County's compliance with Federal DBE provisions contained in 49 CFR Part 26. Mr. Riddle stated that Mr. Atsem is currently in training as his assistant to gain more experience and competency in DBE Program administration before assuming the role of DBELO. He indicated that the transition will occur in about two years.

Mr. Riddle has held the responsibility of DBELO for the past two years (2014 – 2015). Prior to Mr. Riddle's tenure, the DBELO position was vacant for approximately one and half years.

Fairfax County revised its DBE Program as part of its small business element submission in December 2012. A further revision was required and submitted in January 2013; however, FTA did not approve the plan and noted it as expired because it did not identify a DBELO. Fairfax County submitted an updated program plan (which identified Mr. Riddle as DBELO) in TEAM on June 16, 2015, and in response to FTA comments, a later revision was submitted on August 22, 2015.

According to Fairfax County's Director, the DBE Program has been in place since 1989. Information in TEAM-Web for Fairfax County's "Civil Rights Status" indicates DBE goal history dating back to 2005. According to TEAM, Fairfax County's DBE goal history has been 100% race neutral, as follows:

- FY 2005 - 15%
- FY 2007 - 9.93%
- FT 2012 - 14.75%
- FY 2013 – 2015 - 7.9%

Goal attainment data for fiscal years prior to 2012 was not available. No DBE report information was in TEAM. The DBELO stated that any information that collected or maintained by his predecessor (who has left the organization) is not available.

The DBE goal attainment for fiscal year 2012 was 87%, and for FFYs 2013 – 2015 was zero percent (0%). Fairfax County's current goal submission for FFYs 2016 – 2018 indicates the agency will implement a race neutral/race conscious program. The proposed overall DBE goal is 17.7%, with an 8.1% RN / 9.6% RC split.

Several corrective actions and recommendations listed in this report will require Fairfax County to develop and implement processes and procedures to ensure that their DBE Program is administered in compliance with the requirements set forth in 49 CFR Part 26.

## 5. Scope and Methodology

### 5.1 Scope

Implementation of the following DBE program components specified by the FTA are reviewed in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA

- A signed policy statement expressing a commitment to Fairfax County's DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by Fairfax County as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed, made available to the public and updated at least annually [49 CFR 26.31]
- Determination that overconcentration does (not) exist and address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on a DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]
- A shortfall analysis and corrective action plan when Fairfax County did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include Fairfax County seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- A non-discrimination and a prompt payment clause is in all FTA-assisted contracts and a prompt payment verification process. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65 -26.71]
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86]
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55]

## 5.2 Methodology

The initial step of this Compliance Review consisted of consultation with the FTA Office of Civil Rights and a review of available information from FTA's TEAM System and other sources. After reviewing this information, potential dates for the site visit were coordinated.

The FTA Office of Civil Rights sent a notification letter to Fairfax County that informed the agency of the upcoming visit, requested necessary review documents, and explained the areas that would be covered during the on-site visit. The letter also informed Fairfax County of staff and other parties that would potentially be interviewed.

Before conducting the on-site visit, Fairfax County was asked to provide the following documents:

- Most current DBE Program plan
- DBE goal methodology submissions
- DBE semi-annual reports and/or quarterly ARRA reports for the past three years
- A Memorandum of Understanding or similar documents indicating Fairfax County's participation in the Unified Certification Program (UCP)
- A list of FTA-assisted contracts awarded during the current and previous fiscal years
- A list of DBE firms that have worked on FTA-assisted projects sponsored by Fairfax County
- Documentation showing the "Good Faith Efforts" criteria and review procedures established by Fairfax County
- Procedures for monitoring all DBE program participants to ensure compliance with the DBE requirements, including but not limited to, a prompt payment verification process, a process for ensuring work committed to DBEs is actually performed by DBEs, and any DBE complaints against the agency or its prime contractors during a specified time period

The on-site DBE Compliance Review of Fairfax County took place from October 7 to 9, 2015. An opening conference was conducted at the beginning of the Compliance Review with FTA representatives, Fairfax County staff and the review team. The following people attended the meeting:

#### **Federal Transit Administration**

Janelle Hinton	FTA Program Analyst
Antoinette Davis	FTA Equal Opportunity Specialist
Britney Berry	FTA DBE Coordinator
Jennifer Riess	FTA Equal Opportunity Specialist
Stacie Parkins	FTA Region III Civil Rights Officer

#### **Fairfax County Department of Transportation**

Tom Biesiadny	Director
Todd Wigglesworth	Acting Chief
Brent Riddle	Senior Transportation Planner
Benjamin Atsem	Transportation Planner II
Deepak Bhinge	Project Manager
Mohamed Kadasi	Section Chief

#### **Milligan and Company, LLC**

Lillie Claitt	Lead Reviewer
Denise Bailey	Principal
Sandra Swiacki	Director
Habibatu Atta	Reviewer
Allison Reed	Reviewer

Following the opening conference, the review team examined Fairfax County's DBE Program Plan and other documents submitted by the DBE Liaison Officer. The team then conducted interviews with Fairfax County regarding DBE program administration, DBE goal

implementation, record keeping, monitoring, and enforcement. These interviews included staff from its diversity, procurement, legal and finance offices. A sample of contracts was then selected and reviewed for their DBE elements. Additional interviews with prime contractors, subcontractors, and interested parties were also conducted

At the end of the review, FTA representatives, Fairfax County staff and the review team convened for the final exit conference. At the exit conference, initial findings and corrective actions were discussed with Fairfax County. Attending the conference were:

**Federal Transit Administration**

Janelle Hinton	FTA Program Analyst
Antoinette Davis	FTA Equal Opportunity Specialist
Britney Berry	FTA DBE Coordinator
Jennifer Riess	FTA Equal Opportunity Specialist
Stacie Parkins	FTA Region III Civil Rights Officer

**Fairfax County Department of Transportation**

Tom Biesiadny	Director
Todd Wigglesworth	Acting Chief
Brent Riddle	Senior Transportation Planner
Benjamin Atsem	Transportation Planner II
Deepak Bhinge	Project Manager
Mohamed Kadasi	Section Chief

**Milligan and Company, LLC**

Lillie Claitt	Lead Reviewer
Sandra Swiacki	Director
Habibatu Atta	Reviewer
Allison Reed	Reviewer

Following the site visit, a draft report was compiled and transmitted to Fairfax County for comment. See Fairfax County's official response enclosed as Attachment A.

### 5.3 Stakeholder Interviews

This section discusses information gathered during interviews with community representatives, stakeholder groups, and contractors regarding Fairfax County's DBE Program.

Prior to the on-site review, the review team interviewed two of Fairfax County's prime contractors and one non-DBE woman-owned business sub-contractor: WDG Architecture – Prime Contractor, Arthur Construction Co., Inc. (DBE) – Prime Contractor, and Parker Rodriguez, Inc. (non-DBE) – WBE Subcontractor.

The interview questions included:

- *What is your familiarity with Fairfax County's DBE Program?*
- *What is your contracting experience with the organization?*
- *Give a brief description of your current/active contract.*
- *What is the dollar value of your contract?*



- *What are the payment terms?*
- *How much have you been paid to date?*
- *How is your working relationship with the prime or subcontractor?*
- *Have there been any contract issues?*

Each contractor was familiar with Fairfax County's DBE Program, and stated that their contracting experiences with the agency have been favorable. According to the primes and the subcontractor, they have not experienced any contract performance or payment issues.

WDG Architecture is the prime contractor on the currently active Spring Central Business District Transit Parking Facility Project. The contract includes the design phase, and later, will include administration of the project's construction phase. The principal of WDG Architecture stated that the design phase has taken longer than anticipated, and the architects are working closely with Fairfax County to finalize the design so that the construction phase can commence. Parker Rodriguez, Inc. (WBE) is a non-DBE subcontractor, selected by WDG Architecture to perform work on the Spring Central Business District Transit Parking Facility design project. The prime contractor stated it has performed three orders for additional services (under contingency) on the contract, and Parker Rodriguez was included in the work. Parker Rodriguez is a registered woman-owned business in Fairfax County's Small Women-owned and Minority-owned (SWAM) Business Program. The female principal stated that the firm has not sought to obtain DBE certification because of the amount of paperwork involved in the process.

Arthur Construction Co., Inc. was the DBE prime contractor on the Richmond Highway Public Transportation project, and successfully completed the contract in February 2015.

All of the contractors were cooperative in providing contract and invoice payment information for the review team's examination. Details of the information reviewed are discussed later in this report.

The review team also contacted business advocacy organizations regarding their interaction with Fairfax County on DBE Program issues. The purpose of this activity was to invite the organizations to participate in interviews to determine how Fairfax County presents its DBE Program to external stakeholders.

The review team contacted seven (7) organizations to participate in the stakeholder interviews:

- *Hispanic Business Council*: is a part of the Dulles Regional Chamber of Commerce, which was launched to broaden the Chamber's membership
- *Asian American Chamber of Commerce*: supports the development of member businesses through networking programs, seminars and special events
- *Capital Region Minority Supplier Diversity Council*: seeks to improve diversification and innovation of supply chains for its corporate members
- *Northern Virginia Black Chamber of Commerce*: maintains efforts to facilitate economic empowerment of black owned businesses in Northern Virginia
- *Dulles Regional Chamber of Commerce*: is ranked as one of the largest chambers in membership in Northern Virginia by the Washington Business Journal
- *Greater Washington Hispanic Chamber of Commerce*: promotes and facilitates the success of Hispanic and other minority-owned businesses and the communities they serve through networking, outreach, advocacy, and education



- *Virginia Hispanic Chamber of Commerce*: creates, promotes and enhances business opportunities for its membership by providing linkage with special emphasis on the Hispanic community

With the assistance from Fairfax County's DBELO, representatives from two of the agencies agreed to participate – the Asian American Chamber of Commerce (AACC) and the Greater Washington Hispanic Chamber of Commerce (GWHCC). The interview questions presented were:

1. *Are you familiar with the agency's DBE Program?*
2. *Have you been requested to participate in the development of or comment on the agency's DBE goal?*
3. *Is your organization made aware of contracting/subcontracting opportunities on the agency's contracts? If so, how?*
4. *How often is your organization contacted to provide referrals for the agency's contracting opportunities?*
5. *Do you participate in any outreach efforts organized by the agency?*
6. *What is your view of the effectiveness of the agency's DBE Program?*
7. *Are you aware of any concerns about the DBE Program from members?*
8. *Do you have any suggestions for the agency to improve their DBE Program?*

The representative from both organizations stated that their working relationship with Fairfax County is new. Consequently, their membership has not had the opportunity to provide much feedback on Fairfax County's DBE program to date. However, GWHCC stated that Fairfax County's DBELO made them aware of contracting/subcontracting opportunities during a new member reception earlier this year. Both agencies stated they are not aware of any concerns that their membership may have regarding Fairfax County's DBE program, but the membership is eager to learn more about new opportunities.

Representatives from both agencies stated they were not contacted to participate in the development of Fairfax County's DBE goal. One agency mentioned they facilitate four networking meetings per year with buyers and suppliers, and will like to see Fairfax County become more involved with those events.

The representatives from both organizations suggested that Fairfax County could work more closely with their agencies by participating in more collaboration and outreach efforts.

## 6. Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to Fairfax County's DBE Program is provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review
- A statement concerning the DBE requirements being violated or potentially being violated
- A statement concerning the required corrective action to resolve the issue

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

## **6.1 DBE Program Plan**

### **Basic Requirement**

(49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the agency's implementation of the DBE Program. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for DBE Program Plan.

Fairfax County does not have an approved DBE Program Plan. Fairfax County submitted its DBE Program Plan, which includes the policy statement, in TEAM on June 26, 2015. It received FTA's conditional approval with comments on August 5, 2015, advising that revisions were required. On August 22, 2015, Fairfax County submitted a revision to the DBE Program Plan in TEAM for FTA approval.

The review team noted that Fairfax County's revised DBE Program Plan has not adequately addressed the FTA's comment areas. These areas will be discussed throughout this report, and include the financial institutions, overconcentration, good faith efforts, prompt payment, contract assurance, and legal remedies sections of Fairfax County's DBE Program Plan.

### **Corrective Actions and Schedule**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights an updated DBE Program Plan, with recommended changes, that meets all of the requirements of 49 CFR Part 26.

## **6.2 DBE Policy Statement**

### **Basic Requirement**

(49 CFR Part 26.23): Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for DBE Policy Statement.

Fairfax County's DBE policy statement is included in the revised DBE Program. The policy statement outlines the objectives of the DBE program, the responsibilities of the DBE Liaison Officer and how the policy will be disseminated internally and externally. The policy statement is signed by the Director, Fairfax County Department of Transportation, Thomas Biesiadny, and is dated June 23, 2015. However, Fairfax County has not posted the policy statement on the website or circulated it throughout the organization. There was also no evidence that Fairfax County has circulated the policy to DBE and non-DBE business communities.

The DBE Liaison Officer (DBELO) indicated that the DBE Program Plan, which includes the policy statement, was presented to the County's Board of Supervisors for approval, and then included as an attachment to the meeting minutes. According to the DBE Liaison Officer, the organization was waiting for FTA's approval of the DBE Program Plan before posting or circulating the policy statement.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights evidence that it has posted the policy statement on the County's website, circulated it throughout the organization, and disseminated it to DBE and non-DBE business communities.

### **6.3 DBE Liaison Officer**

#### **Basic Requirement (49 CFR Part 26.25)**

Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program, and must have adequate staff to properly administer the program.

#### **Discussion**

During this compliance review, deficiencies were found with the requirement for DBE Liaison Officer.

The DBE Program Plan identifies the duties and responsibilities of the DBELO. Brent Riddle, Senior Transportation Planner, is identified as the DBELO responsible for implementing all aspects of the DBE Program. Fairfax County's DBE Program states that the DBELO has direct and independent access to the Director, Department of Transportation concerning DBE program matters. The organizational chart included in the DBE Program, reflects the reporting line access to the Director, Mr. Thomas Biesiadny. Mr. Riddle stated that he meets with the Director, on average, every 2 to 3 weeks regarding various DBE program matters.

Mr. Riddle holds the position of Senior Transportation Planner in the Coordination and Funding Division. The position description provided indicates that Mr. Riddle's job duties are 100% transit planning and allocates a percentage of time for the various duties, such as:

- 15% - Serve as technical staff and provided recommendations on policy issues to member of the Fairfax County Board of Supervisors or serve on regional agency boards;
- 30% - Serve as technical staff and provides recommendations on policy issues to Board of Supervisors and County executives regarding transportation legislation;
- 10% - Develops, examines, and pursues various transportation funding mechanisms;
- 20% - Supports Chair of Northern Virginia Transportation Authority (NVTa ) interim technical committee;
- 5% - Maintains a working knowledge of the provisions of federal transportation and related air quality legislation;
- 5% - Analyses transportation policy issues, conducts advanced transportation studies and analyses;
- 5% - Reviews operating and capital budgets, assists with development of transportation section of County's capital improvement program;
- 10% - Works with VDOT staff to prepare regular updates of County's secondary road program for Board of Supervisors consideration.

As such, Mr. Riddle's position description does not allot time dedicated to administering the DBE program. While Mr. Riddle has been involved in DBELO responsibilities, such as, goal

setting, submitting semi-annual reports and meeting with external organizations regarding DBE program opportunities, based upon the percentage of time required to perform his transit planning duties, it is unlikely that Mr. Riddle can fully carry out the duties and responsibilities the DBELO must perform.

The DBE Program states, *“To assist Mr. Riddle in his role as DBELO, Fairfax County hired a Transportation Planner II who will help coordinate with other County departments, organize Title VI training, and generally assist with FCDOT’s Civil Rights (i.e., DBE and Title VI) compliance efforts.”*

Fairfax County recently hired Mr. Benjamin Atsem as the new Transportation Planner II, reporting directly to Mr. Riddle. The position description provided for Mr. Atsem indicates he is to “assume” the role of DBELO, with 25% of his time dedicated to DBELO duties and responsibilities, as outlined in Fairfax County’s DBE Program. Mr. Riddle stated that Mr. Atsem will have hands-on training to gain required experience prior to assuming the role of DBELO, which may take up to two years.

The review team conducted interviews with Fairfax County staff regarding their involvement in the DBE Program management. The departments included Public Works and Environmental Services (Engineering), Finance, Procurement, and Legal. These discussions with the each department representative, demonstrated how they work together as a team with the DBELO. Each representative expressed his or her support of the DBE Program, and indicated that there is a positive working relationship with the DBELO. However, they each have had limited involvement in assisting the DBELO in administering the various aspects of the DBE Program.

The Project Manager stated that he was not involved in the goal setting process and that because the Springfield Central Business District Parking Facility project was race neutral, it did not have DBE participation that required DBE reporting or monitoring. The Project Manager stated that the DBELO has requested his assistance to develop a DBE monitoring tool to maintain invoice payment and verification information.

The Procurement Manager stated that he coordinates with the Transportation Design Division to identify projects for the DBE goal calculation process, and that he will be working with the DBELO to update bid and contract documents to reflect required FTA clauses.

The Deputy County Attorney stated that she relies upon the DBELO to bring issues to the attention of the Legal Department for review, and that she provides legal counsel to the DBELO as required. The Deputy County Attorney further stated that she will assist in updating existing contract documents.

The review team observed Mr. Atsem’s involvement in assisting the DBELO in responding to information and document requests for this review, prior to and during the on-site visit.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA’s Office of Civil Rights the identification of a DBELO with direct and independent access to the CEO who is fully responsible for implementing all aspects of the DBE Program.

## 6.4 DBE Financial Institutions

### Basic Requirement (49 CFR Part 26.27)

Recipients must investigate the existence of DBE financial institutions and make efforts to use them. Recipients must also encourage prime contractors to use these DBE financial institutions.

### Discussion

During this compliance review, deficiencies were found with the requirement for Financial Institutions.

Fairfax County has not investigated the existence of banks owned and controlled by socially and economically disadvantaged individuals.

Fairfax County utilizes a competitive procurement process for banking services. The August 2015 DBE Program states, “*The Director of Finance is responsible for the procurement of banking services and is authorized by statutes of the Commonwealth of Virginia and by County resolution to acquire these services by contract.*” Fairfax County is currently in the second year of a three-year term contract, which has four one-year renewal options. The current contract will expire in December 2021.

The DBE Program states that for future banking requirements, Fairfax County will work with the Virginia Department of Small Business and Supplier Diversity and the Fairfax County Economic Development Authority to identify financial institutions. The DBELO stated that Fairfax County will investigate the existence of DBE financial institutions every three years, in conjunction with establishing the agency’s triennial goal submission.

### Corrective Actions and Schedules

Within 60 days of the issuance of the final report, submit to the FTA’s Office of Civil Rights evidence that it has investigated the existence of DBE financial institutions, plans to utilize these institutions, and efforts to encourage their use by prime contractors.

## 6.5 DBE Directory

### Basic Requirement (49 CFR Part 26.31)

A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

### Discussion

During this compliance review, deficiencies were found with the requirement for DBE Directory.

Fairfax County is not a certifying agency, but relies upon the Virginia Unified Certification Program (VUCP) DBE Directory to identify certified DBE firms. The Virginia Department of

Small Business & Supplier Diversity (DSBSD) and the Metropolitan Washington Airports Authority (MWAA) are the certifying agencies for the state of Virginia. The DSBSD maintains the directory in real time as firms are added and removed from the database.

The directory includes the name, address, phone number, email, and type of work (using the specific NAICS code) each DBE is certified to perform. The DBE Program includes a link to the DBE directory. However, the review team did not find reference to the DBE directory in solicitation documents or on Fairfax County's website.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit evidence to the FTA's Office of Civil Rights that a link to the Virginia UCP DBE Directory is posted on Fairfax County's website and included in solicitation documents.

## **6.6 Overconcentration**

### **Basic Requirement (49 CFR Part 26.33)**

The recipient must determine if overconcentration of DBE firms exists and address the problem, if necessary.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for Overconcentration.

The overconcentration section of Fairfax County's DBE Program states that, "*Fairfax County has not identified that overconcentration exists in the types of work that DBEs perform. The DBELO (or his designee) will work with relevant County agencies to re-evaluate for overconcentration triennially.*" The DBE Program does not describe how Fairfax County evaluated overconcentration (i.e., conducted an analysis of the number of DBEs being used in a specific area of contracting), or how frequently it performs such evaluations.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights a process for conducting an overconcentration analysis including how often the analysis will be conducted.

## **6.7 Business Development Programs**

### **Basic Requirement (49 CFR Part 26.35)**

The recipient may establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

## **Discussion**

During this compliance review, no deficiencies were found with the requirement for Business Development Programs.

Fairfax County does not have a formal business development program or mentor protégé program as described in the DBE regulations.

## **6.8 Determining/Meeting Goals**

### **A) Calculation**

#### **Basic Requirement (49 CFR Part 26.45)**

To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

## **Discussion**

During this compliance review, no deficiencies were found with the requirement for Determining/Meeting Goals. However, an advisory comment is made regarding this requirement.

Fairfax County is listed in Group C on the FTA's "DBE Three-Year Goal Setting Submission Schedule". The County's current three-year DBE goal submission was due August 1, 2015 for federal fiscal years 2016, 2017, and 2018. Fairfax County's DBE goal submission incorrectly references the goal period as 2015, 2016, and 2017.

In June 2015, Fairfax County submitted to the FTA a combined document containing both the DBE Program Plan and DBE goal and methodology for FY 2016 – 2018. The proposed overall goal for the three fiscal years is 17.7%, with 8.1% to be achieved through race neutral means and 9.6% through race conscious means. The FTA Region III Civil Rights Officer provided review comments in August 2015 advising Fairfax County of corrections required, and that the submittal is to be two separate documents. The FTA's comments pertaining to the goal setting methodology were for Fairfax County to include: (1) a narrative of the agency's geographic market area; (2) information if there were any comments from the community during the consultation of the overall goal; and (3) goal calculation worksheets.

On September 11, 2015, Fairfax County resubmitted the FFY 2016 – 2018 DBE goal and methodology to include calculation worksheets, and a cover letter responding to the Region III Civil Rights Officer's comments. The revised submittal did not impact Fairfax County's overall goal calculation.

#### **Step 1: Determining the Base Figure**

When establishing Fairfax County's FFY 2016–2018 goal, the DBELO worked in conjunction with other personnel to identify FTA-funded projects that will be initiated to support the construction of transit access improvements (including sidewalks, intersection improvements



and bus shelters). Fairfax County's goal setting methodology projects \$5,510,561 in FTA-funded contracts for the three fiscal years. The construction related NAICS codes identified for the anticipated contracts are:

- 237110 – Water & Sewer Line & Related Structures
- 237130 – Power & Communications Line & Related Structures
- 237310 – Highway, Street & Bridge Construction
- 238990 – All Other Specialty Trade Contractors

Fairfax County identified its local market area as the Washington, D.C. Metropolitan Area, which includes the larger counties and municipalities in Northern Virginia. This includes the following jurisdictions: City of Alexandria, Arlington County, District of Columbia, City of Fairfax, Fairfax County, Falls Church, Fredericksburg, Loudoun County, City of Manassas, Manassas Park, Prince William, and Stafford County.

Fairfax County created a table summarizing the total number of all contractors and certified DBEs located in Fairfax County's local market area to determine the relative availability of ready, willing and able DBEs. The 2013 U.S. Census Bureau's County Business Patterns was used to obtain the estimated number of all contractors providing services in the applicable NAICS codes (as the denominator), and the Virginia UCP DBE directory was to obtain certified DBEs in the applicable NAICS codes (as the numerator). These data sources yielded Fairfax County's calculation of 486 firms that could participate in its contracting opportunities, of which 86 were DBE firms.

The number of DBEs divided by the number of all firms resulted in an unweighted base figure of 17.7%.

Fairfax County elected not to use the FTA's recommended weighting strategy for each NAICS code to improve the accuracy of the DBE goal. In the goal submission Fairfax County states, *"FCDOT does not anticipate entering into any new contracts using applicable FTA funding other than for construction services."*

#### Step 2: Adjusting the Base Figure

There was no adjustment to Fairfax County's 17.7% base figure. According to the goal setting methodology, Fairfax County considered several factors to determine if an adjustment would be made: (1) Disparity Studies: A review of the Virginia Department of Transportation's Utilization and Availability Study, revised July 19, 2004, provided no useful information. Fairfax County believed this information was out-dated and did not adequately reflect the business demographics in their market area. No other current local disparity study was available to Fairfax County for review. (2) Past Participation: Fairfax County reviewed past participation data since 2008, and identified possible underutilization of DBEs because they achieved 0% DBE participation in the past three fiscal years. (3) Potential Capacity Increases: Fairfax County stated that there was no evidence to show any significant increase on an annual basis of DBEs or total firms in either the Construction or Engineering NAICS categories.

#### **Advisory Comment**

It is recommended that Fairfax County consider the process of weighting, an effective best practice, to ensure that the Step One Base Figure in the goal calculation is as accurate as possible. Weighting is the statistical technique used to refine the base goal. This is

accomplished by comparing the DBE firms for each category of work (by NAICS) with the proportion of funds projected to be spent in that category.

## **B) Public Participation**

### **Basic Requirement (49 CFR Part 26.45)**

In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

### **Discussion**

During this compliance review, no deficiencies were found with the requirement for Public Participation. However, an advisory comment is made regarding this requirement.

The FFY 2016 – 2018 goal methodology documentation included copies of email communications evidencing proof of public participation outreach efforts. The DBELO contacted Fairfax County's Department of Purchasing and Supply Management, Supplier Diversity, for assistance in identifying local community organizations for participation in the consultation process for the development of the "*DBE policy and goal*".

The initial contact for outreach included emails to the following organizations:

- Hispanic Business Council (HBC)
- Capital Region Minority Supplier Development Council (CRMSDC)
- Greater Washington Hispanic Chamber of Commerce (GWHCC)
- Virginia Hispanic Chamber of Commerce (VHCC)
- Asian American Chamber of Commerce (AACC)

Brent Riddle represented Fairfax County as the DBELO and presented the objectives of the DBE Program to promote participation of DBEs in Fairfax County's contracts. The means of communication were emails, telephone discussions, and presentation meetings. The public participation documents reviewed indicate that Mr. Riddle informed the organizations that,

*"Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY 15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs."*

The documentation reviewed indicates that Mr. Riddle met with three organizations on the following dates:

- 12/10/14 Angie Carrera – Hispanic Business Council
- 12/17/14 Jonice S. Adams – Capital Region Minority Supplier Development Council
- 05/12/15 Pamela Nieto – Greater Washington Hispanic Chamber of Commerce  
(Mr. Riddle gave a DBE Program presentation at the GWHCC's "New Member Morning Reception")

The documentation did not contain evidence of comments Fairfax County may have received from the telephone discussions or presentation meetings. However, the review team communicated with two of the agencies (GWHCC and AACC) in stakeholder interviews and was informed that their relationships with Fairfax County are new and that their memberships are eager to learn more about opportunities with the County.

As proof of publication, Fairfax County provided advertising verification. The goal was published in the Washington Post (on April 27, 2015 and May1, 2015), El Tiempo Latino (the Spanish language newspaper), and was posted on Fairfax County's website.

### **Advisory Comment**

Please note that Fairfax County's DBE goal must remain on its website for the entire triennial period.

## **C) Race-Neutral DBE Participation**

### **Basic Requirement (49 CFR Part 26.51)**

The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for Race-Neutral DBE Participation.

Fairfax County submitted its updated DBE Program Plan in December 2012 to include the required small business element in accordance with §26.39.

In previous fiscal years, Fairfax County has established 100% race neutral goals to facilitate DBE participation. There is no evidence of Fairfax County's use of race neutral measures to facilitate achievement of its DBE goals.

The DBE Program Plan states that Fairfax County *"has incorporated a non-discriminatory element in its DBE program, in order to facilitate competition on FTA assisted public works projects by small business concerns (both DBEs and non-DBE small businesses)".* The agency has identified Fairfax County's Small and Minority Business Enterprise (SMBE) Program as the element used to foster DBE and other small business participation.

The SMBE Program operates under the auspices of the Department of Purchasing and Supply Management (DPSM), Vendor Relations Division (VRD). The objective of the SMBE Program is to grow and sustain small, woman-owned, and minority-owned (SWAM) and service disabled veteran businesses through community outreach, education, and training.

The SMBE program states that the County's DPSM is responsible for small business activities such as:

- encouraging participation of SWAM and service disabled veteran vendors in all phases of the procurement process;
- making available lists of goods and services annually procured, the amounts procured, the designated buyer's name, e-mail address, and telephone number;
- discussing and clarifying questions relative to Fairfax County contracts;
- participating in conference and vendor fairs designated for small, minority and women-owned businesses

DBE regulation, §26.51 provide several examples of means to facilitate race neutral participation, such as:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing
- Providing technical assistance and other services
- Carrying out information and communications programs on contracting procedures and specific contract opportunities
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses

The review team examined Fairfax County's solicitation documents and noted that they provided language in "Section A-25 – Subcontracting", encouraging contractors to utilize small, women, and minority businesses. The section references a link to the Virginia eProcurement Portal website (<http://eva.state.va.us>), and the Fairfax County Office of Small Business website (<http://www.fairfaxcountv.gov/dpstTi/osb/smba.htm>), for contractors to identify registered small, minority-owned and/or woman-owned businesses. The section does not reference a link to the Virginia UCP Directory to encourage the use of DBEs to facilitate race neutral participation.

With the exception of one year, Fairfax County has not achieved its race neutral DBE goals. Through its customary competitive procurement process, in FY 2012 Fairfax County awarded one race neutral DBE prime contract (the Route 1, Richmond Highway Construction Project), which was successfully completed in FY 2015.

For FFYs 2016 – 2018, Fairfax County anticipates achieving its overall 17.7% DBE goal by 8.1% race neutral and 9.6% race conscious means. In the goal submission, Fairfax County states that in recent years it has not consistently maintained data on the use of DBEs, and it is impossible for them to use past results to project a target for race neutral procurement opportunities. The DBELO stated that Fairfax County did not have a system in place to track DBE data. Fairfax County maintained non-electronic, paper records, which were not conducive for providing historical DBE participation information.

Accordingly, to establish a race neutral goal for FFYs 2016 - 2018, Fairfax County elected to use Virginia DOT's race neutral goal as a starting point for establishing the race neutral portion of its overall goal. The DBELO stated that Fairfax County and Virginia DOT's geographic market areas are similar, and that their projected construction contracts overlap relative to sidewalk, roadway, and transit amenities projects.

VDOT's overall DBE goal is set at 10.53% with a 4.82% race neutral breakout. Therefore, Fairfax County has set its race neutral goal by first, dividing VDOT's 4.82% race neutral goal by the 10.53% overall goal ( $4.82\% / 10.53\% = 45.77\%$  of VDOT's overall goal). Next, Fairfax County multiplied its 17.7% base goal by the 45.77% result to equal an 8.1% race neutral goal calculation ( $\text{base goal} = 17.7\% * 45.77\% = 8.1\%$  race neutral).

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights a process to develop and implement race neutral measures to facilitate race neutral participation on its contracts.

## **D) Race-Conscious DBE Participation**

### **Basic Requirement (49 CFR Part 26.51)**

The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for Race-Conscious DBE Participation.

Fairfax County anticipates being able to meet 9.6% of its overall 17.7% DBE goal through race-conscious means, after establishing its goal of 8.1% through race neutral means. The DBE Program states that, "Fairfax County will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means".

Prior to the FFY 2016 – 2018 goal submission, Fairfax County has implemented a 100% race neutral DBE Program, and there is no evidence of the agency setting contract-specific goals in the past. As a result, Fairfax County does not have an established process for the review of projects to establish future contract-specific DBE goals.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights a process for setting contract goals.

## E) Good Faith Efforts

### Basic Requirement (49 CFR Part 26.53)

The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract; a description of the work each DBE will perform; the dollar amount of DBE participation; written commitment to use DBE submitted in response to the contract goal; written confirmation from each DBE listed; or good faith efforts as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

### Discussion

During this compliance review, deficiencies were found with the requirement for Good Faith Efforts.

Since Fairfax County's DBE Program has historically been 100% race neutral, the good faith efforts requirement has not been applicable. Solicitation documents reviewed did not contain good faith efforts language.

Fairfax County's updated DBE Program includes the Good Faith Efforts (GFE) procedures that will be applicable to future contracts with race conscious DBE goals. The DBE Program Plan does not clearly establish Fairfax County's approach for either responsiveness or responsibility criteria. The DBE Program states:

*"Fairfax County may regard compliance with good faith effort requirements as either a matter of responsiveness or responsibility as appropriate, as determined by the Purchasing Agent. Fairfax County will determine whether a bidder/offeror who has not met the DBE contract goal has documented sufficient good faith efforts to be regarded as responsive or responsible."*

The DBE Program sets forth the procedures for those instances where a contract-specific DBE goal is included in a procurement/solicitation, stating:

*"Fairfax County will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so."*

In addition, a bidder/offeror will be required to submit the following information:

- *The names and addresses of DBE firms that will participate in the contract*
- *A description of the work that each DBE will perform*
- *The dollar value of the participation of each DBE firm participating*
- *Written and signed documentation of commitment to use a DBE subcontractor, whose participation it submits to meet a contract goal*

- *Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment*
- *If the contract goal is not met, evidence of good faith efforts*

The DBE Program further states:

*"Any bidder/offeror who is determined not to be a responsible bidder shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination. Within 10 days of being informed by Fairfax County that the bidder is not responsible because it has not documented sufficient good faith efforts to meet the DBE goal, a bidder/offeror may seek administrative reconsideration. Bidders/offerors should submit this request for reconsideration in writing to the reconsideration official."*

Mr. Ronald N, Kirkpatrick, Deputy Director, Fairfax County Department of Public Works and Environment Services is identified as the reconsideration officer. To date, the reconsideration appeal process has not been initiated.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Right a singular approach for determining good faith efforts as either responsiveness or responsibility. In addition, provide contract and solicitation documents with the revised language for determining good faith efforts.

## **F) Protecting Against Termination for Convenience**

### **Basic Requirements (49 CFR 26.53 and 26.13)**

Recipients must implement appropriate mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform the work of the terminated subcontract with its own forces or those of an affiliate, or reducing the scope of DBE contract) without the transit agency's prior written consent. Failure to obtain written consent is a material breach of contract.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for Protecting Against Termination for Convenience.

The DBE Program contains language that requires the prime contractor to obtain Fairfax County's prior written approval to terminate or substitute a DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. However, the contract documents reviewed did not contain this language.

Fairfax County indicated that there have been no DBE terminations on contracts. Based upon the contract information reviewed, there was only one DBE prime contract awarded in FY2012, that was successfully completed FY 2015. No other DBE prime contracts or DBE subcontracts were awarded for review.

Fairfax County must update its procurement and contract documents to contain rules for termination, substitution, and reduction of work performed by DBEs when there is a DBE contract goal. Furthermore, a request for approval to terminate or substitute a DBE used to meet a contract goal must be preceded by the prime contractor allowing the DBE a "five-day" period to provide a response or rebuttal to the proposed termination.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights evidence of updated contract language containing required DBE termination clauses. In addition, develop and implement a process to ensure that contractors comply with the requirements.

### **G) Counting DBE Participation**

#### **Basic Requirement (49 CFR Part 26.55)**

The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidders is only counting work performed by the DBE's own forces in accordance with the DBE requirements.

#### **Discussion**

During this compliance review, no deficiencies were found with the requirement for Counting DBE Participation.

Fairfax County's DBE Program indicates that it will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55. No other information is provided in this DBE Program section.

The DBE Program includes a process for determining a bidder's/offeror's good faith efforts. However, Fairfax County's previous contract awards have been race neutral, and good faith effort determination was not applicable.

The review team examined bid documents submitted for the only federally-funded race neutral prime contract awarded in FY 2012, the Richmond Highway - Public Transportation Initiative Project. The document submittals included the "*Commonwealth of Virginia, Department of Transportation, Minimum DBE Requirements, Form C-111*", which indicated that the DBE prime contractor was designated to perform 87% of the contract with its own workforce, with the exception of signalization work, which was designated to be performed by a non-DBE subcontractor. The review of the bid document and executed contract and verification of invoice payments did not indicate any DBE participation counting issues.



## **H) Quotas**

### **Basic Requirements (49 CFR Part 26.43)**

The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

#### **Discussion**

During this compliance review, no deficiencies were found with the requirement for Quotas.

No evidence of the use of quotas or set-aside contracts by Fairfax County was found during the on-site visit.

## **6.9 Shortfall Analysis and Corrective Action Plan**

### **Basic Requirement (49 CFR Part 26.47)**

The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

#### **Discussion**

During this compliance review, deficiencies were found with the requirement for Shortfall Analysis and Corrective Action Plan.

Fairfax County's DBE Program states that if the awards and commitments shown on the 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, it will (1) analyze in detail the reason for the difference between the overall goal and the actual awards/commitments, and (2) establish specific steps and milestones to address the issues identified in the analysis.

Fairfax County's report of DBE awards and commitments for FFYs 2013, 2014 and 2015 (as June 1) did not meet the 7.9% race neutral goal. FY 2013 and 2015 were zero reports, and the FY 2014 (December 1 report) contained one contract award with no DBE participation. Furthermore, shortfall analyses and corrective action plans were required, but were not conducted for any fiscal year.

Fairfax County does not currently have a process in place for conducting a shortfall analysis. The DBELO stated that in addition to himself and Mr. Atsem, the only other personnel involved would be the engineering staff from the office of Public Works and Environmental Services.

At the on-site, the DBELO and procurement staff informed the review team that the solicitations and awards of contracts anticipated for the FFY 2013 – 2015 were delayed due to unforeseen engineering and design issues. However, Fairfax County anticipates the remaining contracts for the Route 1 Richmond Highway Project will be advanced over the new FFY 2016 – 2018 goal reporting period.

## **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights documentation that a shortfall analysis and corrective action plan for FFYs 2013, 2014 and 2015 have been conducted.

### **6.10 Transit Vehicle Manufacturers (TVMs)**

#### **Basic Requirement (49 CFR Part 26.49)**

The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

#### **Discussion**

During this compliance review, no deficiencies were found with the requirement for Transit Vehicle Manufacturers.

Fairfax County has not purchased transit vehicles.

### **6.11 Required Contract Provisions and Enforcement**

#### **A) Contract Assurance**

##### **Basic Requirements (49 CFR Part 26.13)**

Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include non-discrimination clauses detailed by the DBE regulations.

#### **Discussion**

During this compliance review, deficiencies were found with the requirement for Contract Assurance.

Fairfax County's DBE Program states that it will ensure that the following clause is placed in every FTA assisted contract and subcontract:

"The contractor or subcontractor shall not discriminate on the basis of race, color, sex, gender, national origin or ethnicity in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA 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 Fairfax County deems appropriate."

However, the statement is not verbatim as required by §26.13.

The review team examined the two federally-funded prime contracts Fairfax County awarded between FFYs 2012 through 2015. The contract assurance language was not found in either of the prime contracts or the one subcontract. The two contracts examined were:

<b>Prime Contractor</b>	<b>Project</b>	<b>Contract Number</b>	<b>DBE Subcontractor</b>
Arthur Construction Company ( <b>DBE Prime</b> ) <b>Awarded – 2/23/12</b>	Richmond Highway Public Transportation Initiative/Bus Stop, Pedestrian Safety, Access & Roadway (Route 1)	CN11001026	None
WDG Architecture <b>Awarded – 8/27/14</b>	Springfield Central Business District Parking Garage Project	WA13042	Parker Rodriguez, Inc. (Non-DBE Small minority-woman owned business)

Fairfax County's DBE Program does not include a process for ensuring that the appropriate clauses are included in prime and subcontracts.

At the on-site, Fairfax County's Procurement Manager stated that his department is responsible for providing all contract provisions and that he has been involved in preparing documents for FHWA contracts with the Virginia Department of Transportation (VDOT). He stated that the Procurement Department is working with the DBELO to update Fairfax County's contract documents to include required FTA clauses.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights a process for ensuring that the contract assurance language is placed in every federally-funded contract and subcontract.

### **B) Prompt Payment**

#### **Basic Requirements (49 CFR Part 26.29)**

The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed.

### **Discussion**

During this compliance review, deficiencies were found with the requirement for Prompt Payment.

Prompt Payment

Fairfax County's DBE Program states that the prime contractor agrees to pay subcontractors for satisfactory performance no later than 30 days from receipt of payment from Fairfax County.

The two prime contracts examined did not contain prompt payment language specifying a number of days for prime contractors to pay subcontractors for satisfactory performance of work. No DBE subcontracts were awarded to allow verification of prompt payment language. The Springfield Central Business District Parking Garage Project has one non-DBE subcontract that contains an *Article Three*, stating, "Payment to the Consultant will occur within 15 days of the Architect receiving payment from the owner." The prime to subcontractor payment analysis indicates that the average number of days for the subcontractor's invoice payment is 22 days.

Retainage

In June 2003, USDOT issued a Final Rule on DBE that contained new requirements for prompt return of retainage. According to the Final Rule, if an agency chooses to hold retainage from a prime contractor, it must have 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 30 days after payment to the prime contractor.

Fairfax County's DBE program plan states that the prime contractor agrees to return retainage to each subcontractor within 30 days after retainage is paid to the prime contractor. Of the two prime contracts reviewed, no retainage was withheld. Fairfax County does not currently have a prompt payment verification process in place.

**Corrective Actions and Schedules:**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil a process for ensuring that the 30-day prompt payment language is placed in every federally-funded contract and subcontract consistent with the DBE Program and evidence that a prompt payment verification system is developed and implemented.

**C) Legal Remedies****Basic Requirements (49 CFR Part 26.37)**

Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

**Discussion**

During this compliance review, deficiencies were found with the requirement for Legal Remedies.

The DBE Program states that Fairfax County has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to:

1. Breach of contract action, pursuant to the terms of the contract
2. Breach of contract action, pursuant as may be available through all of Virginia's common law civil remedies including but not limited to actions for breach of contract damages, to obtain restitution, and specific enforcement of the contract
3. If applicable and appropriate, consideration of vendor disbarment from any similar future solicitations pursuant to Fairfax County Procedural Memorandum 12-11 (dated August 21, 2003)

In addition, Fairfax County indicates that it has available several federal government enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001

In the review of the contract documents, the legal remedies referenced in the DBE Program were not found.

Fairfax County's executed contract with WDG Architecture, for architectural services, was the American Institute of Architects (AIA) form contract. The document did not contain specific clauses pertaining to contract violations and associated legal remedies. Article 9 – Miscellaneous Provisions of the contract contained a clause related to non-discrimination and another that states:

“Architect shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Architect's failure to so comply shall constitute a material breach of this contract.”

The executed contract with DBE prime, Arthur Construction, for construction services, was a standard form contract that did not contain any legal remedies or sanctions.

### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights a process to ensure legal and contract remedies are included in all federally-funded contracts and subcontracts.

## **6.12 Certification Standards**

### **Basic Requirements (49 CFR Part 26.67- 26.71)**

The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

**Discussion**

Fairfax County is not a certifying member of the Virginia UCP; therefore, this section is not applicable.

**6.13 Certification Procedures****A) Onsite Visits and Document Review****Basic Requirements (49 CFR Part 26.83)**

The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

**Discussion**

Fairfax County is not a certifying member of the Virginia UCP; therefore, this section is not applicable.

**B) Annual Affidavit****Basic Requirement (49 CFR Part 83)**

DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

**Discussion**

Fairfax County is not a certifying member of the Virginia UCP; therefore, this section is not applicable.

**C) Interstate Certification****Basic Requirement (49 CFR 26.85)**

The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR 26.85(c)-(g).

**Discussion**

Fairfax County is not a certifying member of the Virginia UCP; therefore, this section is not applicable.

## **D) Certification Appeals**

### **Basic Requirements (49 CFR 26.86)**

The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

#### **Discussion:**

Fairfax County is not a certifying member of the Virginia UCP; therefore, this section is not applicable.

## **6.14 Record Keeping and Enforcements**

### **Basic Requirement (49 CFR Parts 26.11 and 26.37):**

The recipient must provide data about its DBE program to FTA on a regular basis to FTA. The recipient must submit Semi-Annual Uniform Reports on June 1<sup>st</sup> and December 1<sup>st</sup> of each fiscal year using the FTA electronic grants management system, unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the DOT Office of Civil Rights by January 1st of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close out reviews for contracts.

Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

#### **Discussion:**

During this compliance review, deficiencies were found with the requirement for Record Keeping and Enforcements.

#### **Reporting DBE Participation**

Prior to the DBE compliance review, Fairfax County had not submitted semi-annual DBE reports, and the current DBELO was unaware that reports were required. To complete the reports, the DBELO stated that he compiled information from two sources, the Department of Public Works, responsible for the award and management of contracts, and the Finance Department, responsible for managing and tracking contract payments. During the past three years, Fairfax County had one DBE prime contract and one prime contract with no DBE participation to report.

The review team examined DBE reports from FY 2013 to the first half of FY 2015 in preparation for this compliance review. Initially the semi-annual reports were not available for review, but were subsequently submitted in TEAM as late reports on September 29, 2015.

The two submissions for FY 2013 were zero reports reflecting no new awards/commitments. For FY 2014, the first half was a zero report reflecting no new awards/commitments; the second half indicated one contract award in the amount of \$3,450,000, with no DBE participation. The first half of FY 2015 was a zero report for new awards/commitments, and reported one closed project in the amount of \$1,179,963, representing 100% race neutral participation.

The one contract award in FY 2014 was the Springfield Central Business District Parking Garage Project. However, the information in the report was incorrect. Specifically, the report reflected the full contract amount of \$3,450,000 and not the federal share of \$990,000. In addition, one subcontract award in the amount of \$109,250 was identified, but not reported.

One closed project reported in the first half of FY 2015 was the completed Richmond Highway Public Transportation Initiative/Bus Stop, Pedestrian Safety, Access, and Roadway on Route 1 construction project. Fairfax County awarded the project February 23, 2012 and completed February 21, 2015. The original contract amount was \$826,650; the final payment amount was \$1,170,963. The increased contract value was attributed to additional task orders issued to complete the project. There were no problems with the information reported.

Over the three fiscal years reporting period, Fairfax County did not attain its overall 7.9% race neutral goal.

#### Bidders List

Fairfax County's DBE program plan states that it does not compile and maintain a bidders list. To verify bidders, Fairfax County utilizes the Virginia Department of Small Business and Supplier Diversity (SBSD) and the Metropolitan Washington Airports Authority's (MWAA) pre-qualified bidders lists, which contain information about all DBE and non-DBE firms that bid or quote on FTA assisted contracts in Virginia.

#### Monitoring

According to the DBE Program Plan, Fairfax County has monitoring and enforcement mechanisms to verify that work committed to DBEs at contract award is actually performed by the DBEs. The DBE Program states that this will be accomplished by:

- the performance of reviews conducted by Fairfax County staff members for all contracts on which DBEs are participating; and
- requiring a running tally of actual payments from prime contractors to DBE firms for work committed at the time of contract award.

Fairfax County was unable to provide any evidence that monitoring efforts and enforcement mechanisms have been implemented to ensure overall DBE Program compliance.

At the on-site, the Project Manager indicated that he and the DBELO are working together to develop a process for monitoring DBE payments. He provided a sample invoice payment report that is used to track on-going payments to prime contractors and subcontractors. The report is being considered as a model in the development of a DBE payment monitoring tool.

#### **Corrective Actions and Schedules**

Within 60 days of the issuance of the final report, submit to the FTA's Office of Civil Rights:



- A plan to develop and implement a procedure for monitoring the DBE Program. This should include any forms, checklists or other tools an on-site reviewer may use to verify and document DBE participation on federally-funded contracts.
- A procedure for collecting and maintaining a record of DBE payments and commitments. This should include a DBE payment verification process.
- A plan to ensure that semi-annual DBE reports are submitted accurately and timely
- Evidence that a bidders list is being compiled in accordance with §26.11(c).

## 7. Summary Findings

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	D	Does not have an approved DBE Program Plan	60 Days
2.	Policy Statement	26.23	D	Policy Statement not posted on website, circulated throughout organization or to DBE & non-DBE communities	60 Days
3.	DBE Liaison Officer	26.25	D	Inadequate amount of time allocated to perform DBELO duties and responsibilities	60 Days
4.	Financial Institutions	26.27	D	Have not investigated the existence of DBE financial institutions or how contractors will be encouraged to use them	60 Days
5.	DBE Directory	26.31	D	VUCP Directory reference and link is not contained in solicitation documents or posted on Fairfax County's website	
6.	Overconcentration	26.33	D	Does not have a process for conducting OC analysis	60 Days

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
7.	Business Development Programs	26.35	ND		
8. Determining / Meeting Goals					
8.a	Calculation	26.45	AC	Best practice of weighting DBE availability may be used to refine base goal	
8.b	Public Participation	26.45	AC	DBE goal must remain on its website for the entire triennial period	
8.c	Race-Neutral	26.51	D	Does not have process for determining race neutral participation	60 Days
8.d	Race-Conscious	26.51	D	Does not have a process for setting contract specific goals.	60 Days
8.e	Good Faith Efforts	26.53	D	Does not have a singular approach for determining GFE as either responsiveness or responsibility	60 Days
8.f	Counting DBE Participation	26.55	ND		
8.g	Protecting Against Termination for Convenience	26.53	D	Contracts do not contain required DBE termination clause	60 Days
8.h	Quotas	26.43	ND		

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
9.	Shortfall Analysis and Corrective Action Plan	26.47	D	Did not meet 7.7% race neutral goal for FY 2013-2015. Shortfall analysis and corrective action plan not conducted	60 Days
10.	TVM	26.49	ND		
11. Required Contract Provisions and Enforcement					
11.a	Contract Assurance	26.13	D	Contract documents do not contain required contract assurance language	60 Days
11.b	Prompt Payment	26.29	D	30-day prompt payment requirement not contained in contract documents Does not have a prompt payment verification process	60 Days
11.c	Legal Remedies	26.37	D	Contract documents do not contain legal remedies or sanctions	60 Days
12. Certification Standards		26.67 - 26.71	NA	FCDOT is not a VUCP certifying member	
13. Certification Procedures					
13.a	Onsite Visit	26.83	NA		
13.b	Annual Affidavit	26.83	NA		
13.c	Interstate Certification	26.85	NA		
13.d	Certification Appeals	26.86	NA		

Item	Requirement of 49 CFR Part 26	Ref.	Site Visit Finding(s)	Finding(s) of Deficiency	Response Days/Date
14.Record Keeping and Enforcements					
14.a	Bidders List and Reporting DBE Participation	26.11	D	Bidders List is not maintained; Semi-annual DBE reports submitted late	60 Days
14.b	Monitoring	26.37	D	Does not have monitoring and enforcement mechanisms to ensure DBE Program compliance or contract remedies & sanctions for non-compliance	60 Days

Findings at the time of the site visit: ND = No Deficiencies Found; D = Deficiency;  
 NA = Not Applicable; AC = Advisory Comment

# **Attachment A**



## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

February 24, 2016

Ms. Anita Heard  
Equal Opportunity Specialist  
Internal EEO Program Coordinator  
Federal Transit Administration  
Office of Civil Rights, TCR  
1200 New Jersey Avenue, S.E.  
E54-420, East Bldg.  
Washington, DC 20590

Re: Fairfax County Department of Transportation DBE Program Compliance Review by the  
Federal Transit Administration, January 2016

Dear Ms. Heard:

On February 16, 2016, Fairfax County Department of Transportation (FCDOT) received FTA's draft report of the *DBE Program Compliance Review*, which was conducted October 7-9, 2015. Prior to and since the review, FCDOT has been working to improve our DBE Program. Consequently, many of the deficiency findings detailed in the draft report have been addressed. FCDOT's responses to the deficiencies are detailed below:

### General Requirements

#### *1) Program Plan – Does not have an approved DBE Program Plan*

FCDOT has several efforts to complete a DBE program to FTA's satisfaction. Over the past year, FCDOT has submitted to FTA three DBE Program Plan drafts. In each iteration, FTA has identified new areas for FCDOT to respond. Please see the attached correspondences.

FCDOT's first submittal occurred on February 24, 2015. FCDOT submitted this draft DBE Program Plan to solicit feedback before a final draft was presented to the Fairfax County Board of Supervisors for consideration. A second DBE Program Plan was submitted to FTA on August 4, 2015, directly after the Board of Supervisors approved the original draft plan. FTA provided additional feedback to the Board-approved version on August 5, 2015. On September 11, 2015, FCDOT resubmitted the DBE Program Plan documents, after incorporating the edits requested by FTA. FTA then requested additional changes to this draft on November 10, 2015, and December 18, 2015.

One of the most recent FTA requests included developing additional language for Section 26.53(f). FCDOT's DBE Program Plan lacked language describing the consequences if a

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[www.fairfaxcounty.gov/fcdot](http://www.fairfaxcounty.gov/fcdot)



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February 24, 2016  
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Prime Contractor's failed to make a good faith effort to hire a DBE firm, when another DBE firm is terminated. Since that provision has significant impacts on operations, bid and contract documentation, and potentially impacts project costs, FCDOT worked to develop proposed policy language in close coordination with the Department of Public Works and Environmental Services (DPWES) and the Office of the County Attorney (OCA).

FCDOT is prepared to resubmit the Title VI Program for FTA review; however, FCDOT's request to FTA on December 18, 2015 for the OCA to discuss requested changes to Section 26.109 has not been resolved. FTA's model language in that section that begins, "Notwithstanding...", appears to contravene Virginia law. The County had offered alternate language, in an attempt to address FTA's concerns and remain compliant with state law. We are confident that any issues in this section can be resolved expeditiously. The County's current *DBE Policy Program and Goal* document is attached, with the section in question highlighted for your convenience.

*2) Policy Statement – Policy Statement not posted on website, circulated throughout organization or to DBE & non-DBE communities*

FCDOT has hesitated to publicly post or circulate internally and externally a DBE Policy Statement that has not been formally approved by the cognizant federal agency. As soon as FTA approves the County's DBE Program, FCDOT will disseminate the Policy Statement, as required.

*3) DBE Liaison Officer – Inadequate amount of time allocated to perform DBELO duties and responsibilities*

The Position Description that FCDOT provided for Mr. Riddle during the compliance review was the one originally utilized to advertise his position. Since his hiring on September 9, 2013, his duties have evolved considerably. A revised position description that includes the designation of DBELO is attached.

*4) Financial Institutions – Have not investigated the existence of DBE financial institutions or how contractors will be encouraged to use them*

Since the last DBE Program submittal on September 11, 2015, the Fairfax County Department of Finance has identified four DBE vendors registered for banking services in the database maintained by the Commonwealth of Virginia. Going forward, FCDOT, working through DPWES, will notify potential contractors of the existence of these four DBE banking services providers through bid and contract documentation and/or task order authorizations.

*5) DBE Directory – Virginia Unified Certification Program Directory reference and link is not contained in solicitation documents or posted on Fairfax County's website*

Working with DPWES, FCDOT has ensured that a reference and link to the Virginia Department of Small Business and Supplier Diversity will be included on federally funded



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solicitation documents. The reference and link also will be posted on the DPWES's website at the following URL: <http://www.fairfaxcounty.gov/dpwes/construction/cap.htm>.

*6) Overconcentration – Does not have a process for conducting Overconcentration analysis*  
Over the past four years only two contracts have been entered into by FCDOT that involve FTA funds. One was for a sidewalks/intersections construction project and one was for the design of a multi-modal terminal and parking facility. With such a sample size, there has not been a need to complete an overconcentration analysis. Moreover, FTA's Sample DBE Program does not describe or recommend any process for analysis. Regardless, going forward, FCDOT will track the types of work performed by DBEs on all future contracts to ensure that DBEs are not monopolizing any area of work.

#### **8. Determining / Meeting Goals**

*8.C) Race-Neutral – Does not have process for determining race neutral participation*  
During the DBE Program Compliance Review, Mr. Deepak Bhinge from DPWES Capital Projects provided an example of how DPWES tracks DBE participation on contracts. As noted in the draft report (pg. 37), he provided detailed spreadsheets that track all aspects of the project, including the prime contractor and all sub-contractors; DBE/SWAM versus non-DBE/SWAM status; contract amounts, scopes, and amounts paid. Other sections within DPWES that are responsible for implementing federally funded projects are adopting Mr. Bhinge's system for the purpose of tracking race neutral participation.

FCDOT does have other race-neutral measures to facilitate race neutral participation on contracts. As noted above, a reference and link to the Virginia Department of Small Business and Supplier Diversity are included on federally funded solicitation documents and posted on the County's website. FCDOT also is in active communication with a number of external organizations that work with qualified DBE firms. This was true prior to the DBE Compliance Review and is noted in the draft report. FCDOT intends to reach out to other organizations as well. Through consultation with these organizations, FCDOT continues to refine its efforts to encourage DBE participation on FTA-supported contracts. For example, FCDOT is developing presentation materials to deliver at "new member" meetings or "vendor fair" types of events that these groups routinely hold.

*8.D) Race-Conscious – Does not have a process for setting contract specific goals*  
Although FCDOT hopes to achieve its DBE goal of 17.7% through race-neutral means, it is prepared to implement race-conscious, contract specific goals. The process that FCDOT intends to implement on a per contract basis is as follows: 1) Determine what the overall contract goal would need to be to achieve the County's overall DBE goal of 17.7%. 2) Based on the project scope of activities, examine the available DBE firms versus all available firms in the Northern Virginia/DC market area, by scope item (NAICS codes). 3) Determine by scope

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item/NAICS codes, what each DBE goal should be to achieve the overall contract goal identified in step 1, which will bring the County in line with its overall DBE goal of 17.7%.

*8.E) Good Faith Efforts – Does not have a singular approach for determining Good Faith Effort as either responsiveness or responsibility*

According to FTA's *DBE Program Compliance Review*, "...bidders must submit documentation of these efforts as part of the initial bid proposal – **as a matter of responsiveness**; or no later than 7 days after bid opening – **as a matter of responsibility**." Clearly, FTA uses a similar approach for determining Good Faith Efforts as FCDOT, in that a bid proposal may be deemed either responsive or responsible. As stated in the County's DBE Program Plan, future solicitation and contract documents will contain the required language. FCDOT will forward these documents to FTA as they become available.

*8.G) Protecting Against Termination for Convenience – Contracts do not contain required DBE termination clause*

FCDOT has revised Section 26.53(f), based on FTA feedback. See draft language included in the attached, *DBE Policy Program and Goal*.

*9.) Shortfall Analysis and Corrective Action Plan – Did not meet 7.7% race neutral goal for FY 2013-2015. Shortfall analysis and corrective action plan not conducted.*

For FY 2013-2015, FTA never formally approved FCDOT's DBE Program Plan. As such, it was unclear to FCDOT staff how to proceed with regard to normal DBE Program reporting requirements.

In addition, from FY 2013-2015, FCDOT entered into only one contract that was FTA-supported. That contract was for the preliminary engineering and design of the Springfield CBC Terminal and Commuter Parking Facility. Since no other contracts were entered into during this time period, it would have been impossible to implement any corrective actions. Going forward, FCDOT will complete required shortfall analyses and develop correct action plans.

## **11. Required Contract Provisions and Enforcement**

*11.A) Contract Assurance – Contract documents do not contain required contract assurance language*

FCDOT has updated all required contract documentation, based on FTA feedback on the DBE Program Plan and the FTA *Best Practices Procurement Manual*. See draft language included in the County's revised, *DBE Policy Program and Goal*.

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*11.B) Prompt Payment – 30-day prompt payment requirement not contained in contract documents. Does not have a prompt payment verification process*

FCDOT, working with OCA and DPWES, has strengthened the prompt payment verification process and is committed to ensuring prompt payments within 30 days. See draft language included in the County's revised, *DBE Policy Program and Goal*.

*11.C) Legal Remedies – Contract documents do not contain legal remedies or sanctions*

FCDOT, working with OCA and DPWES, will ensure that all future contracts will contain legal remedies as delineated in the County's, *DBE Policy Program and Goal*.

#### **14. Record Keeping and Enforcements**

*14.A) Bidders List and Reporting DBE Participation – Bidders List is not maintained; Semi-annual DBE reports submitted late*

In order to be notified of upcoming contracting opportunities, DPWES and the Department of Information Technology (DIT) maintain a vendor listserv. FCDOT, working with DPWES and DIT will expand the fields required to register for the listserv to conform to FTA's requirements to maintain a bidders list.

*14.B) Monitoring – Does not have monitoring and enforcement mechanisms to ensure DBE Program compliance or contract remedies & sanctions for non-compliance*

FCDOT, working with OCA and DPWES, has strengthened the County's monitoring and oversight processes. All federally funded projects will be subjected to the same documentation requirements. See draft language included in the County's revised, *DBE Policy Program and Goal*. Furthermore, FCDOT staff will conduct project oversight activities, including site visits, to ensure that prime contractors and sub-contractors remain in compliance with the County's DBE policies, as outlined in the contract documents.

#### **Advisory Comments**

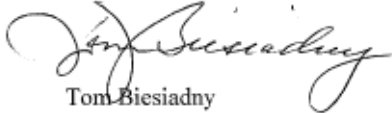
*8.A) Calculation – Best practice of weighting DBE availability may be used to refine base goal*  
When FCDOT revises the DBE base goal, it will incorporate the best practice weighting suggestions offered by the review team during the DBE Compliance Review.

*8.B) Public Participation – DBE goal must remain on its website for the entire triennial period*  
FCDOT will publish its DBE goal, including the overall DBE Program Plan, on its website for the duration of the triennial period, once we have an FTA approved plan.

If you have any questions or require additional information, please contact Brent Riddle at [michael.riddle@fairfaxcounty.gov](mailto:michael.riddle@fairfaxcounty.gov) or (703) 877-5659.

Ms. Anita Heard  
February 24, 2016  
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Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Biesiadny".

Tom Biesiadny  
Director

cc: Stacie Parkins, FTA Region III Civil Rights Officer  
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT  
Brent Riddle, Senior Transportation Planner  
Benjamin Atsem, Transportation Planner II

Enclosures: a/s

**Riddle, Brent**

**From:** stacie.parkins@dot.gov  
**Sent:** Friday, December 18, 2015 3:38 PM  
**To:** Riddle, Michael  
**Cc:** Atsem, Benjamin  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Hello, Good Afternoon,

Thank you for your email. Please see my comments for the respective sections:

- Section 26.27 – It is within your discretion however, please provide a regular interval for re-evaluation
- Section 26.45 – Goal submittals are required to be submitted to FTA by August 1 of the year specified for your agency. This section begins with the acknowledgement of that requirement. The other portion missing within this section is a detailed process of how your agency will calculate its DBE overall goal. Please provide a detailed narrative of the process used by your agency to calculate the overall goal.
- Please refer to the previous emails regarding revisions and the inclusion of the remaining sections.

Sincerely,

Stacie

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**From:** Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]  
**Sent:** Friday, December 18, 2015 2:37 PM  
**To:** Parkins, Stacie (FTA)  
**Cc:** Atsem, Benjamin  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Good afternoon Stacie,  
 We are continuing to make progress on your latest comments to the County's DBE policy and goals documents. However, I have a few questions for clarification and a couple of updates. See below.

Thanks,  
 Brent

- Section 26.27 – include frequency of re-evaluation (how often)
  - Are we allowed to say, "as contracts expire." We are currently in the middle of a 5-year contract. It doesn't make too much sense to do any evaluation, if a contract is not up.
- Section 26.45 – Please see sample program for language, submittals to FTA is August 1 of specified triennial years. Also, please incorporate the elements of the overall goal submittal and how the goal was established, and when FCDOT will begin using the goal
  - o We will change the date to Aug 1. Are you essentially looking for the goal setting methodology discussion that is included in the Goal and Methodology section to be cut and pasted here?
- Section 26.53(f) – incorporate if termination of a DBE and failure to comply with this section the resulting consequence

- I am trying to get the County Attorney's office to sign off on the proposed language. TBD.
- Section 26.109 – include the paragraph that begins with “Notwithstanding....”
  - The County Attorney's office is thinking that the way we have worded this section achieves similar objectives. If it would help, one of the County's attorneys can discuss with FTA. Please advise.
- The following attachments are missing from the document: 1) good faith effort forms, 2) a link to the DBE regulations
  - We will send with the revised documents.

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**From:** [stacie.parkins@dot.gov](mailto:stacie.parkins@dot.gov) [<mailto:stacie.parkins@dot.gov>]  
**Sent:** Tuesday, November 10, 2015 9:01 AM  
**To:** Riddle, Michael <[Michael.Riddle@fairfaxcounty.gov](mailto:Michael.Riddle@fairfaxcounty.gov)>  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Good Afternoon Brent,

My apologies for this late email follow-up response after our phone conversation a few days ago. Per our last conversation, the sample bid document submitted as a supplemental resource to the Fairfax County DBE Program Plan, will require a condensed version submitted within the Fairfax County DBE Program Plan. Please incorporate the language used on Fairfax County construction and non-construction contracts that possess a contract goal within the appropriate section of your agency's DBE program plan. For reference please review the provided section following 26.53(f) within the DBE sample program. The following areas are also identified for further revision:

- Section 26.27 – include frequency of re-evaluation (how often)
- Section 26.45 – Please see sample program for language, submittals to FTA is August 1 of specified triennial years. Also, please incorporate the elements of the overall goal submittal and how the goal was established, and when FCDOT will begin using the goal
- Section 26.53(f) – incorporate if termination of a DBE and failure to comply with this section the resulting consequence
- Section 26.109 – include the paragraph that begins with “Notwithstanding....”
- The following attachments are missing from the document: 1) good faith effort forms, 2) a link to the DBE regulations

In regard to the DBE Goal submittal:

- Please review past DBE attainment and include that discussion in your submittal. The RC/RN breakdown will require justification. Explain the first paragraph on page 8.
- Please explain the similarity in the VDOT goal and justify using their goal breakdown.
- In regard to the statement beginning the last paragraph at the bottom of page 7, 49 CFR 26.45 (f)(1) (ii) allows for the adjustment of your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You will need to submit adjustments for review and approval.

Please do not hesitate to contact me with any questions/concerns.

Sincerely,

**Stacie Parkins, Ph.D.** | Region III Civil Rights Officer  
Federal Transit Administration | U.S. Department of Transportation  
1760 Market Street | Philadelphia, PA 19103  
office: 215.656.7255 | [Stacie.Parkins@dot.gov](mailto:Stacie.Parkins@dot.gov)

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Submit your inquiry and our ADA team will provide sound technical advice.

FTA Office of Civil Rights Homepage: [http://www.fta.dot.gov/civil\\_rights.html](http://www.fta.dot.gov/civil_rights.html)

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**From:** Riddle, Michael [<mailto:Michael.Riddle@fairfaxcounty.gov>]  
**Sent:** Friday, September 11, 2015 2:32 PM  
**To:** Parkins, Stacie (FTA)  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Hi Stacie,

I uploaded the revised Sample Bid Document. I removed about 400 pages from the original. I don't think I removed anything relevant for FTA, but please let me know if you have questions.

Thanks,  
Brent

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**From:** Riddle, Michael  
**Sent:** Friday, September 11, 2015 9:07 AM  
**To:** 'stacie.parkins@dot.gov'  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Okay, thanks. I will begin working on that now.

Brent

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**From:** [stacie.parkins@dot.gov](mailto:stacie.parkins@dot.gov) [<mailto:stacie.parkins@dot.gov>]  
**Sent:** Friday, September 11, 2015 9:03 AM  
**To:** Riddle, Michael  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Good Morning and thank you Brent for uploading those documents into TEAM-Web. Please extract your agency's DBE requirements and or clauses on the sample bid for submittal.

Sincerely,  
S. Parkins

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**From:** Riddle, Michael [<mailto:Michael.Riddle@fairfaxcounty.gov>]  
**Sent:** Friday, September 11, 2015 8:59 AM  
**To:** Parkins, Stacie (FTA)  
**Subject:** RE: Fairfax County (5349) DBE Program & DBE Goal/Methodology

Good morning, Stacie,

We have made changes to the County's DBE Program and DBE Goal/Methodology per your email below. I have uploaded the two documents into TEAM. However, the new Sample Bid Document that I have for upload exceeds TEAM's data threshold. Even when I pull the document out to submit separately, it is still too large. Any suggestions for how to handle that?

Thanks,  
Brent

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**From:** [stacie.parkins@dot.gov](mailto:stacie.parkins@dot.gov) [mailto:[stacie.parkins@dot.gov](mailto:stacie.parkins@dot.gov)]  
**Sent:** Wednesday, August 05, 2015 4:35 PM  
**To:** Riddle, Michael  
**Subject:** Fairfax County (5349) DBE Program & DBE Goal/Methodology

Good Afternoon Brent,

Thank you for submitting the Fairfax County DBE program to include the DBE goal/methodology. In locating the documents for review in TEAM, I noticed that the civil rights tab includes many versions of civil rights programs dating back to 2010. I encourage you to remove all older versions and keep only the current civil rights programs in TEAM. All older versions of civil rights programs can be saved within your agency for future reference. However, please do not delete any FTA correspondence placed in TEAM under the civil rights tab. Also, please note that the DBE program and the DBE goal/methodology submittals to FTA are **two separate documents**. The DBE program should include as an attachment, the goal setting methodology- please refer to the sample program for guidance. The Fairfax County DBE goal/methodology submittal should include: cover letter stating overall goal and breakout into race conscious/race neutral percentage, narrative of market area, goal calculation methodology to include projects with corresponding NAICS codes, all goal calculation worksheets, and public participation (e.g. proof of publication, and consultation with community groups).

Upon review of the two-part document entitled Fairfax County DBE Program and Goal 2015-2017 in TEAM, the following bulleted comments require revision:

#### DBE PROGRAM

- Section 26.21 – Please include the information pertaining to receiving FTA funds exceeding \$250,000 or more in planning, capital or operating assistance.
- Section 26.25 – The words “or his designee” is included - will someone else be responsible for ensuring this DBE program? Please explain.
- Section 26.27 – Please address if you have investigated and identified any financial institutions meeting this criteria and how often you intend to re-evaluate.
- Section 26.29(d) – Please include how/what steps the agency is undertaking to ensure that prompt payment is in fact occurring.
- Section 26.31 – How often is the directory revised?
- Section 26.35 – How often will the agency re-evaluate, please be specific.
- Section 26.53(d)- On page 4 the unnamed procurement agent is stated as the reconsideration official, on page 11 the deputy director is also identified as the reconsideration official. Please identify the individual chosen by your agency to function as the reconsideration official for your agency.
- Section 26.53(f) – Please include within this section of your program that there will be no termination without prior written consent - also please include greater detail (refer to sample program).
- Section 26.61-26.73 – This section is missing from your agency's program.
- Section 26.109 – Please also include written consent within this section.



- Sample bid – DBE clauses were not found within the sample bid provided in your program. Please refer to language for this section with the DBE sample program.

**DBE Program Attachments**

- Organization chart is not legible (this is the visual showing direct and independent access from the DBELO to the top official).
- Please include good faith effort forms
- Please include a weblink to access certification forms
- Please include a weblink to the DBE regulations

**DBE GOAL/METHODOLOGY**

- Please include a narrative of the agency's geographic market area
- Please include information if there were any comments from the community during the consultation of the overall goal

Future Reference: We encourage you to include in the calculation of the overall goal, the breakout by projects, to include the NAICS codes for each project. Please reference the Goal Calculation worksheet included as an attachment to this email.

Please do not hesitate to contact me directly to discuss any questions/concern regarding this review.

Sincerely,

**Stacie Parkins, Ph.D.** | Region III Civil Rights Officer  
Federal Transit Administration | U.S. Department of Transportation  
1760 Market Street | Philadelphia, PA 19103  
office: 215.656.7255 | [Stacie.Parkins@dot.gov](mailto:Stacie.Parkins@dot.gov)

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Submit your inquiry and our ADA team will provide sound technical advice.

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**Riddle, Brent**

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**From:** stacie.parkins@dot.gov  
**Sent:** Monday, April 13, 2015 3:05 PM  
**To:** Riddle, Michael  
**Subject:** RE: Fairfax County DRAFT DBE Policy

Hi, Good Afternoon Brent,

Thank you for the email. Please note that my email address has changed, and my contact information includes my new direct phone number in region 3.

In regard to the questions you presented below:

1. The Cover letter is separate from the Appendix
2. In the DBE program, the goal is submitted as an appendix item; worksheets may also be included here. In the DBE goal/methodology, there is a cover letter stating the goal, breakout of race conscious/race neutral, and the worksheets are included following the descriptive narrative document.
3. You may round up to 18%, or leave it at one decimal point in the tenths place.

My apologies for any inconvenience. If you need to contact me, please do not hesitate to email or call. Thank you.

Sincerely,

**Stacie Parkins, Ph.D.** | Region III Civil Rights Officer  
Federal Transit Administration | U.S. Department of Transportation  
1760 Market Street | Philadelphia, PA 19103  
office: 215.656.7255 | [Stacie.Parkins@dot.gov](mailto:Stacie.Parkins@dot.gov)

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Submit your inquiry and our ADA team will provide sound technical advice.

FTA Office of Civil Rights Homepage: [http://www.fta.dot.gov/civil\\_rights.html](http://www.fta.dot.gov/civil_rights.html)

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**From:** Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]  
**Sent:** Monday, April 13, 2015 2:07 PM  
**To:** Parkins, Stacie (FTA)  
**Subject:** FW: Fairfax County DRAFT DBE Policy

Hi Stacie,

I just realized that I may have an incorrect email for you. For some reason that email I had before had a ctr after your name. The recent announcement from Region III does not have that as part of your email address. Regardless, I am also going to follow up with a call.

Thanks,  
Brent

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**From:** Riddle, Michael  
**Sent:** Tuesday, April 07, 2015 9:43 AM  
**To:** 'stacie.parkins.ctr@dot.gov'  
**Subject:** RE: Fairfax County DRAFT DBE Policy

Hi Stacie,  
I got the email from Terry Crews that you are now in place in Region III. I am still hoping to get feedback from you regarding the questions below.

Thanks,  
Brent

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**From:** Riddle, Michael  
**Sent:** Monday, March 30, 2015 1:56 PM  
**To:** 'stacie.parkins.ctr@dot.gov'  
**Subject:** RE: Fairfax County DRAFT DBE Policy  
**Importance:** High

Hi Stacie,  
One last question: The spreadsheets automatically round up the goal from 17.7% to 18%. Can we use the 17.7% in the advertisement or do we have to use 18%. Technically, it is 17.7%.

Thanks,  
Brent

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**From:** Riddle, Michael  
**Sent:** Thursday, March 26, 2015 11:53 AM  
**To:** 'stacie.parkins.ctr@dot.gov'  
**Subject:** RE: Fairfax County DRAFT DBE Policy

Hi Stacie,  
Thank you for the feedback; it was extremely helpful. Based on your review, I was able to work with other County agencies to make some additional refinements to the document that address FTA requirements. It has taken some additional time, however, to address Section 26.27 adequately. As you may realize, Fairfax County government is quite large (~10K employees) and coordination between County agencies can take some time. In any event, we are getting ready to advertise the goal for public comment. Furthermore, I am preparing the document for consideration by the Board of Supervisors. Before I submit the document for their consideration, I did want to get clarification from you on your DBE GOAL/METHODOLOGY comments below:

- 1) Is the cover letter separate from the Appendices? The topics are covered within Appendix 6.
- 2) Appendix 6 primarily addresses the goal and methodology for arriving at that goal. Where do most agencies attach the Excel goal setting worksheets? It seems almost like an extra appendix item.

Thanks,  
Brent

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**From:** [stacie.parkins.ctr@dot.gov](mailto:stacie.parkins.ctr@dot.gov) [mailto:[stacie.parkins.ctr@dot.gov](mailto:stacie.parkins.ctr@dot.gov)]

**Sent:** Wednesday, February 25, 2015 9:41 AM

**To:** Riddle, Michael

**Subject:** RE: Fairfax County DRAFT DBE Policy

Hi, Good Morning Brent,

Thank you for emailing the draft DBE program and DBE goal/methodology for my review. As stated in the phone conversation, please find the resources I mentioned as attachments to this email, as well as my bulleted comments below regarding the DBE program document.

#### DBE PROGRAM

- Please remember to have the final completed document signed and dated before uploading into TEAM-Web.
- Section 26.27 – Please address if you have investigated and identified any financial institutions meeting this criteria and how often you intend to re-evaluate.
- Section 26.29(d) – Please include how/what steps the agency is undertaking to ensure that prompt payment is in fact occurring.
- Section 26.45 – Include any and all community groups (women's groups, minority groups, chambers of commerce, etc.) that are consulted regarding the formulation of the overall goal.
- Section 26.45 – Please describe the process used for the calculation of the overall goal.
- Section 26.51 – Include the race neutral measures that will be used, provide statement acknowledging maximum portion of the overall goal will be race neutral.
- Section 26.53(d) – It is unclear if the reconsideration official is Mr. Tom Biesiadny. If someone else is the reconsideration official for non-construction then provide name and all contact information for the individual.
- Section 26.53(f) – Please include prior written consent is needed before replacement/termination of a DBE on a contract.
- Section 26.81 – Is Fairfax County a member of the UCP? Please provide statement here. Refer to sample program for language.
- Section 26.83-26.91 - Include FTA address for complainant appeals as well as UCP contact information. Refer to sample program.
- Please make certain to include all appendices, including Appendix 7 – the sample bid

#### DBE GOAL/METHODOLOGY


- Cover letter stating overall goal and breakout by race conscious and race neutral percentages.
- Description narrative of the market area for projects
- Please include all contracting opportunities (services that can be put for bid, i.e. landscaping) in the breakdown of the NAICS codes and calculations
- All worksheets showing the calculation of the goal
- Copy of the published notice
- Documentation on consultation and outreach process – (communication/correspondence with community groups regarding the goal)

I am including 1. a sample dbe program that can be used as a guide in completing your dbe program, 2. the Excel worksheets for the dbe goal calculation. Please do not hesitate to contact me for any questions or concerns. If you would like to discuss, I will be back in office on Friday, February 27.

Sincerely,

Stacie Parkins, Ph.D. | Office of Civil Rights

U.S. Department of Transportation | Federal Transit Administration  
230 Peachtree Street, Suite 800 | Atlanta, GA 30303  
Office: 404.865.5631 | [stacie.parkins.ctr@dot.gov](mailto:stacie.parkins.ctr@dot.gov)

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Unless otherwise specified, the contents of this message are intended for purposes of informal communication and do not represent official FTA or DOT policy or information.

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**From:** Riddle, Michael [<mailto:Michael.Riddle@fairfaxcounty.gov>]  
**Sent:** Tuesday, February 24, 2015 3:25 PM  
**To:** Parkins, Stacie CTR (FTA)  
**Subject:** Fairfax County DRAFT DBE Policy

Dr. Parkins:

Attached is a **DRAFT DBE Policy Program and Goal** and **Attachment 6 - FFX Goal and Methodology** for Fairfax County. I would greatly appreciate your review of the proposed documents to make sure that they are in accordance with FTA requirements. I am aiming to take the revised policy and goal to the Board of Supervisors for their consideration in April.

As you may recall, I had intended to bring the DBE policy and goal to the Board of Supervisors for consideration last month. However, some issues arose with regard to making sure that the proposed policy did not contravene existing state law or county policies with regard to Administrative Reconsideration of bids. At the same time, I was asked to reconfirm the proposed goal, as it was higher than the previous DBE goal. Consequently, the policy and goal has not been considered by the Board of Supervisors.

To make sure that I have no further issues, I have doubled back with all of the county departments that weighed in on the draft policy and goal and have been given the thumbs up. I am now waiting on my director to review. However, I don't want to advertise the DBE goal only to learn that FTA has an issue with something, which might require a recalculation of the goal and re-advertisement. Please let me know if you are able to review the DRAFT DBE policy and goal. If so, I would need your feedback by **March 11, 2015**.

Thanks in advance for your assistance.

Regards,  
Brent

Brent Riddle, Sr Transportation Planner  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: [Michael.Riddle@fairfaxcounty.gov](mailto:Michael.Riddle@fairfaxcounty.gov)

<b>COUNTY OF FAIRFAX</b> <b>DEPARTMENT OF HUMAN RESOURCES</b> <b>POSITION DESCRIPTION FORM</b>	
1. POSITION NUMBER: 52003762	
3. EMPL. NAME	
Items 2 and 4 through 6 default	
SUPERVISOR	
7. POSITION NUMBER	
Items 8 through 10 default	
11. PROPOSED CLASS : 20000686	PROPOSED TITLE: Transportation Planner III
12.	WORKING TITLE:
13. MANDATORY LICs/CERT 6601	
14. DUTIES AND RESPONSIBILITIES: see page 3	
15. EQUIPMENT INFORMATION PCT EQUIPMENT DESCRIPTION TIME A. 40% Personal Computer B. 25% Motor Vehicle C. D. E.	16. SUBORDINATE INFORMATION (List position number or names)
17. PHYSICAL REQUIREMENT NEEDED TO PERFORM ESSENTIAL DUTIES Work is generally sedentary. However, employee may be required to do some walking, standing, bending, and carrying of items less than 25 pounds in weight.	
18. DESCRIBE THE KIND AND EXTENT OF SUPERVISION YOU EXERCISE OVER THE POSITION: THIS POSITION RECEIVES GENERAL ORAL AND WRITTEN INSTRUCTIONS WILL BE GIVEN AS NEEDED. EMPLOYEE SELECTS WORK METHODS FOR ROUTINE ASSIGNMENTS. SUPERVISOR SUGGESTS WORK METHODS FOR UNIQUE TASKS.	
SUPERVISOR REVIEWS WORK IN GENERAL MANNER WHILE IN PROGRESS OR UPON COMPLETION.	
20. WHAT DO YOU CONSIDER THE PRIMARY FUNCTION OF THIS EMPLOYEE? PROVIDES SUPPORT TO SUPERVISOR, STAFF, AND DIRECTOR ON REGIONAL, STATE, AND FEDERAL POLICY ISSUES AND PROJECTS. TRACKS REVENUES AND EXPENDITURES AND PERFORMS BUDGETARY DUTIES FOR FEDERAL AND STATE-FUNDED TRANSPORTATION PROJECTS. ENSURES FCDOT COMPLIANCE WITH USDOT CIVIL RIGHTS PROGRAMS (TITLE VI AND DBE) AND PROVISIONS.	
21. INDICATE ANY VARIATION IN THE WORK WEEK. A. REGULAR DAILY FROM: 8:00 to 4:30 B. TOTAL HOURS PER WEEK: 40 EXPLAIN ANY ROTATION IN WORK SHIFTS: OCCASIONAL OVERTIME TO MEET DEADLINES OR TO ATTEND EVENING MEETINGS OF REGIONAL BODIES, CITIZENS, OR ELECTED OFFICIALS.	

Criticality: 10 or 5 (10 being critical)

Frequency: Annually, Biweekly, Daily, Monthly, Quarterly, Seasonally, Weekly

Overview is 100% and total of remaining duties must equal 100%

22. ARE THE DUTIES ASSIGNED THIS POSITION A RESULT OF NEW RESPONSIBILITY, INCREASED VOLUME, OR REORGANIZATION? EXPLAIN. YES. THE POSITION IS THE RESULT OF INCREASED COUNTY ACTIVITIES RELATED TO TRANSPORTATION AND AN INCREASED NEED FOR REGIONAL TRANSPORTATION COORDINATION. THE POSITION ALSO REFLECTS NEED FOR INTERDEPARTMENTAL COORDINATION WITH REGARD TO FEDERAL CIVIL RIGHTS COMPLIANCE.

23. AGENCY HEAD'S COMMENTS: None

24. LIST THE POSITION NUMBERS OF ANY OTHER POSITIONS IN YOUR AGENCY OR OTHER AGENCIES WITH WHICH YOU BELIEVE THIS POSITION SHOULD BE COMPARED:  
POSITIONS:  
CLASS CODES :

COUNTY OF FAIRFAX DEPARTMENT OF HUMAN RESOURCES POSITION DESCRIPTION FORM			
POSITION NUMBER:		WORKING COPY	
14. DUTIES AND RESPONSIBILITIES.			
DUTY 1 OF 9	FREQUENCY: D	CRITICALITY: 10	PERCENT: <b>100%</b>
<b>OVERVIEW STATEMENT OF POSITION DUTIES</b> THIS POSITION IS LOCATED IN THE COORDINATION AND FUNDING DIVISION OF THE DEPARTMENT AND PERFORMS TRANSPORTATION AGENCY LIAISON DUTIES WITH REGIONAL, STATE, AND FEDERAL BODIES; DEVELOPS BUDGETS AND FUNDING STRATEGIES; SEEKS AND MANAGES FEDERAL AND STATE GRANTS; ANALYZES VARIOUS TRANSPORTATION POLICY ISSUES AND PREPARES RECOMMENDATIONS; WORKS TO ENSURE COUNTY REMAINS COMPLIANT WITH USDOT CIVIL RIGHTS PROGRAMS AND PROVISIONS; SUPPORTS SUPERVISOR ON STATE AND FEDERAL LEGISLATIVE ISSUES AS THEY RELATE TO TRANSPORTATION; AND NEGOTIATES FUNDING AGREEMENTS FOR CAPITAL PROJECTS.			
DUTY 2 OF 9	FREQUENCY: D	CRITICALITY: 10	PERCENT: 30 %
MANAGES FEDERAL TRANSIT ADMINISTRATION GRANTS, COMPLETING DRAWDOWNS AND FILING QUARTERLY REPORTS; REVIEWS OPERATING AND CAPITAL BUDGETS; ASSISTS WITH THE DEVELOPMENT OF TRANSPORTATION SECTION OF COUNTY'S CAPITAL IMPROVEMENT PROGRAM, AND THE COUNTY'S SUBMISSION TO THE REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM/CONSTRAINED LONG-RANGE PLAN AND VDOT'S TRANSPORTATION DEVELOPMENT PLAN; PREPARES CASH FLOW PLAN FOR GENERAL OBLIGATION BONDS FOR TRANSPORTATION PROJECTS.			

Criticality: 10 or 5 (10 being critical)

Frequency: Annually, Biweekly, Daily, Monthly, Quarterly, Seasonally, Weekly

Overview is 100% and total of remaining duties must equal 100%

DUTY 3 OF 9	FREQUENCY: D	CRITICALITY: 10	PERCENT:15 %
Reviews, analysis and negotiates proffers. PERFORMS DUTIES OF DISADVANTAGED BUSINESS ENTERPRISE LIAISON OFFICER. ENSURES FCDOT COMPLIANCE WITH FEDERAL DBE PROVISIONS CONATAINED IN 49 CFR PART 26, INCLUDING: GATHERS AND REPORTS STATISTICAL DATA AND OTHER INFORMATION AS REQUIRED BY USDOT; REVIEWS THIRD PARTY CONTRACTS AND PURCHASE REQUISITIONS FOR COMPLIANCE; WORKS TO SET OVERALL ANNUAL GOALS; WORKS WITH OTHER DEPARTMENTS TO ENSURE THAT BID NOTICES AND REQUESTS FOR PROPOSALS ARE AVAILABLE TO DBE'S; IDENTIFIES CONTRACTS AND PROCUREMENTS SO THAT DBE GOALS ARE INCLUDED IN SOLICITATIONS AND MONITORS RESULTS; ANALYZES FAIRFAX COUNTY'S PROGRESS TOWARD GOAL ATTAINMENT AND IDENTIFIES WAYS TO IMPROVE PROGRESS; PARTICIPATES IN PRE-BID MEETINGS; ADVISES THE DIRECTOR ON DBE MATTERS; PARTICIPATES WITH THE LEGAL COUNSEL AND PROJECT MANAGERS TO DETERMINE CONTRACTOR COMPLIANCE WITH GOOD FAITH EFFORTS; VERIFIES DBE CERTIFICATION; PROVIDES DBE'S WITH INFORMATION AND ASSISTANCE IN THIS PROCESS; PLANS AND PARTICIPATES IN DBE TRAINING SEMINARS; PROVIDES OUTREACH TO DBE'S AND COMMUNITY ORGANIZATIONS TO ADVISE THEM OF OPPORTUNITIES; MAINTAINS A BIDDER'S LIST OF ELIGIBLE DBE FIRMS IN THE NORTHERN VIRGINIA SERVICE AREA; ENSURES MAINTENANCE OF DBE-RELATED RECORDS FOR POSSIBLE FEDERAL REVIEW; AND DEVELOPS DBE POLICY PROGRAMS AND GOALS EVERY THREE YEARS, AS REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION.			
DUTY 4 OF 9	FREQUENCY: W	CRITICALITY: 10	PERCENT:15%
PERFORMS DUTIES AS THE TITLE VI COMPLIANCE OFFICER. PROVIDES OVERSIGHT OF FCDOT'S TITLE VI PROGRAM, INCLUDING: CONDUCTS TITLE VI TRAINING FOR FCDOT STAFF; ENSURES TITLE VI NOTICES AND INSTRUCTIONS ARE UP-TO-DATE AND DISTRIBUTED ACCORDING TO THE APPROVED TITLE VI PROGRAM; WORKS WITH COUNTY AND BOARD OF SUPERVISORS STAFF TO ENSURE MINORITY REPRESENTATION ON TRANSPORTATION ADVISORY BODIES, COMMISSIONS, OR BOARDS; COORDINATES WITH TRANSPORTATION MARKETING TEAM TO ENSURE ALL PUBLIC OUTREACH INCLUDES TITLE VI PROGRAM STRATEGIES; OUTREACH TO FCDOT DEPARTMENTS AND COUNTY AGENCIES TO LEVERAGE RESOURCES TO COMPLY WITH TITLE VI LANGUAGE ACCESS PLAN; WORK TO DEVELOP FORMALIZED PARTNERSHIPS WITH OUTSIDE AGENCIES TO MAXIMIZE PUBLIC OUTREACH; WORK WITH TRANSIT SERVICES DIVISION TO ENSURE TRANSIT SERVICE STANDARDS REMAIN TITLE VI COMPLIANT; MONITORS OVERALL TITLE VI PROGRAM COMPLIANCE BY FCDOT DIVISIONS AND INDIVIDUAL STAFF; AND TITLE VI PROGRAM EVERY THREE YEARS, AS REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION.			
DUTY 5 OF 9	FREQUENCY: D	CRITICALITY: 10	PERCENT:10 %
SERVES AS TECHNICAL STAFF AND PROVIDES RECOMMENDATIONS ON POLICY ISSUES TO MEMBERS OF THE FAIRFAX COUNTY BOARD OF SUPERVISORS WHO SERVE ON REGIONAL AGENCY BOARDS, SUCH AS NVTA, NVTC, ROUTE 28 TAX DISTRICT, VRE, WMATA,TPB, AND MWAA; PROACTIVELY IDENTIFIES REGIONAL TRANSPORTATION ISSUES WHICH MAY HAVE AN IMPACT ON FAIRFAX COUNTY AND INFLUENCES HOW THOSE ISSUES ARE ADDRESSED IN THE REGION; COORDINATES AND NEGOTIATES DIRECTLY WITH STAFF AND OFFICIALS OF THESE REGIONAL BODIES, AS WELL AS STATE AGENCIES AND OTHER LOCAL JURISDICTIONS; OFTEN THROUGH TECHNICALCOMMITTEES; BRIEFS APPROPRIATE DOT STAFF ON MATTERS DISCUSSED; COORDINATES PROJECTS WITH OTHER COUNTY AGENCIES, INCLUDING THE TRANSPORTATION ADVISORY COMMISSION, REVIEWS TRANSPORTATION AGENCY BUDGETS,PARTICIPATES IN DISTRIBUTION OF TRANSPORTATION REVENUES AVAILABLE TO THE REGION.			



Criticality: 10 or 5 (10 being critical)

Frequency: Annually, Biweekly, Daily, Monthly, Quarterly, Seasonally, Weekly

Overview is 100% and total of remaining duties must equal 100%

DUTY 6 OF 9	FREQUENCY: D	CRITICALITY: 10	PERCENT: 10 %
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SERVES AS TECHNICAL STAFF AND PROVIDES RECOMMENDATIONS ON POLICY ISSUES TO BOARD OF SUPERVISORS AND COUNTY EXECUTIVE REGARDING TRANSPORTATION LEGISLATION IN THE VIRGINIA GENERAL ASSEMBLY AND THE U.S. CONGRESS; PREPARES PRESENTATIONS TO GENERAL ASSEMBLY COMMITTEES AND OTHER STATE AND REGIONAL TRANSPORTATION ORGANIZATIONS; PARTICIPATES IN COUNTY'S GENERAL ASSEMBLY LOBBYING ACTIVITIES AS THEY RELATE TO TRANSPORTATION. COORDINATES WITH CONSULTANTS.

DUTY 7 OF 9 FREQUENCY: W CRITICALITY: 10 PERCENT: 10%

DEVELOPS, EXAMINES, AND PURSUES VARIOUS TRANSPORTATION FUNDING MECHANISMS, SUCH AS BONDS AND TAX DISTRICTS; IDENTIFIES, PURSUES AND APPLIES FOR GRANT FUNDS

DUTY 8 OF 9	FREQUENCY: D	CRITICALITY: 10	PERCENT: 5 %
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ANALYSES TRANSPORTATION POLICY ISSUES; CONDUCTS ADVANCED TRANSPORTATION STUDIES AND ANALYSES; PREPARES TECHNICAL REPORTS REGARDING FINDINGS AND RECOMMENDATIONS.

DUTY 9 OF 9 FREQUENCY: W CRITICALITY: 10 PERCENT: 5%

FOR TRANSPORTATION PROJECTS AND SERVICES.  
ASSISTS WITH TECHNICAL SUPPORT FOR NVTA, COORDINATES INPUT FROM NINE LOCAL GOVERNMENTS AND SIX TRANSPORTATION AGENCIES ON POLICY ISSUES TO BE CONSIDERED BY NVTA, PRESENTS TECHNICAL INFORMATION AT NVTA MEETINGS, DRAFTS NVTA LEGISLATIVE PROGRAM AND OTHER POLICY DOCUMENTS.

**Fairfax County**  
**Disadvantaged Business Enterprise Policy, Program, and Goal for FY 2016-FY2018**  
**for the Federal Transit Administration (FTA)**

**Section 26.1, 26.23 Objectives and Policy Statement**

**Program Objectives**

The County of Fairfax, Virginia (Fairfax County) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. Fairfax County has received Federal financial assistance in excess of \$250,000 from USDOT (i.e. FTA) for capital projects, and as a condition of receiving this assistance, Fairfax County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Fairfax County to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in FTA assisted contracts. It is also the county's policy to:

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

**Policy Statement**

Brent Riddle is designated by Fairfax County Department of Transportation (FCDOT) as DBE Liaison Officer (DBELO). In that capacity, Mr. Riddle 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 Fairfax County in its financial assistance agreements with the Department of Transportation.

Fairfax County Department of Transportation staff will submit this policy statement to the County's Board of Supervisors and all relevant departments and agencies within the County. Fairfax County also distributes this statement to DBE and non-DBE business communities that perform work on FTA assisted contracts. The information will be available on the County's website, to ensure accessibility to any interested parties.

**Director's Commitment to the Disadvantaged Business Enterprise Program**

I, Tom Biesiadny, Director of the Fairfax County Department of Transportation, will take Affirmative Action to ensure that DBEs shall have maximum practical opportunity to participate in the performance of the contracts financed in whole or in part with funds derived from FTA.

I will direct the appropriate Fairfax County Department of Transportation staff to provide for the utilization of DBEs including financial institutions, and to use all practical means to ensure that DBEs have the maximum practical opportunity to complete for contract and subcontract work let by Fairfax County and supported by FTA funding.

In keeping with this commitment it is my pledge to work toward achieving the following DBE goals for the award of FTA assisted contracts. The goal for utilization of the DBE's shall be 17.7% of the value of construction, supply and consultant contract dollar amounts for FTA funded construction contracts during FY2016-2018.

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Tom Biesiadny, Director  
Fairfax County Department of Transportation

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Date

#### **Section 26.1, 26.23 Objectives**

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

#### **Section 26.3 Applicability**

Fairfax County 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 TEA-21, Pub. L. 105-178.

#### **Section 26.5 Definitions**

Fairfax County adopts the definitions contained in Section 26.5 of Part 26 for this program.

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

Fairfax 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, gender, national origin or ethnicity.

In administering its DBE program, Fairfax 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, gender, national origin or ethnicity.

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

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

Fairfax County will report DBE participation to the relevant federal operating administrations using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

##### Bidders List: 26.11(c)

Fairfax County compiles and maintain a bidders list in accordance with 49 CFR Section 26.11(C). To verify bidders, Fairfax County utilizes the Virginia Department of Small Business and Supplier Diversity (SBSD) and the Metropolitan Washington Airports Authority's (MWAA) pre-qualified bidders lists which contain information about all DBE and non-DBE firms that bid or quote on FTA assisted contracts in Virginia. The directories determine which firms may be counted as DBEs. The bidder list will include the name, address, DBE/non-DBE status, age of firm, and annual gross receipts.

These directories are revised periodically. Due to the size of the directories, copies are not appended; however, these directories are available together online at the following URL:

<http://www.dmbv.virginia.gov/>

**Section 26.13 Assurances**

Fairfax County has signed the following assurance, applicable to all FTA assisted contracts and their administration:

**Federal Financial Assistance Agreement Assurance: 26.13(a)**

Fairfax County shall not discriminate on the basis of race, color, sex, gender, national origin or ethnicity in the award and performance of any FTA assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. Fairfax County shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of FTA assisted contracts. The Fairfax County 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 Fairfax County of their failure to carry out its approved program, the Department may impose sanctions as provided for under §26.101 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**

Fairfax County will ensure that the following clause is placed in every FTA assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, sex, gender, national origin or ethnicity in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA 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 Fairfax County deems appropriate.

**Section 26.21 DBE Program Updates**

Since Fairfax County has received grants of more than \$250,000 in FTA capital assistance in FY 2007 (VA-03-0111), FY 2008 (VA-04-0032), FY 2010 (VA-04-0031-01), and FY 2005 (VA-37-X012), the County will continue to carry out this program until all funds from FTA financial assistance have been expended. Fairfax County will provide to USDOT updates representing significant changes in the program.

**Section 26.25 DBE Liaison Officer**

FCDOT has designated the following individual as DBE Liaison Officer (DBELO):

Brent Riddle  
Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033  
703-877-5659  
michael.riddle@fairfaxcounty.gov

In his capacity as DBELO, Mr. Riddle (or his designee) is responsible for implementing all aspects of the DBE program and ensuring that Fairfax County comply with all provisions of 49 CFR Part 26. As DBELO, Mr. Riddle has direct, independent access to the Director of the Department of Transportation concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Coordinates with other County departments (as applicable) to determine overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBE's in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Fairfax County's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings as needed.
8. Advises the Director on DBE matters and achievement.
9. Participates with the legal counsel and project managers to determine contractor compliance with good faith efforts.
10. Provides DBE's with information and assistance in this process.
11. Plans and participates in DBE training seminars.
12. Checks DBE certification according to criteria set by SBSD on the Uniform Certification Process in Virginia
13. Provides outreach to DBE's and community organizations to advise them of opportunities.
14. Coordinates with SBSD on the Uniform Certification Process in Virginia

To assist Mr. Riddle in his role as DBELO, Fairfax County hired a Transportation Planner II who will help coordinate with other County departments, organize Title VI training, and generally assist with FCDOT's Civil Rights (i.e., DBE and Title VI) compliance efforts.

#### Reconsideration Official

Fairfax County's reconsideration official will be the Deputy Director of the Department of Public Works and Environmental Services, who will work in tandem with the Director of Fairfax County's Department of Transportation. They will abide by the requirements for reconsideration as stated in §26.53(d).

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

Fairfax County is authorized to utilize the services of any public depository in the Commonwealth of Virginia that is deemed qualified by the State Treasury Board to maintain checking, time deposit and warrant accounts and for the purposes of wiring funds, processing tax and license payments and maintaining custodial accounts for the County's investments. The Director of Finance is responsible for the procurement of banking services and is authorized by statutes of the Commonwealth of Virginia and by County resolution to acquire these services by contract. As outlined in the most recent request for proposal for banking and financial services, financial institutions eligible for consideration to provide such services to Fairfax County must be:

- Designated as a qualified public depository under the Virginia Security for Public Deposits Act.
- A member of the Federal Reserve System and the National Automated Clearing House Association (NACHA)

- Be able to accommodate local deposits within their business operations
- Sufficiently capitalized to accommodate the County's cash management needs with bank assets exceeding \$100 billion and bank deposits exceeding \$100 billion at the end of its most recent reporting period.

Fairfax County recently completed a competitive procurement for banking services that resulted in a three year contract with four one year renewal options. In January 2015, the County entered into the second year of the initial three year term of the contract. The current contract will expire in December 2021, assuming the County exercises all remaining renewal options. During the County's most recent procurement, it did not receive any offers from qualified DBE financial institutions. Currently, there are four DBE vendors registered for banking services in the database maintained by the Commonwealth of Virginia.

In preparation for future requirements for this type of service the County will work with the Virginia Department of Small Business and Supplier Diversity, which administers the Federal Disadvantaged Business Enterprise Program certification for the Commonwealth of Virginia, and the Fairfax County Economic Development Authority to identify financial institutions that may meet the County's requirements. The County will reach out to identified financial institutions to advise them of how they can register to receive notices of solicitation and participate in workshops on how to respond to County solicitations. At the time of the re-solicitation process, the County will invite all qualified DBE financial institutions to participate in the competitive procurement. The County will re-evaluate the availability of DBE financial institutions that meet the County's requirements every three years.

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

Fairfax County will include the following clauses in each FTA assisted prime contract:

##### Prompt Payment: 26.29(a)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Fairfax County. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Fairfax County. This clause applies to both DBE and non-DBE subcontracts.

##### Retainage: 26.29(b)

The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after retainage is paid to the prime contractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from Fairfax County. This clause applies to both DBE and non-DBE subcontractors. Work may be credited toward goals only when payments are actually made to DBE's.

##### Monitoring and Enforcement: 26.29(d)

Fairfax County monitors and enforces the prompt payment of DBE and non-DBE sub-contractors and suppliers by inserting into every contract Articles of General Conditions that require prime contractors to pay sub-contractors and suppliers within seven days. By the terms of General Conditions Articles 9.4 and 9.5, the prime contractor turns over a pay request to the Engineer of Record. Furthermore, prime contractors must sign an affidavit with every pay application to ensure prime contractors are meeting the terms of the General Conditions. The Engineer has seven calendar days to review and provide a recommendation for payment. The County is then obligated to make payment within seventeen calendar days. The contractor, upon receipt of that payment, has seven calendar days to pay all subs and suppliers. Allowing for a day or two for payment from the County to hit the prime contractor's bank account, all

subs and suppliers should receive payment within 31 to 32 days after submission of the prime contractor's application for payment.

Fairfax County will bring to the attention of USDOT any fraudulent or dishonest conduct in connection with the DBE program, so that USDOT can take the steps provided in §26.107. Fairfax County also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Fairfax County has implemented appropriate mechanisms to ensure compliance by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law).

#### **Section 26.31 Directory**

Fairfax County does not certify firms as DBEs but utilizes SBSD's and MWAA's Certified DBE Vendor lists to verify if firms may be counted as DBEs. The directories list the firm's name, address, and phone number and the type of work the firm has been certified to perform as a DBE.

The directories utilized by FCDOT are revised periodically. The SBSD revises their directory in real-time as vendors are added or subtracted and MWAA revises monthly. Because of the size of these files, copies are not appended; however, the directories are available online at the following URLs:

<http://www.dmbe.virginia.gov/>

#### **Section 26.33 Overconcentration**

Fairfax County has not identified that overconcentration exists in the types of work that DBEs perform. The DBELO (or his designee) will work with relevant County agencies to re-evaluate for overconcentration triennially.

#### **Section 26.35 Business Development Programs**

Fairfax County does not operate a business development program. The DBELO will work with the County's Department of Purchasing and Supply Management to re-evaluate the need for such a program triennially, in advance of the County's DBE program renewal. As part of that effort, the County also will develop criteria to determine the need for such a program.

In addition, Fairfax County will continue to refer to its small and minority business program that is advertised to firms that do business with County agencies. Fairfax County will support small and minority businesses through our sustained relationships with regional business development groups. For further information, please see Appendix 3: *Fairfax County Small and Minority Business Enterprise Program*.

#### **Section 26.37 Monitoring and Enforcement Mechanisms**

Fairfax County will implement the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. Fairfax County will bring to the attention of FTA any false, fraudulent, or dishonest conduct in connection with the program, of which Fairfax County has knowledge, so that FTA 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.

2. Fairfax County will consider appropriate action under our own legal authorities as may be authorized under applicable Virginia law, including responsibility determinations in future contracts.
3. Fairfax County will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by monitoring and reviews performed throughout the contract segments by staff members of the Fairfax County Department of Transportation and will occur for all contracts/projects on which DBEs are participating.
4. Fairfax County will require a running tally of actual payments from prime contractors to DBE firms for work committed to them at the time of contract award.

For more information regarding this section, please see Appendix 4: *Monitoring and Enforcement Mechanisms/Legal Remedies for Ensuring Disadvantaged Business Enterprise Inclusion in Contracts*.

#### **Section 26.39 Small Business Participation**

Fairfax County has incorporated a non-discriminatory element in its DBE program, in order to facilitate competition on FTA assisted public works projects by small business concerns (both DBEs and non-DBE small businesses): For more details, please see Appendix 3: *Fairfax County Small and Minority Business Enterprise Program*.

The Fairfax County Board of Supervisors voted to establish a Small and Minority Business Enterprise Program on April 6, 1981. Through this program, Fairfax County undertakes every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.

Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.

Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

Fairfax County does not certify businesses; however, Fairfax County does recognize business classifications of Small, Minority, Woman, Veteran and Service-Disabled Veteran Owned business enterprises that are certified by other agencies. Certification documentation can be submitted to the Vendor Relations Coordinator as an email attachment to [VendorHelpSelfService@fairfaxcounty.gov](mailto:VendorHelpSelfService@fairfaxcounty.gov) or by fax to 703-324-3587.

Business classifications are defined on Fairfax County's business classification website under the Department of Purchasing and Supply Management's website, which is located at the following URL: (<http://www.fairfaxcounty.gov/dpsm/osb/busclass.htm>).

**Small Business Enterprise** - An independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. Nothing in the provision prevents a program, agency, institution or subdivision from complying with the qualification criteria of a specific state program or a federal guideline to be in compliance with a federal grant or program.



**Minority-Owned Business Enterprise** - A business concern with at least 51% ownership by one or more minorities who are United States citizens or legal resident aliens or, in the case of a corporation, partnership or limited liability company or other entity, at least 51% ownership interest by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.

**Woman-Owned Business Enterprise** - A business concern which is at least 51% owned by one or more women who are United States citizens or legal resident aliens or, in the case of a corporation, partnership or limited liability company or other entity, at least 51% ownership interest by one or more women and whose management and daily business operations are controlled by one or more of such individuals.

All business representatives are welcome to the *Selling to Fairfax County* workshop held six times per year. Businesses, including small businesses, have an opportunity to meet staff from the county's Purchasing department and become familiar with the county's process. Workshops outline the county's process, upcoming contracting opportunities, and address any questions or concerns that businesses may have about doing business with the county.

All workshops are free of charge. The workshop schedule is available under the Vendor Relations Website at: (<http://www.fairfaxcounty.gov/dpsm/osb/workshop.htm>).

#### **Section 26.43 Set-asides or Quotas**

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

#### **Section 26.45 Overall Goals**

In accordance with Section 26.45, Fairfax County submitted its FY 2016 – 2018 overall DBE goal to the FTA on August 1, 2015, upon approval by the Fairfax County Board of Supervisors.

##### Overall Goal

FCDOT utilized several programs and resources already in existence to help determine a DBE goal and promote DBE participation. These programs include county and private-sector resources. Among County resources, FCDOT consulted with the Supplier Diversity Program within the Department of Purchasing and Supply Management, which ensures that small businesses, minority-owned businesses and women-owned businesses are treated fairly and have an opportunity to compete for the county's contract dollars. The office also engages in a variety of outreach efforts, including counseling and assistance, which are intended to maximize prime and subcontract opportunities for small, minority-owned businesses and women-owned businesses. FCDOT also met with representatives of Fairfax County's Office of Public Private Partnerships, which serves as a clearing house for public agencies, non-profit organizations, and businesses interested in working collaboratively. Additionally, FCDOT consulted the Fairfax County Economic Development Authority, which works with small, minority, and women-owned businesses to provide services and opportunities to start and expand their business operations (<http://www.fairfaxcountyaeda.org/services-small-minority-and-woman-owned-firms>).

Outside of the County resources, FCDOT reached out to representatives of the Capital Region Minority Supplier Development Council, the Metropolitan Washington Hispanic Chamber of Commerce, the Asian Chamber of Commerce, and the Virginia Hispanic Chamber of Commerce to gain a sense of the number of types of DBE firms that their organizations represent and to begin to develop strategies for ensuring DBE participation in bidding for FTA supported contracts. FCDOT was able to rely upon these resources in addition to the resources listed subsequently in this document to determine and promote DBE

participation. Consultation with the groups identified above should not be construed as mutually exclusive or exhaustive. See Appendix 6: *Documentation of Consultation and Outreach*

Fairfax County then consulted with directories maintained by SBSB and MWAA to verify information and availability of disadvantaged and non-disadvantaged businesses, relevant to the projects to be put out for bids from FY 2016 – FY 2018. From all of these efforts, Fairfax County has established an overall goal of 17.7% DBE participation for federal FY 2016 – 2018 on United States Department of Transportation Federal Transit Administration assisted contracts. Any Fairfax County DBE enhancement or remedial measures shall comply with measures established for the VDOT DBE program, as applicable to a Fairfax County contract or project.

Fairfax County posted notices of the proposed DBE goal, informing the public that the proposed goal and its rationale were available for public inspection for 30 days during normal business hours at FCDOT headquarters:

Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033

Fairfax County also accepted public comment on the proposed goals for 45 days after the notices were published. To reach a diverse public audience, the goal was published in *El Tiempo Latino*, the Spanish-language newspaper, the *Washington Post*, and posted on the Department of Transportation's website. Copies of the advertised notices are included in Appendix 8: *Proof of Publication*.

Fairfax County expects to meet this goal for upcoming projects receiving FTA funds by verifying DBE certifications and furnishing prime contractors information about DBE firms in the greater Washington, D.C. and Northern Virginia region. This overall goal of 17.7% will be reviewed triennially, with the next review taking place in FY 2018, based on program updates.

#### Methodology to Calculate Overall Goal

**STEP ONE** – The first step in establishing an overall DBE Goal is to come up with a measurement of the actual relative availability of DBE vendors within Fairfax County and the local region to perform the types of FTA assisted contracts that FCDOT intends to let during the federal fiscal year cycle. For 2016 – 2018, Fairfax County is expected to initiate contracts for construction of sidewalks and bus shelters.

After reviewing the current projects Fairfax County is completing with the use of applicable FTA grant funds, FCDOT has determined that an estimate of FTA funding for FY 2016-2018 is \$5,510,561 out of approximately \$8,305,513 in total project costs. The approximately \$5.5 million in FTA funds for FY 2016-2018 will be spent on Construction services (NAICS Codes 237110, 237130, 237310, and 238990). Fairfax County does not anticipate any new large scale or additional projects that require FTA grants arising in the next three years that would increase the estimated total project costs and FTA Grant amounts for FY 2016-2018.

#### Base Figure

FTA has suggested the following formula for determining the base figure percentage of ready, willing, and able DBE firms for USDOT-Assisted projects:

$$\text{Base Figure} = \frac{\text{Numerator: Ready, Willing and Able DBE Firms (by category)}}{\text{Denominator: All Ready, Willing and Able Firms (by the same numerator category)}}$$

A substantial majority of the contracting dollars are spent in the local marketing area known as the Washington Metropolitan Area that is comprised of Washington D.C. and the larger counties and municipalities in Northern Virginia. The following table summarizes the total number of all contractors and subcontractors located in Fairfax County's local market area who would be available for FTA-assisted projects. This information was extracted from the 2012 County Business Patterns (NAICS) database hosted by the census.

<b>Total Available Firms</b>	
<b>Jurisdiction</b>	<b>NAICS Codes 237110, 237130, 237310, &amp; 238990</b>
Alexandria City, VA	15
Arlington, VA	13
District of Columbia	18
Fairfax City, VA	8
Fairfax, VA	175
Falls Church, VA	3
Fredericksburg, VA	6
Loudoun, VA	76
Manassas City, VA	18
Manassas Park, VA	8
Prince William, VA	116
Stafford, VA	24
<b>Total</b>	<b>486</b>

The table below lists the number of Certified DBE Firms with offices in the Washington Metropolitan Area, according to databases maintained by the Commonwealth of Virginia Department of Small Business and Supplier Diversity (SBSD), and the Metropolitan Washington Airport Authority (MWAA). During this process, Fairfax County Department of Transportation cross-referenced each directory to prevent double counting a particular DBE firm who is certified and registered by more than one agency.

<b>Certified DBE Firms Overview</b>			
	<b>DMBE</b>	<b>MWAA</b>	<b>Total</b>
NAICS Codes 237110, 237130, 237310, & 238990	72	14	86
	<b>Total DBE</b>		<b>86</b>

The base goal calculation is as follows:

$$\frac{86 \text{ Ready, Willing, and able DBEs in the aforementioned NAICS codes}}{486 \text{ Total Firms Ready, Willing, and Able in the aforementioned NAICS codes}} = 17.7\%$$

#### Weighting

To improve the accuracy of the DBE goal, FTA recommends a weighting strategy for each NAICS category. However, FCDOT does not anticipate entering into any new contracts using applicable FTA funding other than for construction services. Moreover, FCDOT anticipates the future construction projects will involve the mix of the NAICS codes detailed above and used to calculate the DBE goal. Therefore, no weighting strategy is utilized to develop the DBE goal for FY 2016-2018.

#### STEP TWO

Several additional factors were considered for adjusting the base figure. These factors were not utilized due to a variety of issues. Included below are the factors and reasons why they were not used in this analysis.

- 1 Disparity Studies: There were no local disparity studies that provided any further insight into the number of ready, willing, and able DBEs or their use in transportation projects. Fairfax County did review the Virginia Department of Transportation (VDOT) Utilization and Availability Study, Revised July 19, 2004.
- 2 Past Participation: After reviewing the past participation data since 2013, Fairfax County discovered inconsistent utilization of DBEs. Only two contracts were let during this timeframe. One contract achieved 100% DBE participation as the prime contractor is also a qualified DBE firm. The other contract achieved 0% DBE participation. Combined, Fairfax County has achieved 50% DBE participation since 2013, well above the 7.9% target for FY 2013-FY2015. However, it is difficult to infer much from such a limited sample size.
- 3 Potential Capacity Increases: The data do not show any significant increase on an annual basis of DBEs or total firms in either the Construction or Engineering NAICS categories. Consequently, Fairfax County does not foresee an increase in the percent of potential firms and thus no additional adjustment is required to the 17.7% goal.

Should contracting opportunities significantly change during the three-year period such that the submitted goal is rendered inconclusive, Fairfax County will appropriately review both the goal and DBE contracting practices to ensure the goal and program as a whole accurately reflects the actual contracting opportunities available during the specified time period. As necessary, Fairfax County will submit adjustments to its DBE goal to the FTA for review and approval.

#### **Race Conscious / Race Neutral Breakout**

FCDOT recently completed reporting to FTA on the use of DBEs from FY 2013–2015. However, given the paucity of FTA-supported contracting opportunities (two contracts), it is difficult to use past results to set a target for race neutral and race conscious goals for project procurement opportunities. Regardless, the goal is to facilitate a high rate of participation of DBE firms in FCDOT projects. Since many of the relevant Fairfax County projects are similar to VDOT-contracted projects, it is instructive to examine VDOT's Race Neutral vs Race Conscious policy thresholds. The same ratios can be applied and used as a starting point for Fairfax County's goal over the next three years.

VDOT data show a Race Neutral percentage of 4.82%. VDOT's total DBE goal is 10.53%. Therefore, the fraction  $4.82 / 10.53$ , which equals 45.77% of the VDOT DBE goal, is expected to be met by Race Neutral project procurement opportunities. For the Fairfax County DBE, this estimate of 45.77% for Race Neutral project procurement opportunities would equate to at least 8.1% ( $= 17.7\% * 45.77\%$ ) of the County's goal being met by race-neutral project procurement opportunities for purposes of the overall goal, leaving the remaining 9.6% of the overall goal to be met by race-conscious project procurement opportunities. Efforts to include the minority business community in such project procurement opportunities will include identification and recruitment of minority firms to advertised procurement opportunities, teaming and networking events allowing minority firms to interact with potential project partners, and participation in association and trade organization events where Fairfax County projects can be highlighted. Race-conscious language regarding project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

However, Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. DBE contractors will be encouraged to apply on all solicitations, Fairfax County will coordinate with appropriate leadership of DBEs to inform them when contract opportunities arise, and all solicitations and contracts will include a good-faith effort DBE goal as a race-neutral means to increase DBE participation. However, if these race neutral strategies do not prove effective in reaching the County's 17.7% DBE goal, we will implement race conscious contract goals. Fairfax County will review the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE usage and will track the outcome of our efforts. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language regarding project procurement opportunities will be adjusted.

For a more detailed methodology used to calculate Fairfax County's overall DBE goal see Appendix 5: *Fairfax County Disadvantage Business Enterprise Goal and Methodology FY16-18*.

#### **Section 26.47 Goal Setting and Accountability**

If the awards and commitments shown on Fairfax County'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, Fairfax County 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 address the issues identified in the analysis.

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

Fairfax County does not currently purchase transit vehicles with federal funds. If, in the future, Fairfax County should procure any transit vehicles with FTA assisted contracts, it 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, Fairfax 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 transit vehicle manufacturer complying with this element of the program.

#### **Section 26.51 Meeting Overall Goals/Contract Goals**

Fairfax County anticipates being able to meet 8.1% of its overall DBE goal of 17.7% through race-neutral means. Race-neutral DBE participation occurs when a DBE wins a contract or subcontract that did not have contract specific goals, or when the DBE status was not considered in making the award. Race-neutral strategies will include regular consultation and notification of bidding opportunities with the internal and external agencies and offices that actively help promote DBEs, as described in Section 26.45 above. Regular consultation may include presentations and/or informational events, as well as email notifications.

Fairfax County 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 Fairfax County's overall goal that is not projected to be met through the use of race-neutral means.

Fairfax County will establish contract goals only on those FTA assisted contracts that have subcontracting possibilities.

Fairfax County will express its contract goals as a percentage of the federal share of a FTA assisted contract.

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

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

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

##### Information to be Submitted: 26.53(b)

Fairfax County may regard bidders'/offerors' compliance with good faith effort requirements as either a matter of responsiveness or responsibility, as determined by the Purchasing Agent. Each solicitation for which a DBE contract goal has been established will require the bidders/offerors to submit the following information:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar value of the participation of each DBE firm participating
- Written and signed documentation of commitment to use a DBE subcontractor, whose participation it submits to meet a contract goal
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment
- If the contract goal is not met, evidence of good faith efforts

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

Fairfax County may regard compliance with good faith effort requirements as either a matter of responsiveness or responsibility as appropriate, as determined by the Purchasing Agent. Fairfax County will determine whether a bidder/offeror who has not met the DBE contract goal has documented sufficient good faith efforts to be regarded as responsive or responsible.

The process used to determine whether good faith efforts have been made by a bidder/offeree are as follows:

1. Review of required documentation of evidence of good faith effort by bidder/offeree [See 26.53(b)]
2. Consult with Virginia's state DBE list to verify if bid contained qualified DBE firms

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

Administrative Reconsideration: 26.53(d)

Any bidder/offeree whose bid/offeree has been determined to be non-responsive to the requirements of the solicitation may protest the decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than 10 days after the award or the announcement of the decision to award, whichever comes first.

Any bidder/offeree who is determined not to be a responsible bidder shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination. Within 10 days of being informed by Fairfax County that the bidder is not responsible because it has not documented sufficient good faith efforts to meet the DBE goal, a bidder/offeree may seek administrative reconsideration. Bidders/offerees should submit this request for reconsideration in writing to the reconsideration official, Ronald N. Kirkpatrick, at the address provided below.

Ronald N. Kirkpatrick  
Deputy Director  
Fairfax County Department of Public Works and Environment Services  
Fairfax County Government  
12000 Government Center Parkway, Suite 449  
Fairfax, Virginia 22035  
703-324-3206

With copy mailed to  
Tom Biesiadny  
Director  
Fairfax County Department of Transportation  
4050 Legato Road, Suite 400  
Fairfax, Virginia 22033-2867  
703-877-5600

As part of the reconsideration of whether the bidder/offeree is or is not responsible with regard to the DBE goal, the bidder/offeree will have the opportunity to provide written documentation concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeree will have the opportunity to meet in person with Fairfax County's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. Fairfax County will send the bidder/offeree 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 written decision on reconsideration shall be final unless the bidder/offeree appeals the decision within 10 days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder/offeree may not institute legal action until all statutory requirements have been met.

If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

For more information regarding Fairfax County's procurement policies, the bidder/offeree should consult the Fairfax County Purchasing Resolution, which can be found at the following URL:  
(<http://www.fairfaxcounty.gov/dpsm/purchres.pdf>)

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

Fairfax County will require the prime contractor to obtain Fairfax County's prior written approval to terminate or substitute a DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

In addition to remedies available under the contract and under applicable law, if the prime contractor fails to provide written notification to the DBELO immediately of the DBE's inability or unwillingness to perform and make a good faith effort to hire another certified DBE, Fairfax County may, at its option: (i) upon at least five (5) days written notice to the prime contractor, issue a work stoppage until these conditions are met and (ii) if the prime contractor still does not meet these demands within ten (10) days, Fairfax County may terminate the contract upon written notice to the prime contractor. The prime contractor agrees that it is solely responsible for any costs or damages related to its failure to replace a DBE or secure satisfactory performance and completion of Work or any contractual obligations by a DBE.

#### Sample Bid Specification

The sample specification language is intended for use in both construction and non-construction contracts for which a contract goal has been established. It can be utilized in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established. The sample specification language is as follows:

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 Fairfax County 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/offerees, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_\_ percent has been established for this contract. The bidder/offeree shall make good faith efforts, as



defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

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

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

#### **Section 26.61-26.73 Certification Process**

Fairfax County does not certify. As such, this section does not apply.

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

Fairfax County is a member of a Unified Certification Program (UCP) administered by the Commonwealth of Virginia. The UCP meets all of the requirements of this section. Fairfax County will use and count for DBE credit only those DBE firms certified by the Commonwealth of Virginia, through SBSD. Accordingly, Fairfax County does not certify DBE's; however, the County does recognize certification by SBSD and MWAA for projects that include funding allocated by the Commonwealth of Virginia, as required by state law. For projects that do not include Commonwealth of Virginia funding, Fairfax County may also recognize certification by the District of Columbia Department of Transportation (DDOT), Washington Metropolitan Transit Authority (WMATA), or any other transportation or transit agency in Northern Virginia receiving USDOT funds.

#### **26.83-26.91 Procedures for Certification Decisions**

The Commonwealth of Virginia uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts.

##### **Process**

Virginia certification application forms and documentation requirements can be found at [www.dmbv.virginia.gov](http://www.dmbv.virginia.gov). For information about the certification process or to apply for certification, firms should contact:

Virginia Department of Minority Business Affairs  
1111 East Main Street, Suite 300  
Richmond, Virginia 23219  
804-786-5560  
[www.dmbv.virginia.gov](http://www.dmbv.virginia.gov).

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

U.S. Department of Transportation

Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave. SE  
West Building, 7<sup>th</sup> Floor  
Washington, D.C. 20590

**Section 26.109 Information, Confidentiality, Cooperation**

Information submitted by a bidder/offeror shall be subject to disclosure requirements under the Virginia Freedom of Information Act and all applicable Federal, state, and local law. See Va. Code §58.1-3; Virginia Freedom of Information Act (VFOIA).

Trade secrets or propriety information submitted by a bidder/offeror in connection with a procurement transaction or prequalification application submitted pursuant to Article 2, Section 4 D.3 shall not be subject to disclosure under the Virginia Freedom of Information Act; however, the bidder/offeror shall 1) invoke the protections of this section prior to or upon submission of the data or other materials, 2) identify the data or other materials to be protected, and 3) state the reasons why protection is necessary.

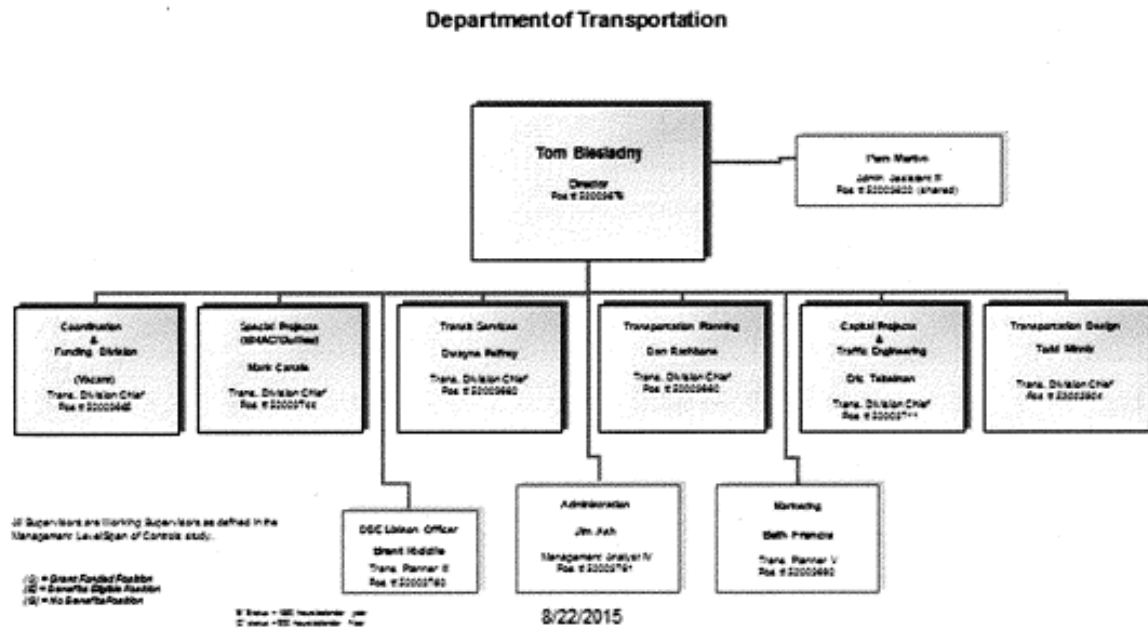
Monitoring Payments to DBEs

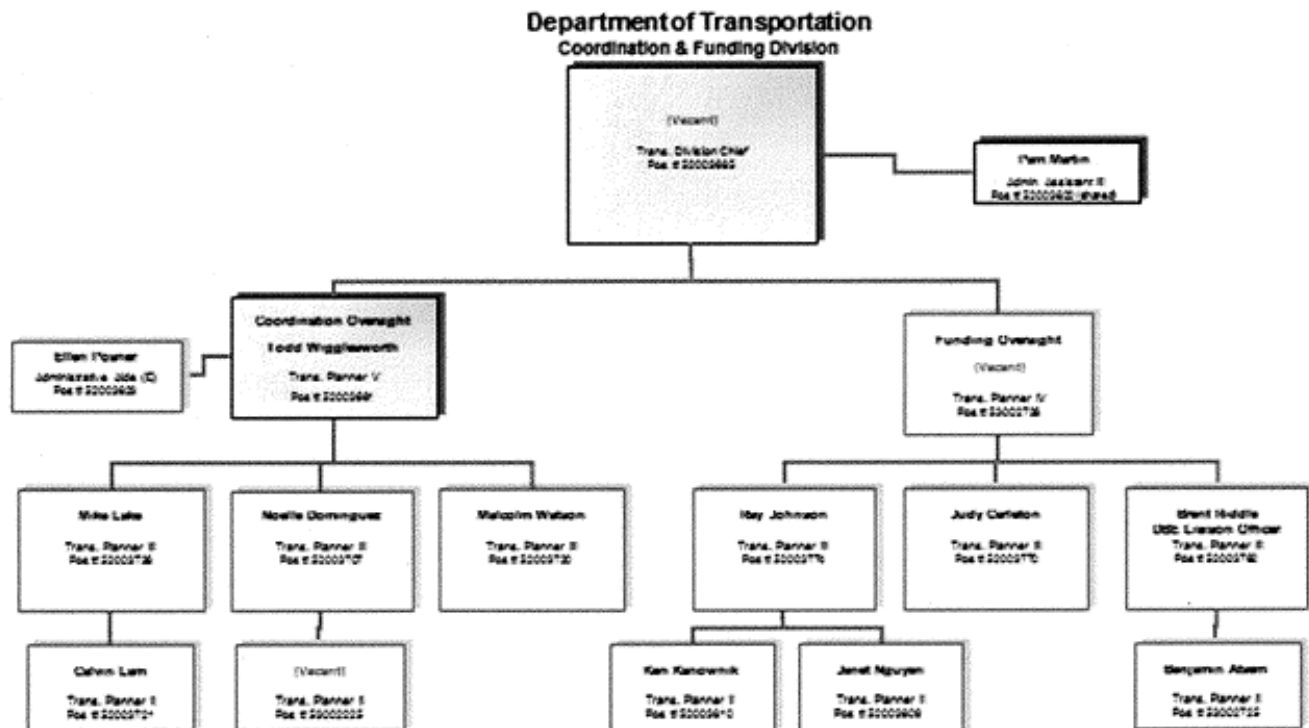
Fairfax County will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Fairfax County or USDOT. This reporting requirement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

Fairfax County may 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.

**APPENDICES**

**Appendix 1: Fairfax County Government Organizational Chart**





**Appendix 2: Links to DBE Regulations (49 CFR Part 26), DBE Directory, Certification Forms, Fairfax County Department of Purchasing and Supply Management****Federal Government Links**

Federal Disadvantaged Business Enterprise Regulations (49 CFR Part 26)

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)**Commonwealth of Virginia Links**

Virginia Department of Small Business &amp; Supplier Diversity (SBSD) – DBE Directory

<http://www.dmbe.virginia.gov/>

Virginia SBSD Certification Forms

<http://www.dmbe.virginia.gov/dbecert.html>

VDOT DBE Certification

<http://www.virginiadot.org/business/bu-civil-rights-Title6.asp#certification>

VDOT Prequalification Process

<http://www.virginiadot.org/business/const/prequal.asp3>**County Links**

Fairfax County Department of Purchasing and Supply Management

<http://www.fairfaxcounty.gov/dpsm/>

Fairfax County Purchasing Regulations

<http://www.fairfaxcounty.gov/dpsm/regs.htm>

Fairfax County Purchasing Resolution

<http://www.fairfaxcounty.gov/dpsm/purchres.pdf>

Virginia Public Procurement Act

<http://www.fairfaxcounty.gov/dpsm/regs.htm>

Virginia Freedom of Information Act (VFOIA) VA Code §58.13

<http://foiadcouncil.dls.virginia.gov/2011Law.pdf>

**Appendix 3: Fairfax County Small and Minority Business Enterprise Program**

# County of Fairfax

## SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM



Your First Stop for  
County Connections





## **Introduction**

The County of Fairfax is committed to keeping diversity in contracting as an integral part of the Department of Purchasing and Supply Management's business strategy. We strive to grow and sustain small, woman-owned, and minority-owned (SWAM) and service disabled veteran businesses through the county's in-reach, community outreach, education and training.

Notice of the county's Small and Minority Business Enterprise Program shall be distributed to all department heads for disbursement to appropriate staff. The program operates under the auspices of the Department of Purchasing and Supply Management (DPSM), Vendor Relations Division (VRD).

## **SWAM and Service disabled veteran Business Definitions**

The definition for a small, woman-owned, and minority-owned (SWAM) and service disabled veteran business shall be as defined by the Commonwealth of Virginia's *Virginia Public Procurement Act (VPPA)*.

## **Mission**

The county's mission is to grant diverse suppliers equal access to potential business opportunities, in an effort to strengthen our supplier base and reflect the citizens we serve.

## **Commitment**

We understand that to effectively respond to today's diverse communities, we must strive for diversity in not only our employees, but also in our supplier base. The county's strong commitment to supplier diversity promotes the increased utilization of SWAM and service disabled veteran business suppliers that meet our standards of high quality and value. We firmly believe that diverse suppliers have a positive impact on our community.

Our commitment is to develop a supply base that reflects the demographic diversity of the County of Fairfax. The Small and Minority Business Enterprise Program is a strategic business process aimed at providing companies that are small, minority-owned, woman-owned or service disabled veteran equal access to procurement opportunities.

### **Expectation**

The county seeks the best quality, value, and service at the best cost, from all of our suppliers. These same standards apply to our Small and Minority Business Enterprise Program. The program does not focus on start-up or in-depth business development support, but rather on expanding mutually beneficial relationships. The County of Fairfax will ensure that suppliers fully comprehend the county's requirements and are thus able to bid appropriately.

### **Objective Statement**

To be successful, we have established the following objectives:

- Identify and utilize SWAM and service disabled veteran businesses that provide goods and/or services that are purchased by the county,
- Encourage certification of SWAM and service disabled veteran businesses by the Commonwealth of Virginia's Department of Minority Business Enterprise.
- Host workshops and training sessions intended to enhance business operations and procurement opportunities for SWAM and service disabled veteran businesses, and
- Promote the utilization of SWAM and service disabled veteran businesses among county departments and prime contractors.

The county recognizes the value of a diverse supplier base and its impact on the business community and population at large. In recognition of this fact, the county has developed this Small and Minority Business Enterprise Program to ensure that it continues to creatively seek new supplier sources to fulfill the business opportunities for the county and that SWAM and service disabled veteran firms are given the opportunity to compete for these business opportunities.

## **Responsibility for Program Implementation**

The development and execution of policy for the Small and Minority Business Enterprise Program will be a function of the County staff, under the broad direction of the County Executive and subject to policy guidance provided by the Board of Supervisors. The Board of Supervisors approved the concept of a Small and Minority Business Enterprise Program in its adoption of the basic principle of Affirmative Action, on May 7, 1979.

The County Executive will have the overall responsibility for implementing the policies set forth by the Board of Supervisors. The County Executive will review the progress towards attaining the objectives of the program ensuring that staff understands and is committed to the objectives of the Board of Supervisors.

The Vendor Relations Division (VRD) Director, under the guidance of the Purchasing Agent will have the primary responsibility for the day-to-day administration of the Small and Minority Business Enterprise Program. The VRD Director will coordinate such support staff and participating organization support as may be necessary and proper to administer the program. The aim of the Small and Minority Business Enterprise Program shall be to increase the involvement of small, women-owned and minority-owned firms on all of the county's contracts.

The specific responsibilities of the Vendor Relations Division include but are not limited to the following:

1. Developing and implementing techniques in order to ensure that all SWAM and service disabled veteran business enterprises shall have the maximum practicable opportunity in every procurement and contractual activity.
2. Contacting and making potential SWAM and service disabled veteran business enterprises aware of the county's procurement regulations.
3. Develop, maintain and update a calendar of County sponsored workshops and seminars.
4. Update and expand the Department of Purchasing and Supply Management website to include more information on relevant procurement policies and procedures especially those that will be of use to the SWAM and service disabled veteran vendors.
5. Utilizing a method of registration of SWAM and service disabled veteran firms.
6. Monitoring bidders' list usage to ensure the inclusion of SWAM and service disabled veteran firms.
7. Assisting prime vendors with locating SWAM and service disabled veteran firms for subcontracting and second-tier opportunities.
8. Incorporating into the county's procurement and construction contracts provisions that:
  - a. Bidders/offerors will indicate whether they are or are not small, woman-owned, and/or minority-owned; and

- b. If Federal grant monies are involved and any subcontracts are to be let, the prime contractor will comply with the requirements set forth in applicable federal grant program regulations governed by OMB Circular A-102, as they pertain to small, woman-owned, and minority-owned business utilization.
- 9. Maintaining statistical data of procurement dollars awarded to SWAM firms directly and through a second-tier program.
- 10. Monitoring, evaluating, and reporting to the County Executive and all county departments on the progress of the Small and Minority Business Enterprise Program on an annual basis.
- 11. Periodically review and analyze county requirements for goods and services with a view toward maximizing the availability of work which would be within the performance capabilities of SWAM and service disabled veteran vendors, by techniques including but not limited to the following:
  - a. Breaking down requirements into small enough packages so that SWAM and service disabled veteran vendors would be able to bid competitively.
  - b. Ensuring that the terms and conditions of county Request for Proposal (RFP) and Invitations for Bid (IFB) are stringent enough to protect the county's interests, but not too stringent so as to disqualify new and/or marginally capitalized businesses from bidding on solicitations within their capabilities, thus unnecessarily limiting competition.

## **Purchasing Activities**

Fairfax County purchases a variety of products and services through several different departments. In each, the overall goal is the same - to obtain the highest quality products and services, at the best cost to the county, in a timely manner and with the best service.

To ensure that SWAM and service disabled veteran vendors are aware of and maximize the benefits of the Small and Minority Business Enterprise Program, the following list of activities are the responsibility of all staff responsible for purchasing goods or services:

1. Encourage participation of SWAM and service disabled veteran vendors in all phases of the procurement process.
2. Make available a list of goods and services annually procured, the usual amount specified in each order, and the designated buyer's name, e-mail address, and telephone number.
3. Discuss and clarify questions relative to County contracts and as to why a particular course of action was taken in reference to the awarding of these contracts.
4. Participate to the maximum extent possible in conference and vendor fairs designated for SWAM and service disabled veteran vendors.
5. Participate in workshops and seminars at appropriate times, in order to familiarize the SWAM and service disabled veteran vendor community with the workings of the county.

The county's purchasing professionals play a key role by supporting our Small and Minority Business Enterprise Program. In addition, other employees who make purchasing decisions are required to work with the Vendor Relations Division to seek and utilize diverse suppliers.

**Appendix 4: Monitoring and Enforcement Mechanisms/Legal Remedies for Ensuring Disadvantaged Business Enterprise Inclusion in Contracts**

Fairfax County 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. Breach of contract action, pursuant as may be available through all of Virginia's common law civil remedies including but not limited to actions for breach of contract damages, to obtain restitution, and specific enforcement of the contract.
3. If applicable and appropriate, consideration of vendor disbarment from any similar future solicitations pursuant to Fairfax County Procedural Memorandum 12-11 (dated August 21, 2003).

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

**Appendix 5: Fairfax County Disadvantaged Business Enterprise Goal and Methodology  
FY 2016-2018****Summary**

Fairfax County has established requirements for setting an overall goal for Disadvantaged Business Enterprise (DBE) participation in federally funded contracts in accordance with regulations of the United States Department of Transportation, 49 CFR Part 26. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect DBEs to achieve in the absence of discrimination.

**Proposed Goal for FY 2016-2018**

Fairfax County has established an overall goal of 17.7% DBE participation for FY 2016 – 2018 on Federal Transit Administration assisted contracts.

Fairfax County will post a notice of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for public inspection during normal business hours at the Fairfax County Department of Transportation. The goal will be published on the Fairfax County Department of Transportation website; the Spanish-language newspaper, El Tiempo Latino; and in the Washington Post.

Fairfax County expects to meet this goal for upcoming projects receiving FTA funds by verifying DBE certifications and furnishing prime contractors information about DBE firms in the greater Washington, D.C. region. This overall goal of 17.7% will be reviewed triennially based on program updates.

**Race Conscious/Race Neutral Breakout Summary**

Fairfax County's goal is to improve the rate of DBEs in Fairfax County Department of Transportation (FCDOT) projects that are funded by FTA, many of which are in partnership with the Virginia Department of Transportation (VDOT). Since many of the relevant Fairfax County projects are similar to VDOT-contracted projects, it is instructive to examine VDOT's Race Neutral vs Race Conscious policy thresholds. The same ratios can be applied and used as a starting point for Fairfax County's goal over the next three years.

In Fairfax County, this estimate would equate to 8.1% of our goal being met by race-neutral project procurement opportunities, leaving the remaining 9.6% of the goal to be met by race-conscious project procurement opportunities, as further described herein. Race-conscious language regarding such project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language will be adjusted.

**Public Participation**

FCDOT utilized several programs and resources already in existence to determine and promote DBE participation. These programs include county and private-sector resources. Among the county resources, FCDOT consulted with the Supplier Diversity Program within the Department of Purchasing and Supply Management, which ensures that small businesses, minority-owned businesses and women-owned

businesses are treated fairly and have an opportunity to compete for the county's contract dollars. The office also engages in a variety of outreach efforts, including counseling and assistance, which are intended to maximize prime and subcontract opportunities for small, minority-owned businesses and women-owned businesses. FCDOT also met with representatives of Fairfax County's Office of Public Private Partnerships, which serves as a clearing house for public agencies, non-profit organizations, and businesses interested in working collaboratively. Additionally, FCDOT consulted the Fairfax County Economic Development Authority, which works with small, minority, and women-owned businesses to provide services and opportunities to start and expand their business operations (<http://www.fairfaxcountyeda.org/services-small-minority-and-woman-owned-firms>).

Outside of the County resources, FCDOT met with representatives of the Capital Region Minority Supplier Development Council, the Virginia Hispanic Chamber of Commerce, the Asian Chamber of Commerce, and the Hispanic Business Council to gain a sense of the number of types of DBE firms that their organizations represent and to begin to develop strategies for ensuring DBE participation in bidding for FTA-supported contracts. FCDOT was able to rely upon these resources in addition to the resources listed subsequently in this document to determine and promote DBE participation.

### **Methodology**

#### **STEP ONE**

The first step in establishing an overall DBE Goal is to come up with a measurement of the actual relative availability of DBE vendors within Fairfax County and the local region to perform the types of FTA assisted contracts that FCDOT intends to let during the federal fiscal year cycle. For FY 2016-2018, Fairfax County is expected to initiate contracts for construction of sidewalks and bus shelters.

After reviewing the current projects Fairfax County is completing with the use of applicable FTA grant funds, FCDOT has determined that an estimate of FTA funding for FY 2016-2018 is \$5,510,561 out of approximately \$8,305,513 in total project costs. The approximately \$5.5 million in FTA funds for FY 2016-2018 will be spent on Construction services (NAICS Codes 237110, 237130, 237310, and 238990). Fairfax County does not anticipate any new large scale or additional projects that require FTA grants arising in the next three years that would increase the estimated total project costs and FTA Grant amounts for FY 2016-2018.



The following table delineates projects that are projected to be completed during FY 2016 - FY 2018.

Project Number	Total Project Amount	Federal Amount
1400079-2012	\$483,347	\$386,678
1400080-2012	\$900,000	\$720,000
1400081-2012	\$322,000	\$257,600
1400082-2012	\$435,666	\$348,533
1400083-2012	\$291,000	\$232,800
1400084-2012	\$659,000	\$527,200
1400087-2012	\$400,000	\$320,000
1400012-2006 (Frye Road Phase II)	\$145,600	\$72,800
1400012-2006 (Lukens Lane)	\$560,000	\$280,000
1400017-2006 (Mohawk Lane)	\$450,000	\$225,000
1400012-2006 (Ladson Lane)	\$317,500	\$158,750
1400017-2006 (Belford Drive)	\$463,100	\$231,550
1400014-2006 (Southgate Drive)	\$268,100	\$134,050
1400015-2006 (Lockheed Boulevard)	\$660,900	\$330,450
1400016-2006 (Arlington Drive)	\$391,200	\$195,600
1400013-2006 (Sacramento Drive)	\$523,100	\$261,550
Transit Shelter Projects	\$1,035,000	\$828,000
<b>TOTAL</b>	<b>\$8,305,513</b>	<b>\$5,510,561</b>

According to proposed project timelines for initiating the above projects, the average annual fiscal year estimate for using FTA Grant funding is provided below.

	NAICS Codes 237110, 237130, 237310, and 238990
Fiscal Year 2016	\$4.0 million
Fiscal Year 2016	\$4.3 million
Fiscal Year 2018	\$0
<b>TOTAL</b>	<b>\$8.3 million</b>

Base Figure

FTA suggests the following formula for determining the base figure percentage of ready, willing, and able DBE firms for USDOT-Assisted projects:

$$\text{Base Figure} = \frac{\text{Numerator: Ready, Willing and Able DBE Firms (by category)}}{\text{Denominator: All Ready, Willing and Able Firms (by the same numerator category)}}$$

Fairfax County does not certify firms as DBE's but utilizes several governmental entities' databases to determine which firms may be counted as DBEs. The directories list the firm's name, address, and phone number and the type of work the firm has been certified to perform as a DBE.

A substantial majority of the contracting dollars are spent in the local marketing area known as the Washington Metropolitan Area that is comprised of Washington D.C. and the larger counties and municipalities in Northern Virginia. The following table summarizes the total number of all contractors and subcontractors located in Fairfax County's local market area who would be available for FTA-assisted projects. This information was extracted from the 2012 County Business Patterns (NAICS) database hosted by the census.

Total Available Firms	
Jurisdiction	NAICS Codes 237110, 237130, 237310, & 238990
Alexandria City, VA	15
Arlington, VA	13
District of Columbia	18
Fairfax City, VA	8
Fairfax, VA	175
Falls Church, VA	3
Fredericksburg, VA	6
Loudoun, VA	76
Manassas City, VA	18
Manassas Park, VA	8
Prince William, VA	116
Stafford, VA	24
<b>Total</b>	<b>486</b>

The table below lists the number of Certified DBE Firms with offices in the Washington Metropolitan Area, according to databases maintained by the Commonwealth of Virginia Department of Small Business and Supplier Diversity (SBSD), and the Metropolitan Washington Airport Authority (MWAA). During this process, Fairfax County Department of Transportation cross-referenced each directory to prevent double counting a particular DBE firm who is certified and registered by more than one agency.

Certified DBE Firms Overview			
	DMBE	MWAA	Total
NAICS Codes 237110, 237130, 237310, & 238990	72	14	86
	Total DBE		86

The base goal calculation is as follows:

$$\frac{86 \text{ Ready, Willing, and able DBEs in the aforementioned NAICS codes}}{486 \text{ Total Firms Ready, Willing, and Able in the aforementioned NAICS codes}} = 17.7\%$$

#### Weighting

To improve the accuracy of the DBE goal, FTA recommends a weighting strategy for each NAICS category. However, FCDOT does not anticipate entering into any new contracts using applicable FTA funding other than for construction services. Moreover, FCDOT anticipates the future construction contracts will involve the mix of the NAICS codes detailed above and used to calculate the DBE goal. Therefore, no weighting strategy is utilized to develop the DBE goal for FY 2016-2018.

#### STEP TWO

Several additional factors were considered for adjusting the base figure. These factors were not utilized due to a variety of issues. Included below are the factors and reasons why they were not used in this analysis.

- 1 Disparity Studies: There were no local disparity studies that provided any further insight into the number of ready, willing, and able DBEs or their use in transportation projects. Fairfax County did review the Virginia Department of Transportation (VDOT) Utilization and Availability Study, Revised July 19, 2004.
- 2 Past Participation: After reviewing the past participation data since 2013, Fairfax County discovered inconsistent utilization of DBEs. Only two contracts were let during this timeframe. One contract achieved 100% DBE participation as the prime contractor is also a qualified DBE firm. The other contract achieved 0% DBE participation. Combined, Fairfax County has achieved 50% DBE participation since 2013, well above the 7.9% target for FY 2013- FY2015. However, it is difficult to infer much from such a limited sample size.
- 3 Potential Capacity Increases: The data do not show any significant increase on an annual basis of DBEs or total firms in either the Construction or Engineering NAICS categories. Consequently, Fairfax County does not foresee an increase in the percent of potential firms and thus no additional adjustment is required to the 17.7% goal.

Should contracting opportunities significantly change during the three-year period such that the submitted goal is rendered inconclusive, Fairfax County will appropriately review both the goal and DBE contracting practices to ensure the goal and program as a whole accurately reflects the actual contracting opportunities available during the specified time period. In general, Fairfax County will submit its DBE goal to the FTA every three years.

**Race Conscious / Race Neutral Breakout**

FCDOT recently completed reporting to FTA on the use of DBEs from FY 2013-2015. However, given the paucity of FTA-supported contracting opportunities (two contracts), it is difficult to use past results to set a target for race neutral and race conscious goals for project procurement opportunities. Regardless, the goal is to facilitate a high rate of participation of DBEs in FCDOT projects. Looking at the most recent Race Neutral vs. Race Conscious breakout at the state level for the Commonwealth of Virginia, the same ratio can be applied and used as a starting point for Fairfax County's goal over the next three years.

VDOT data show a Race Neutral percentage of 4.82%. VDOT's total DBE goal is 10.53%. Therefore, the fraction  $4.82 / 10.53$ , which equals 45.77% of the VDOT DBE goal, is expected to be met by Race Neutral project procurement opportunities. For the Fairfax County DBE, this estimate of 45.77% for Race Neutral project procurement opportunities would equate to at least 8.1% ( $= 17.7\% * 45.77\%$ ) of the County's goal being met by race-neutral project procurement opportunities for purposes of the overall goal, leaving the remaining 9.6% of the overall goal to be met by race-conscious project procurement opportunities. Efforts to include the minority business community in such project procurement opportunities will include identification and recruitment of minority firms to advertised procurement opportunities, teaming and networking events allowing minority firms to interact with potential project partners, and participation in association and trade organization events where Fairfax County projects can be highlighted. Race-conscious language regarding project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

However, Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. DBE contractors will be encouraged to apply on all solicitations, Fairfax County will coordinate with appropriate leadership of DBEs to inform them when contract opportunities arise, and all solicitations and contracts will include a good-faith effort DBE goal as a race-neutral means to increase DBE participation. However, if these race neutral strategies do not prove effective in reaching the County's 17.7% DBE goal, we will implement race conscious contract goals. Fairfax County will review the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE usage and will track the outcome of our efforts. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language regarding project procurement opportunities will be adjusted.

**Appendix 6: Documentation of Consultation and Outreach****Fairfax County Department of Purchasing and Supply Management, Supplier Diversity**

From: Estelle, Michael W.  
Sent: Friday, December 05, 2014 2:30 PM  
To: Riddle, Michael  
Subject: RE: Disadvantaged Business Enterprise Program

Here is the list of contacts per our conversation:

Asian Chamber of Commerce – My Lan Tran, Director 804-502-8081, aabac@aabac.org

Asian American Chamber of Commerce – Dr. Cindy Shao, President - 703-752-6292, cindy@asian-americanchamber.org

Capital Region Minority Supplier Diversity Council – Jonice Adams - (301) 593-5860, jonice.adams@crmsdc.org

NoVA Black Chamber of Commerce – Brad Ryant, Vice Chairman - 703-879-2770

Hispanic Business Council – Angie Carrera 703-324-5371 rosario.carrera@fairfaxcounty.gov

Women Presidents' Educational Organization-DC - SANDRA EBERHARD, Executive Director 202-595-2628 sandra@womenpresidentsorg.com

Sincerely,

*Michael Estelle*

From: Riddle, Michael  
Sent: Friday, December 05, 2014 2:13 PM  
To: Estelle, Michael W.  
Subject: Disadvantaged Business Enterprise Program

Michael,

Thanks for your time. I really appreciate you providing a list of organizations that I can reach out to help DOT develop a DBE policy.

Best,  
Brent

Brent Riddle, Sr Transportation Planner, AICP  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov

**Hispanic Business Council**

From: Riddle, Michael  
Sent: Wednesday, December 10, 2014 3:59 PM  
To: Carrera, Angie  
Subject: FW: Disadvantaged Business Enterprise Program

Angie,  
It was a pleasure meeting you today. Below is the list of contacts that I received from Michael Estelle. I have heard back from Jonice Adams and My Lan Tran.

Brent

**Capital Region Minority Supplier Development Council**

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]  
Sent: Monday, December 15, 2014 11:31 AM  
To: Riddle, Michael  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good morning Brent,

I look forward to meeting with you in our office on the 17th at 10:00 AM.

Jonice S. Adams  
Vice President, Operations  
Capital Region Minority Supplier Development Council (CRMSDC)

10750 Columbia Pike, Suite 200  
Silver Spring, MD 20901  
301-593-5862 – Office  
301-593-1364 – Fax  
Jonice.adams@crmsdc.org  
www.crmsdc.org

From: Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]  
Sent: Monday, December 15, 2014 10:29 AM  
To: Jonice Adams  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Hi Jonice,  
Wednesday, December 17, works fine for me. I am happy to meet you in your office. Shall we set the meeting for 10am?

Thanks,  
Brent

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]  
Sent: Saturday, December 13, 2014 12:50 PM  
To: Riddle, Michael  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good afternoon Brent,

Wednesday, December 17, is the best day for me. If you can, I would like to meet you at our Silver Spring office. I am available between 10:00 am and 1:00pm.

Jonice

From: Riddle, Michael  
Sent: Tuesday, December 09, 2014 9:56 AM  
To: 'Jonice Adams'  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Hi Ms. Adams,  
Thanks for your reply. As for this week, tomorrow or Friday are both wide open for me. I can meet anytime. Next week Monday afternoon from 3-5 is open and Tuesday and Wednesday are both clear. Hopefully, we can find a good date and time from those options.

Also, I see that your office is located in Silver Spring. I am happy to meet with you there, if you prefer, or we can meet here at the Department of Transportation offices in Fairfax.

I look forward to your response.

Regards,  
Brent

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]  
Sent: Monday, December 08, 2014 6:01 PM  
To: Riddle, Michael  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good afternoon Mr. Riddle,

I will be pleased to discuss the proposed DBE policy and goals with you. Please provide me with a few dates and times that we can meet.

Regards,

Jonice S. Adams  
Vice President, Operations  
Capital Region Minority Supplier Development Council (CRMSDC)

10750 Columbia Pike, Suite 200  
Silver Spring, MD 20901  
301-593-5862 – Office  
301-593-1364 – Fax  
Jonice.adams@crmsdc.org  
www.crmsdc.org

From: Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]  
Sent: Monday, December 08, 2014 2:17 PM  
To: Jonice Adams  
Subject: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Dear Ms Adams,  
Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

I would appreciate the opportunity to meet with you in the next few weeks to discuss the proposed DBE policy and goals. Your feedback is important to our efforts to ensure that the DBE policy is effective. Thank you in advance for your assistance.

Sincerely,  
Brent

Brent Riddle, Sr Transportation Planner, AICP  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov



**Greater Washington Hispanic Chamber of Commerce**

Dear Mr. Riddle,

Thank you for joining us on Tuesday. Please find below the information for the event. Please be there by 9:10am. If you have any questions or need anything you can contact me on my cell 202 340 5157.

New Member Morning Reception

Date: May 12, 2015

Time: 9:00 am - 11:00 am

Location:

Pepco Edison Place Gallery

702 8th St. NW

Washington, DC 20068

Best,

Pamela Nieto

Director of Marketing and Communications

Greater Washington Hispanic Chamber of Commerce

910 17th Street NW, Suite 1150 Washington DC, 20006 P: 202.728.0352.

On Wed, May 6, 2015 at 12:15 PM, Linda Mayo <lmayo@gwhcc.org> wrote:

Brent,

We are very appreciative of your commitment to our event. I am copying Pamela Nieto, our Director of Marketing and Communications, who will respond to your questions about the reception. I am attaching the invitation below.

We look forward to seeing you there!

Linda

Linda Mayo

Executive Assistant to the President & CEO

and Office Manager

GWHCC

910 17th Street, NW, Suite 1150

Washington, DC 20006

202.728.0352 (O)

240.994.2506 (C)

On Wed, May 6, 2015 at 8:42 AM, Riddle, Michael <Michael.Riddle@fairfaxcounty.gov> wrote:

Linda,

I am happy to attend the New Member Reception on May 12. Where is the event being held? What time do you anticipate me speaking? I have been asked to help out with another project from 6-9am, but GWHCC's event is more important. So, I will definitely be there. However, if I can manage both I would like to try.

Thanks,  
Brent

From: Linda Mayo [mailto:lmayo@gwhcc.org]  
Sent: Tuesday, May 05, 2015 4:23 PM  
To: Riddle, Michael  
Subject: BRENT RIDDLE TO SPEAK AT NEW MEMBER RECEPTION ON MAY 12TH

Dear Brent,

I just wanted to confirm that you will attend the New Member Reception on May 12th from 9-11am and speak briefly for 2 minutes?

I look forward hearing from you!

Linda

Linda Mayo  
Executive Assistant to the President & CEO  
and Office Manager  
GWHCC  
910 17th Street, NW, Suite 1150  
Washington, DC 20006  
202.728.0352 (O)  
240.994.2506 (C)

----- Forwarded message -----

From: Linda Mayo <lmayo@gwhcc.org>  
Date: Fri, Apr 17, 2015 at 4:51 PM  
Subject: BRENT RIDDLE TO SPEAK FOR 2 MIN AT NEW MEMBER RECEPTION ON MAY 12TH  
To: Pamela Nieto <pnieto@gwhcc.org>  
Cc: Angela Franco <afranco@gwhcc.org>

Pam, Brent Riddle will speak at the next event briefly for 2 minutes. He spoke with Angela today.

Brent Riddle, Sr Transportation Planner  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov

Linda Mayo

Executive Assistant to the President & CEO  
and Office Manager  
GWHCC  
910 17th Street, NW, Suite 1150  
Washington, DC 20006  
202.728.0352 (O)  
240.994.2506 (C)

**Virginia Hispanic Chamber of Commerce**

From: Michel Zajur [zajur@vahcc.com]  
Sent: Thursday, March 26, 2015 8:13 PM  
To: Riddle, Michael  
Cc: Carrera, Angie  
Subject: Re: DBE email to GWHCC

Brent  
Let's plan on talking tomorrow  
by phone if that works then we can  
meet in person in the very near future.  
Best regards Michel

Sent from my iPhone

Michel Zajur  
President/CEO  
Virginia Hispanic Chamber of Commerce  
WWW.VAHCC.COM  
Cell. 804-306-4404

On Mar 26, 2015, at 1:11 PM, Riddle, Michael <Michael.Riddle@fairfaxcounty.gov> wrote:

Angie,  
Thank you again for the introduction.

Dear Michel,  
As Angie mentioned, I am trying to identify ways to promote participation of Disadvantaged Business Enterprises (DBEs) in Fairfax County Department of Transportation contracts. I would very much the opportunity to meet with you or speak over the phone to discuss how we might be able to assist one another. Feel free to email me or give me a call. My contact information is below.

Regards  
Brent

Brent Riddle, Sr Transportation Planner  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723

Email: Michael.Riddle@fairfaxcounty.gov

**Asian American Chamber of Commerce**

Dear Dr. Shao,

Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

I would appreciate the opportunity to meet with you in the next few weeks to discuss the proposed DBE policy and goals. Your feedback is important to our efforts to ensure that the DBE policy is effective. Thank you in advance for your assistance.

Sincerely,  
Brent

Brent Riddle, Sr Transportation Planner, AICP  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov



## Appendix 8: Proof of Publication

Ad # 11909557 Name FAIRFAX CO DEPT OF TRANSPORTATION ATTN: Size 64 Lines T0007  
 Class 820 POF Authorized by Account 2010187255

## PROOF OF PUBLICATION

District of Columbia, ss., Personally appeared before me, a Notary Public in and for the said District, Alba Cortes well known to me to be BILLING SUPERVISOR of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Hereby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following date(s) at a cost of \$785.32 and was circulated in the Washington metropolitan area.

Published 1 time(s). Date(s): 27 of April 2015

Account 2010187255

Witness my hand and official seal this 27 day of April 20 15

My commission expires

Alba Cortes  
Alba Cortes  
 Alba H. Cooper Smith  
 Notary Public, District of Columbia  
 My Commission Expires 8/1/2015

Public Notice Disadvantaged Business Enterprise Proposed Federal FY2015-2017 Goal Fairfax County hereby announces its FY 2015-2017 goal of 17.7% for Disadvantaged Business Enterprise (DBE) participation for projects supported by funding from the Federal Transit Administration. The goal and its rationale are available for inspection from 9:00 am to 4:30 pm (local time) at 4050 Legato Road, Suite 400, Fairfax, VA 22033, for 30 days following the date of publication of this notice. Written comments on this goal will be accepted for 45 days from the date of publication of this notice. Comments should be addressed to: Fairfax County Department of Transportation Attention: Brent Riddle, Sr. Transportation Planner 4050 Legato Road, Suite 400 Fairfax, VA 22033 michael.riddle@fairfaxcounty.gov Phone: 703-877-5600 Fairfax County and the Fairfax County Department of Transportation (FCDOT) ensure nondiscrimination in all programs and activities in accordance with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA). To request this information in an alternate format, contact FCDOT at 703-877-5600, TTY 711.

Ad#11910475      NAME FAIRFAX CO DEPT OF TRANSPORTATION      Size 3 CO x 5 IN  
 Class ETCISSFR2      Authorized by Natalie J. Colley      Account 2010187255

## PROOF OF PUBLICATION

**The Washington Post**

The Washington Post Company hereby certifies that it is the publisher of The Washington Post; that The Washington Post is a newspaper of general circulation, published daily in the City of Washington, District of Columbia; that The Washington Post has been so published continuously for more than one year prior to the date of first publication of the notice mentioned below; that the undersigned person is the duly authorized agent of The Washington Post Company to execute this certificate on its behalf; and that a notice of which the annexed is a true copy was printed and published in said newspaper on the following date (s) at a cost of \$306.00 and was circulated in the Washington metropolitan area.

Published 1 times. Date(s) 01 of May 2015

Witness my hand and official seal this 5<sup>th</sup> day of May 2015  
 My commission expires 10/31/2019



**Anuncio Público**

Una Publicación de Fairfax County, Va.

**AVISO PÚBLICO**  
**Propuesta para empresas en desventaja**  
**Su meta de propósito federal FY 2015-2017**

El Condado de Fairfax anuncia su objetivo de FY 2015-2017 del 17.7% para la participación de la empresas en desventaja (DBE) para proyectos apoyados por fondos de la Administración Federal de tránsito. El objetivo y sus fundamentos están disponibles para inspección de 9:00 a 4:30 (hora local) en 4050 Legato Road, Suite 400, Fairfax, VA 22033, durante 30 días siguientes a la fecha de publicación de este aviso. Se aceptarán comentarios por escrito sobre este objetivo durante 45 días desde la fecha de publicación de este aviso. Comentarios deben ser dirigidas a:

**Fairfax County Department of Transportation**  
**Atencion: Brent Riddle, Sr. Transportation Planner**  
**4050 Legato Road, Suite 400**  
**Fairfax, VA 22033**  
**michael.riddle@fairfaxcounty.gov**  
**Phone: 703-877-5600**

El Condado de Fairfax y el Departamento de Transportación (FCDOT) garantizan no discriminación en todos los programas y actividades con arreglo del Título VI de la ley de derechos civiles de 1964 y a los americanos con discapacidades (ADA). Para solicitar esta información en un formato alternativo, póngase en contacto con FCDOT en el 703-877-6606, TTY 711.

**Appendix 9: Good Faith Effort Forms**

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

**THIS INFORMATION MUST BE SUBMITTED  
WITHIN 2 DAYS AFTER BID OPENING IF YOUR BID DOES  
NOT MEET THE PROJECT DBE REQUIREMENTS, OR  
WHEN REQUESTED BY FCDOT**

CONTRACT I.D. NUMBER \_\_\_\_\_  
PROJECT NUMBER \_\_\_\_\_  
FTA PROJECT NUMBER \_\_\_\_\_  
FAIRFAX COUNTY DISTRICT \_\_\_\_\_  
DATE BID SUBMITTED \_\_\_\_\_  
BIDDER'S NAME \_\_\_\_\_  
SIGNATURE \_\_\_\_\_  
TITLE \_\_\_\_\_  
DATE \_\_\_\_\_  
VENDOR NUMBER \_\_\_\_\_

DBE GOAL FROM BID PROPOSAL



**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_  
IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT  
REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH  
EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY  
REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

NAMES OF CERTIFIED DBEs AND THE DATES ON WHICH THEY WERE SOLICITED TO BID ON  
THIS PROJECT

INCLUDE THE ITEMS OF WORK OFFERED AND THE DATES AND METHODS USED FOR FOLLOWING UP INITIAL  
SOLICITATIONS TO DETERMINE WHETHER OR NOT DBEs WERE INTERESTED.

NAMES AND VENDOR NUMBERS OF DBEs SOLICITED	DATE OF INITIAL SOLICITATION	ITEM(S) OF WORK	FOLLOW-UP METHODS AND DATES

**NOTE:** ATTACH ADDITIONAL PAGES IF NECESSARY

ATTACH COPIES OF SOLICITATIONS, TELEPHONE RECORDS, FAX CONFIRMATIONS, ELECTRONIC INFORMATION,  
ETC

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**TELEPHONE LOG**

DBE(s) CALLED	TELEPHONE NUMBER	DATE CALLED	TIME CALLED	CONTACT PERSON OR VOICE MAIL STATUS

**NOTE:** ATTACH ADDITIONAL PAGES IF NECESSARY

**FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE FIRMS**

IDENTIFY THOSE ITEM(S) OF WORK THAT THE BIDDER MADE AVAILABLE TO DBE FIRMS OR THOSE ITEM(S) THE BIDDER IDENTIFIED AND DETERMINED TO SUBDIVIDE INTO ECONOMICALLY FEASIBLE UNITS TO FACILITATE DBE PARTICIPATION. FOR EACH ITEM LISTED, SHOW THE DOLLAR VALUE AND PERCENTAGE OF THE TOTAL CONTRACT AMOUNT. IT IS THE BIDDER'S RESPONSIBILITY TO DEMONSTRATE THAT SUFFICIENT WORK TO MEET THE GOAL WAS MADE AVAILABLE TO DBE FIRMS.

ITEM(S) OF WORK MADE AVAILABLE	BIDDER NORMALLY PERFORMS ITEM(S) (Y/N)	ITEM(S) BROKEN DOWN TO FACILITATE PARTICIPATION (Y/N)	AMOUNT IN DOLLARS	PERCENTAGE OF CONTRACT

**NOTE:** INFORMATION REQUIRED FOR THIS SECTION CONTINUED ON SHEET 5  
ATTACH ADDITIONAL PAGES IF NECESSARY

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**ADDITIONAL INFORMATION REGARDING ITEM(S) OF WORK THAT THE BIDDER  
MADE AVAILABLE TO DBE FIRMS** (Continued From Sheet 4)

ITEM(S) OF WORK MADE AVAILABLE, NAMES OF SELECTED FIRMS AND DBE STATUS, DBEs THAT PROVIDED QUOTES, PRICE QUOTE FOR EACH FIRM, AND THE PRICE DIFFERENCE FOR EACH DBE IF THE SELECTED FIRM IS NOT A DBE.

ITEM(S) OF WORK MADE AVAILABLE	NAME OF SELECTED FIRM AND VENDOR NUMBER	DBE OR NON- DBE	NAME OF REJECTED FIRM(S)	QUOTE IN DOLLARS	PRICE DIFFERENCE IN DOLLARS

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY.

IF THE FIRM SELECTED FOR THE ITEM IS NOT A DBE, PROVIDE THE REASON(S) FOR THE SELECTION ON A SEPARATE PAGE AND ATTACH.

PROVIDE NAMES, ADDRESSES, AND TELEPHONE NUMBERS FOR THE FIRMS LISTED ABOVE.

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**ADVERTISEMENTS OR PROOFS OF PUBLICATION.**

NAMES AND DATES OF EACH PUBLICATION IN WHICH A REQUEST FOR DBE PARTICIPATION FOR THE PROJECT WAS PLACED BY THE BIDDER. ATTACH COPIES OF PUBLISHED ADVERTISEMENTS OR PROOFS OF PUBLICATION.

PUBLICATIONS	DATES OF ADVERTISEMENT

**NOTE:** ATTACH ADDITIONAL PAGES IF NECESSARY

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

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THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

NAME OF AGENCY	METHOD AND DATE OF CONTACT	RESULTS

**NOTE:** ATTACH ADDITIONAL PAGES IF NECESSARY

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**TECHNICAL ASSISTANCE AND INFORMATION PROVIDED TO DBEs**

EFFORTS MADE TO PROVIDE INTERESTED DBEs WITH ADEQUATE INFORMATION ABOUT THE PLANS, SPECIFICATIONS, AND REQUIREMENTS OF THE BID DOCUMENTS TO ASSIST THE DBEs IN RESPONDING TO A SOLICITATION.

IDENTIFY THE DBEs ASSISTED, THE INFORMATION PROVIDED, AND THE DATE OF CONTACT. ATTACH COPIES OF SUPPORTING DOCUMENTS.

DBEs ASSISTED	INFORMATION PROVIDED	DATE OF CONTACT

**NOTE:** ATTACH ADDITIONAL PAGES IF NECESSARY

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION  
**DBE GOOD FAITH EFFORTS DOCUMENTATION**

CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

IF THE DBE GOAL ESTABLISHED FOR THIS CONTRACT HAS NOT BEEN MET OR FCDOT REQUESTS THE SUBMITTAL THEREOF, THE BIDDER IS REQUIRED TO SUBMIT GOOD FAITH EFFORTS AS OUTLINED IN THIS DOCUMENT.

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

TITLE \_\_\_\_\_

**EFFORTS MADE TO ASSIST DBEs OBTAIN BONDING, LINES OF CREDIT,  
INSURANCE, ETC.**

**EFFORTS MADE TO PROVIDE INTERESTED DBEs IN OBTAINING BONDING, LINES OF CREDIT, INSURANCE, NECESSARY EQUIPMENT, SUPPLIES, MATERIALS, OR RELATED ASSISTANCE OR SERVICES, EXCLUDING SUPPLIES AND EQUIPMENT THE SUBCONTRACTOR PURCHASES OR LEASES FROM THE PRIME CONTRACTOR OR ITS AFFILIATES.**

IDENTIFY THE DBEs ASSISTED, THE ASSISTANCE OFFERED, AND THE DATES OF SERVICES OFFERED AND PROVIDED. ATTACH COPIES OF SUPPORTING DOCUMENTS.

DBEs ASSISTED	ASSISTANCE OFFERED	DATES SERVICES OFFERED AND/OR PROVIDED

NOTE: ATTACH ADDITIONAL PAGES IF NECESSARY



CONTRACT I.D. NO. \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

THE BIDDER ACKNOWLEDGES AND CERTIFIES THAT THIS FORM ACCURATELY REPRESENTS THE INFORMATION CONTAINED HEREIN.

BIDDER \_\_\_\_\_ SIGNATURE \_\_\_\_\_

**TITLE** \_\_\_\_\_

#### ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORTS

ADDITIONAL DATA TO SUPPORT DEMONSTRATION OF GOOD FAITH EFFORTS

118



## County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

September 11, 2015

Dr. Stacie Parkins, Civil Rights Officer  
Federal Transit Administration, Region III  
U.S. Department of Transportation  
1760 Market Street  
Philadelphia, Pennsylvania 19103

Reference: Fairfax County's Disadvantaged Business Enterprise (DBE) Goal and  
Methodology for FY 2016-2018

Dear Dr. Parkins:

Attached is Fairfax County's *Disadvantaged Business Enterprise (DBE) Goal and Methodology for FY 2016-2018* which was approved by the Fairfax County Board of Supervisors on June 23, 2015. As required, this document has been uploaded into FTA's TEAM grant management database. The overall DBE goal for FTA-funded projects for Fairfax County is 17.7 percent. Of that overall goal, the County's race-neutral goal is 8.1 percent, leaving 9.6 percent to be achieved through race-conscious means, if necessary. The County is hopeful that it can achieve the overall goal through race-neutral strategies, but recognizes that race-conscious strategies may need to be employed.

### *Market Area*

The local market area from which the County's DBE goal was established is the Washington D.C. Metropolitan Area, which generally includes the District of Columbia and the larger counties and municipalities in Northern Virginia. This includes the following jurisdictions: City of Alexandria, Arlington County, District of Columbia, City of Fairfax, Fairfax County, Falls Church, Fredericksburg, Loudoun County, City of Manassas, Manassas Park, Prince William, and Stafford County.

### *Goal Calculation Methodology*

The FTA-funded projects that will be initiated during FY 2016-2018 support the construction of transit access improvements (including sidewalks, intersection improvements, and bus shelters) and are the basis for calculating the DBE goal. The applicable North American Industry Classification System (NAICS) codes for these projects include: 237110, 237130, 237310, and 238990. The County has compared the number of registered DBE firms under each of these NAICS codes, versus the number of overall registered firms under the same codes to determine the DBE goal for the next three years. No weighting was given due to the fact that all of the NAICS codes are for construction. Per your request, the FTA worksheets

Dr. Stacie Parkins  
September 11, 2015  
Page 2 of 2

consultation and outreach to community groups regarding the development of the DBE goal also is provided in *Appendix 2: Documentation of Consultation and Outreach*. Copies of the published public notices advertising the County's proposed DBE policy are included in *Appendix 3: Proof of Publication*.

If you have questions or require further information regarding the County's DBE policy, please contact me.

Sincerely,



Brent Riddle  
Disadvantaged Business Liaison Officer

cc Todd Wigglesworth, Division Chief, Fairfax County Department of Transportation  
(FCDOT)  
Benjamin Atsem, Transportation Planner, FCDOT

Attachments: Fairfax County Disadvantaged Business Enterprise Goal and Methodology  
FY 2016-2018

**Fairfax County Disadvantaged Business Enterprise Goal and Methodology  
FY 2016-2018**

**Summary**

Fairfax County has established requirements for seeing an overall goal for Disadvantaged Business Enterprise (DBE) participation in federally funded contracts in accordance with regulations of the United States Department of Transportation, 49 CFR Part 26. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect DBEs to achieve in the absence of discrimination.

**Proposed Goal for FY 2016-2018**

Fairfax County has established an overall goal of 17.7% DBE participation for FY 2016 – 2018 on Federal Transit Administration assisted contracts.

Fairfax County will post a notice of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for public inspection during normal business hours at the Fairfax County Department of Transportation. The goal will be published on the Fairfax County Department of Transportation website; the Spanish-language newspaper, El Tiempo Latino; and in the Washington Post.

Fairfax County expects to meet this goal for upcoming projects receiving FTA funds by verifying DBE certifications and furnishing prime contractors information about DBE firms in the greater Washington, D.C. region. This overall goal of 17.7% will be reviewed triennially based on program updates.

**Race Conscious/Race Neutral Breakout Summary**

Fairfax County's goal is to facilitate a high level of participation of DBEs in Fairfax County Department of Transportation (FCDOT) projects that are funded by FTA (and in general), many of which are in partnerships with the Virginia Department of Transportation (VDOT). Many of the relevant Fairfax County projects are similar to VDOT-contracted projects. Therefore, by examining VDOT's most recent Race Neutral vs. Race Conscious breakout, FCDOT can utilize the same ratio as a starting point for the County's goal over the next three years.

In Fairfax County, this estimate would equate to 8.1% of our goal being met by race-neutral project procurement opportunities, leaving the remaining 9.6% of the goal to be met by race-conscious project procurement opportunities, as further described herein. Race-conscious language regarding such project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language will be adjusted.

### Public Participation

FCDOT utilized several programs and resources already in existence to determine and promote DBE participation. These programs include county and private-sector resources. Among the county resources, FCDOT consulted with the Supplier Diversity Program within the Department of Purchasing and Supply Management, which ensures that small businesses, minority-owned businesses and women-owned businesses are treated fairly and have an opportunity to compete for the county's contract dollars. The office also engages in a variety of outreach efforts, including counseling and assistance, which are intended to maximize prime and subcontract opportunities for small, minority-owned businesses and women-owned businesses. FCDOT also met with representatives of Fairfax County's Office of Public Private Partnerships, which serves as a clearing house for public agencies, non-profit organizations, and businesses interested in working collaboratively. Additionally, FCDOT consulted the Fairfax County Economic Development Authority, which works with small, minority, and women-owned businesses to provide services and opportunities to start and expand their business operations (<http://www.fairfaxcountypedda.org/services-small-minority-and-woman-owned-firms>).

Outside of the County resources, FCDOT met with representatives of the Capital Region Minority Supplier Development Council, the Virginia Hispanic Chamber of Commerce, the Asian Chamber of Commerce, and the Hispanic Business Council to gain a sense of the number of types of DBE firms that their organizations represent and to begin to develop strategies for ensuring DBE participation in bidding for FTA-supported contracts. FCDOT was able to rely upon these resources in addition to the resources listed subsequently in this document to determine and promote DBE participation. See *Appendix 2: Documentation of Consultation and Outreach* and *Appendix 3: Proof of Publication*.

### Methodology

#### STEP ONE

The first step in establishing an overall DBE Goal is to come up with a measurement of the actual relative availability of DBE vendors within Fairfax County and the local region to perform the types of FTA assisted contracts that FCDOT intends to let during the federal fiscal year cycle. For FY 2016-2018, Fairfax County is expected to initiate a handful of contracts for the construction of sidewalks and bus shelters.

After reviewing the current projects Fairfax County is completing with the use of applicable FTA grant funds, FCDOT has determined that an estimate of FTA funding for FY 2016-2018 is \$5,510,561 out of approximately \$8,305,513 in total project costs. The approximately \$5.5 million in FTA funds for FY 2016-2018 will be spent on Construction services (NAICS Codes 237110, 237130, 237310, and 238990). Fairfax County does not anticipate any new large scale or additional projects that require FTA grants arising in the next three years that would increase the estimated total project costs and FTA Grant amounts for FY 2016-2018.

The following table delineates projects that are projected to be completed during FY 2016-2018.

Project Number	Total Project	Federal Amount
1400079-2012	\$483,347	\$386,678
1400080-2012	\$900,000	\$720,000
1400081-2012	\$322,000	\$257,600
1400082-2012	\$435,666	\$348,533
1400083-2012	\$291,000	\$232,800
1400084-2012	\$659,000	\$527,200
1400087-2012	\$400,000	\$320,000
1400012-2006 (Frye Road Phase II)	\$145,600	\$72,800
1400012-2006 (Lukens Lane)	\$560,000	\$280,000
1400017-2006 (Mohawk Lane)	\$450,000	\$225,000
1400012-2006 (Ladson Lane)	\$317,500	\$158,750
1400017-2006 (Belford Drive)	\$463,100	\$231,550
1400014-2006 (Southgate Drive)	\$268,100	\$134,050
1400015-2006 (Lockheed Boulevard)	\$660,900	\$330,450
1400016-2006 (Arlington Drive)	\$391,200	\$195,600
1400013-2006 (Sacramento Drive)	\$523,100	\$261,550
Transit Shelter Projects	\$1,035,000	\$828,000
<b>TOTAL</b>	<b>\$8,305,513</b>	<b>\$5,510,561</b>

According to proposed project timelines for initiating the above projects, the average annual fiscal year estimate for using FTA Grant funding is provided below.

	NAICS Codes 237110, 237130, 237310, and 238990
Fiscal Year 2016	\$4.0 million
Fiscal Year 2016	\$4.3 million
Fiscal Year 2018	\$0
<b>TOTAL</b>	<b>\$8.3 million</b>

Base Figure

FTA has suggested the following formula for determining the base figure percentage of ready, willing, and able DBE firms for USDOT-Assisted projects:

$$\text{Base Figure} = \frac{\text{Numerator: Ready, Willing and Able DBE Firms (by category)}}{\text{Denominator: All Ready, Willing and Able Firms (by the same numerator category)}}$$

Fairfax County does not certify firms as DBE's but utilizes several governmental entities' databases to determine which firms may be counted as DBEs. The directories list the firm's name, address, and phone number and the type of work the firm has been certified to perform as a DBE.

A substantial majority of the contracting dollars are spent in the local marketing area known as the Washington Metropolitan Area that is comprised of Washington D.C. and the larger counties and municipalities in Northern Virginia. The following table summarizes the total number of all contractors and subcontractors located in Fairfax County's local market area who would be available for FTA-assisted projects. This information was extracted from the 2012 County Business Patterns (NAICS) database hosted by the census.

Total Available Firms	
Jurisdiction	NAICS Codes 237110, 237130, 237310, &
Alexandria City, VA	15
Arlington, VA	13
District of Columbia	18
Fairfax City, VA	8
Fairfax, VA	175
Falls Church, VA	3
Fredericksburg, VA	6
Loudoun, VA	76
Manassas City, VA	18
Manassas Park, VA	8
Prince William, VA	116
Stafford, VA	24
<b>Total</b>	<b>486</b>

The table below lists the number of Certified DBE Firms with offices in the Washington Metropolitan Area, according to databases maintained by the Commonwealth of Virginia Department of Small Business and Supplier Diversity (SBSD), and the Metropolitan Washington Airport Authority

(MWAA). During this process, Fairfax County Department of Transportation cross-referenced each directory to prevent double counting a particular DBE firm who is certified and registered by more than one agency.

Certified DBE Firms Overview			
	DMBE	MWAA	Total
NAICS Codes 237110, 237130, 237310, & 238990 (Construction)	72	14	86
Total DBE			86

The base goal calculation is as follows:

$$\frac{86 \text{ Ready, Willing, and able DBEs in the aforementioned NAICS codes}}{486 \text{ Total Firms Ready, Willing, and Able in the aforementioned NAICS codes}} = 17.7\%$$

#### Weighting

To improve the accuracy of the DBE goal, FTA recommends a weighting strategy for each NAICS category. However, FCDOT does not anticipate entering into any new contracts using applicable FTA funding other than for construction services. Therefore, no weighting strategy is utilized to develop the DBE goal for FY 2016-2018. See *Appendix I: Goal Calculation Worksheets*

#### STEP TWO

Several additional factors were considered for adjusting the base figure. These factors were not utilized due to a variety of issues. Included below are the factors and reasons why they were not used in this analysis.

- 1 Disparity Studies: There were no local disparity studies that provided any further insight into the number of ready, willing, and able DBEs or their use in transportation projects. Fairfax County did review the Virginia Department of Transportation (VDOT) Utilization and Availability Study, Revised July 19, 2004.
- 2 Past Participation: After reviewing the past participation data since 2013, Fairfax County discovered inconsistent utilization of DBEs. Only two contracts were let during this timeframe. One contract achieved 100% DBE participation as the prime contractor is also a qualified DBE firm. The other contract achieved 0% DBE participation. Combined, Fairfax County has achieved 50% DBE participation since 2013, well above the 7.9% target for FY 2013- FY2015. However, it is difficult to infer much from such a limited sample size.
- 3 Potential Capacity Increases: The data do not show any significant increase on an annual basis of DBEs or total firms in either the Construction or Engineering NAICS categories. Consequently, Fairfax County does not foresee an increase in the percent of potential firms and thus no additional adjustment is required to the 17.7% goal.

Should contracting opportunities significantly change during the three-year period such that the submitted goal is rendered inconclusive, Fairfax County will appropriately review both the goal and



DBE contracting practices to ensure the goal and program as a whole accurately reflects the actual contracting opportunities available during the specified time period. If necessary, Fairfax County then will submit adjustments to its DBE goal to the FTA for review and approval. Otherwise, the County will submit its goal to FTA every three years.

#### **Race Conscious / Race Neutral Breakout**

FCDOT recently completed reporting to FTA on the use of DBEs from FY 2013-2015. However, given the paucity of FTA-supported contracting opportunities (two contracts), it is difficult to use past results to set a target for race neutral and race conscious goals for project procurement opportunities. Regardless, the goal is to facilitate the participation of DBEs in FCDOT projects. Since many of the relevant Fairfax County projects are similar to VDOT-contracted projects, it is instructive to examine VDOT's Race Neutral vs Race Conscious policy thresholds. The same ratios can be applied and used as a starting point for Fairfax County's goal over the next three years.

VDOT data show a Race Neutral percentage of 4.82%. VDOT's total DBE goal is 10.53%. Therefore, the fraction  $4.82 / 10.53$ , which equals 45.77% of the VDOT DBE goal, is expected to be met by Race Neutral project procurement opportunities. For the Fairfax County DBE, this estimate of 45.77% for Race Neutral project procurement opportunities would equate to at least 8.1% ( $= 17.7\% * 45.77\%$ ) of the County's goal being met by race-neutral project procurement opportunities for purposes of the overall goal, leaving the remaining 9.6% of the overall goal to be met by race-conscious project procurement opportunities. Efforts to include the minority business community in such project procurement opportunities will include identification and recruitment of minority firms to advertised procurement opportunities, teaming and networking events allowing minority firms to interact with potential project partners, and participation in association and trade organization events where Fairfax County projects can be highlighted. Race-conscious language regarding project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

However, Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. DBE contractors will be encouraged to apply on all solicitations, Fairfax County will coordinate with appropriate leadership of DBEs to inform them when contract opportunities arise, and all solicitations and contracts will include a good-faith effort DBE goal as a race-neutral means to increase DBE participation. However, if these race neutral strategies do not prove effective in reaching the County's 17.7% DBE goal, we will implement race conscious contract goals. Fairfax County will review the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE usage and will track the outcome of our efforts. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language regarding project procurement opportunities will be adjusted.

**Appendix 1: Goal Calculation Worksheets**

**Appendix 2: Documentation of Consultation and Outreach****Fairfax County Department of Purchasing and Supply Management, Supplier Diversity**

From: Estelle, Michael W.  
Sent: Friday, December 05, 2014 2:30 PM  
To: Riddle, Michael  
Subject: RE: Disadvantaged Business Enterprise Program

Here is the list of contacts per our conversation:

Asian Chamber of Commerce – My Lan Tran, Director 804-502-8081, aabac@aabac.org

Asian American Chamber of Commerce – Dr. Cindy Shao, President - 703-752-6292, cindy@asian-americanchamber.org

Capital Region Minority Supplier Diversity Council – Jonice Adams - (301) 593-5860, jonice.adams@crmsdc.org

NoVA Black Chamber of Commerce – Brad Ryant, Vice Chairman - 703-879-2770

Hispanic Business Council – Angie Carrera 703-324-5371 rosario.carrera@fairfaxcounty.gov

Women Presidents' Educational Organization-DC - SANDRA EBERHARD, Executive Director 202-595-2628 sandra@womenpresidentsorg.com

Sincerely,

*Michael Estelle*

From: Riddle, Michael  
Sent: Friday, December 05, 2014 2:13 PM  
To: Estelle, Michael W.  
Subject: Disadvantaged Business Enterprise Program

Michael,  
Thanks for your time. I really appreciate you providing a list of organizations that I can reach out to help DOT develop a DBE policy.

Best,  
Brent

Brent Riddle, Sr Transportation Planner, AICP  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov

**Hispanic Business Council**

From: Riddle, Michael  
Sent: Wednesday, December 10, 2014 3:59 PM  
To: Carrera, Angie  
Subject: FW: Disadvantaged Business Enterprise Program

Angie,

It was a pleasure meeting you today. Below is the list of contacts that I received from Michael Estelle. I have heard back from Jonice Adams and My Lan Tran.

Brent

**Capital Region Minority Supplier Development Council**

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]  
Sent: Monday, December 15, 2014 11:31 AM  
To: Riddle, Michael  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good morning Brent,

I look forward to meeting with you in our office on the 17th at 10:00 AM.

Jonice S. Adams  
Vice President, Operations  
Capital Region Minority Supplier Development Council (CRMSDC)

10750 Columbia Pike, Suite 200  
Silver Spring, MD 20901  
301-593-5862 – Office  
301-593-1364 – Fax  
Jonice.adams@crmsdc.org  
www.crmsdc.org

From: Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]  
Sent: Monday, December 15, 2014 10:29 AM  
To: Jonice Adams  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Hi Jonice,  
Wednesday, December 17, works fine for me. I am happy to meet you in your office. Shall we set the meeting for 10am?

Thanks,  
Brent

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]  
Sent: Saturday, December 13, 2014 12:50 PM  
To: Riddle, Michael  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good afternoon Brent,

Wednesday, December 17, is the best day for me. If you can, I would like to meet you at our Silver Spring office. I am available between 10:00 am and 1:00pm.

Jonice

From: Riddle, Michael  
Sent: Tuesday, December 09, 2014 9:56 AM  
To: 'Jonice Adams'  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Hi Ms. Adams,  
Thanks for your reply. As for this week, tomorrow or Friday are both wide open for me. I can meet anytime. Next week Monday afternoon from 3-5 is open and Tuesday and Wednesday are both clear. Hopefully, we can find a good date and time from those options.

Also, I see that your office is located in Silver Spring. I am happy to meet with you there, if you prefer, or we can meet here at the Department of Transportation offices in Fairfax.

I look forward to your response.

Regards,  
Brent

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]  
Sent: Monday, December 08, 2014 6:01 PM  
To: Riddle, Michael  
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good afternoon Mr. Riddle,

I will be pleased to discuss the proposed DBE policy and goals with you. Please provide me with a few dates and times that we can meet.

Regards,

Jonice S. Adams  
Vice President, Operations

## Capital Region Minority Supplier Development Council (CRMSDC)

10750 Columbia Pike, Suite 200  
Silver Spring, MD 20901  
301-593-5862 – Office  
301-593-1364 – Fax  
Jonice.adams@crmsdc.org  
www.crmsdc.org

From: Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]  
Sent: Monday, December 08, 2014 2:17 PM  
To: Jonice Adams  
Subject: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Dear Ms Adams,  
Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

I would appreciate the opportunity to meet with you in the next few weeks to discuss the proposed DBE policy and goals. Your feedback is important to our efforts to ensure that the DBE policy is effective. Thank you in advance for your assistance.

Sincerely,  
Brent

Brent Riddle, Sr Transportation Planner, AICP  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov

**Greater Washington Hispanic Chamber of Commerce**

Dear Mr. Riddle,

Thank you for joining us on Tuesday. Please find below the information for the event. Please be there by 9:10am. If you have any questions or need anything you can contact me on my cell 202 340 5157.

New Member Morning Reception

Date: May 12, 2015

Time: 9:00 am - 11:00 am

Location:

Pepco Edison Place Gallery

702 8th St. NW

Washington, DC 20068

Best,

Pamela Nieto

Director of Marketing and Communications

Greater Washington Hispanic Chamber of Commerce

910 17th Street NW, Suite 1150 Washington DC, 20006 P: 202.728.0352.

On Wed, May 6, 2015 at 12:15 PM, Linda Mayo <lmayo@gwhcc.org> wrote:

Brent,

We are very appreciative of your commitment to our event. I am copying Pamela Nieto, our Director of Marketing and Communications, who will respond to your questions about the reception. I am attaching the invitation below.

We look forward to seeing you there!

Linda

Linda Mayo

Executive Assistant to the President & CEO

and Office Manager

GWHCC

910 17th Street, NW, Suite 1150

Washington, DC 20006

202.728.0352 (O)

240.994.2506 (C)

On Wed, May 6, 2015 at 8:42 AM, Riddle, Michael <Michael.Riddle@fairfaxcounty.gov> wrote:

Linda,

I am happy to attend the New Member Reception on May 12. Where is the event being held? What time do you anticipate me speaking? I have been asked to help out with another project from 6-9am, but GWHCC's event is more important. So, I will definitely be there. However, if I can manage both I would like to try.

Thanks,  
Brent

From: Linda Mayo [mailto:lmayo@gwhcc.org]  
Sent: Tuesday, May 05, 2015 4:23 PM  
To: Riddle, Michael  
Subject: BRENT RIDDLE TO SPEAK AT NEW MEMBER RECEPTION ON MAY 12TH

Dear Brent,

I just wanted to confirm that you will attend the New Member Reception on May 12th from 9-11am and speak briefly for 2 minutes?

I look forward hearing from you!

Linda

Linda Mayo  
Executive Assistant to the President & CEO  
and Office Manager  
GWHCC  
910 17th Street, NW, Suite 1150  
Washington, DC 20006  
202.728.0352 (O)  
240.994.2506 (C)

----- Forwarded message -----

From: Linda Mayo <lmayo@gwhcc.org>  
Date: Fri, Apr 17, 2015 at 4:51 PM  
Subject: BRENT RIDDLE TO SPEAK FOR 2 MIN AT NEW MEMBER RECEPTION ON MAY 12TH  
To: Pamela Nieto <pnieto@gwhcc.org>  
Cc: Angela Franco <afranco@gwhcc.org>

Pam, Brent Riddle will speak at the next event briefly for 2 minutes. He spoke with Angela today.

Brent Riddle, Sr Transportation Planner  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov



Linda Mayo  
Executive Assistant to the President & CEO  
and Office Manager  
GWHCC  
910 17th Street, NW, Suite 1150  
Washington, DC 20006  
202.728.0352 (O)  
240.994.2506 (C)

**Virginia Hispanic Chamber of Commerce**

From: Michel Zajur [zajur@vahcc.com]  
Sent: Thursday, March 26, 2015 8:13 PM  
To: Riddle, Michael  
Cc: Carrera, Angie  
Subject: Re: DBE email to GWHCC

Brent  
Let's plan on talking tomorrow  
by phone if that works then we can  
meet in person in the very near future.  
Best regards Michel

Sent from my iPhone

Michel Zajur  
President/CEO  
Virginia Hispanic Chamber of Commerce  
WWW.VAHCC.COM  
Cell. 804-306-4404

On Mar 26, 2015, at 1:11 PM, Riddle, Michael <Michael.Riddle@fairfaxcounty.gov> wrote:

Angie,  
Thank you again for the introduction.

Dear Michel,  
As Angie mentioned, I am trying to identify ways to promote participation of Disadvantaged Business Enterprises (DBEs) in Fairfax County Department of Transportation contracts. I would very much the opportunity to meet with you or speak over the phone to discuss how we might be able to assist one another. Feel free to email me or give me a call. My contact information is below.

Regards  
Brent

Brent Riddle, Sr Transportation Planner  
Coordination and Funding Division  
Fairfax County Department of Transportation

Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov

**Asian American Chamber of Commerce**

Dear Dr. Shao,

Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

I would appreciate the opportunity to meet with you in the next few weeks to discuss the proposed DBE policy and goals. Your feedback is important to our efforts to ensure that the DBE policy is effective. Thank you in advance for your assistance.

Sincerely,  
Brent

Brent Riddle, Sr Transportation Planner, AICP  
Coordination and Funding Division  
Fairfax County Department of Transportation  
Phone: (703) 877-5659 Fax: (703) 877-5723  
Email: Michael.Riddle@fairfaxcounty.gov



## Appendix 3: Proof of Publication

Ad # 11508557 Name FAIRFAX CO DEPT OF TRANSPORTATION ATTN: Size 64 Lines T0607  
 Class 820 R0# Authorized by Account 2010187255

## PROOF OF PUBLICATION

District of Columbia, ss., Personally appeared before me, a Notary Public in and for the said District, Alba Cortes well known to me to be BILLING SUPERVISOR of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Heraby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following date(s) at a cost of \$785.32 and was circulated in the Washington metropolitan area.

Published 1 time(s). Date(s): 27 of April 2015

Account 2010187255

Witness my hand and official seal this 27 day of April 20 15

My commission expires

Alba Cortes  
Alba Cortes  
 Notary Public, District of Columbia  
 My Commission Expires 6/1/2015

Public Notice Disadvantaged Business Enterprise Proposed Federal FY2015-2017 Goal Fairfax County hereby announces its FY 2015-2017 goal of 17.7% for Disadvantaged Business Enterprise (DBE) participation for projects supported by funding from the Federal Transit Administration. The goal and its rationale are available for inspection from 9:00 am to 4:30 pm (local time) at 4050 Legato Road, Suite 400, Fairfax, VA 22033, for 30 days following the date of publication of this notice. Written comments on this goal will be accepted for 45 days from the date of publication of this notice. Comments should be addressed to: Fairfax County Department of Transportation Attention: Brent Riddle, Sr. Transportation Planner 4050 Legato Road, Suite 400 Fairfax, VA 22033 michael.riddle@fairfaxcounty.gov Phone: 703-877-3600 Fairfax County and the Fairfax County Department of Transportation (FCDOT) ensure nondiscrimination in all programs and activities in accordance with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA). To request this information in an alternate format, contact FCDOT at 703-877-3600, TTY 711.

Ad#11910475 NAME FAIRFAX CO DEPT OF TRANSPORTATION Size 3 CO x 5 IN  
 Class ETCLSSFRZ Authorized by Natalie J. Colley Account 2010187255

## PROOF OF PUBLICATION

**The Washington Post**

The Washington Post Company hereby certifies that it is the publisher of The Washington Post; that The Washington Post is a newspaper of general circulation, published daily in the City of Washington, District of Columbia; that The Washington Post has been so published continuously for more than one year prior to the date of first publication of the notice mentioned below; that the undersigned person is the duly authorized agent of The Washington Post Company to execute this certificate on its behalf; and that a notice of which the annexed is a true copy was printed and published in said newspaper on the following date (s) at a cost of \$505.00 and was circulated in the Washington metropolitan area.

Published 1 times. Date(s): 01 of May 2015

Witness my hand and official seal this 5<sup>th</sup> day of MAY 2015  
 My commission expires 10/31/2019



**Anuncio Público**

Una Publicación de Fairfax County, Va.

**AVISO PÚBLICO**  
**Propuesta para empresas en desventaja**  
**Su meta de propósito federal FY 2015-2017**

El Condado de Fairfax anuncia su objetivo de FY 2015-2017 del 17.7% para la participación de la empresas en desventaja (DBE) para proyectos apoyados por fondos de la Administración Federal de tránsito. El objetivo y sus fundamentos están disponibles para inspección de 9:00 a 4:30 (hora local) en 4050 Legato Road, Suite 400, Fairfax, VA 22033, durante 30 días siguientes a la fecha de publicación de este aviso. Se aceptarán comentarios por escrito sobre este objetivo durante 45 días desde la fecha de publicación de este aviso. Comentarios deben ser dirigidos a:

Fairfax County Department of Transportation  
 Attention: Brent Riddle, Sr. Transportation Planner  
 4050 Legato Road, Suite 400  
 Fairfax, VA 22033  
 michael.riddle@fairfaxcounty.gov  
 Phone: 703-877-5600

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