



FEDERAL TRANSIT ADMINISTRATION

# **Waccamaw Regional Transportation Authority (Coast RTA)**

Disadvantaged Business Enterprise (DBE)  
Compliance Review

Final Report  
June 2017



U.S. Department of Transportation  
**Federal Transit Administration**

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**Attachments**

- A FTA Notification Letter to Coast RTA
- B Coast RTA Response
- C DBE Program Plan

## Executive Summary

### Objective and Methodology

This report details the findings of FTA's compliance review of the Waccamaw Regional Transportation Authority's (Coast RTA's) Disadvantaged Business Enterprise (DBE) program implementation. It examines Coast RTA's DBE program procedures, management structure, actions, and documentation.

On behalf of FTA's Office of Civil Rights, the Collaborative, Inc. of Boston, Massachusetts conducted the review in three stages:

1. Preparation: compilation of information covering policies, procedures and reported data.
2. Site visit: observation of Coast RTA's DBE program files, contracts, and interviews
3. Analysis and reporting: identification of deficiencies requiring corrective actions and suggestions of effective practices in DBE programs

Coast RTA's DBE program includes the following positive program elements:

#### **Positive Program Elements**

- Coast RTA is committed to increasing DBE participation through broadening its pool of vendors and working with community partners.
- Coast RTA's procurement procedures are well organized.

Coast RTA must address the following administrative deficiencies to comply with 49 CFR Part 26:

#### **Administrative Deficiencies**

- Not all of Coast RTA's RFPs with DBE participation goals include the required DBE provisions.
- Coast RTA does not maintain a bidders list.

Coast RTA must address the following substantive deficiencies to comply with 49 CFR Part 26:

#### **Substantive Deficiencies**

- Coast RTA's DBE goal methodology is not properly documented.

This report highlights several steps to help Coast RTA implement its DBE program in good faith.

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## 1 General Information

This chapter provides basic information concerning this compliance review of the Waccamaw Regional Transportation Authority (Coast RTA). Information on the grantee, the review team, and the dates of the review are presented below.

Grant Recipient:	Waccamaw Regional Transportation Authority (Coast RTA)
City/State:	Conway, SC
Grantee Number:	5526
Executive Official:	Brian Piascik
On-site Liaison:	Kevin Parks
Report Prepared By:	The Collaborative, Inc., Boston, MA
Dates of Site Visit:	January 24–26, 2017
Review Team Members:	William Schwartz, Z. Wayne Johnson

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## **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 subrecipients 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 Waccamaw Regional Transportation Authority (Coast RTA) is the recipient of one or more Federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, Coast RTA 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 Coast RTA’s DBE program and were the basis for this compliance review.

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## 3 Purpose and Objectives

This chapter discusses the purpose and objectives of FTA's DBE compliance reviews and the review process.

### 3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26.

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

The compliance review is not solely designed to investigate whether there is 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 Coast RTA is honoring its commitment to comply with 49 CFR Part 26.
- Examine the required components of Coast RTA'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 Coast RTA's DBE Program Plan from a variety of sources, including DBE program managers, other Coast RTA 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 Coast RTA's operations and scale. The section highlights Coast RTA's services, FTA projects, and history of its DBE program.

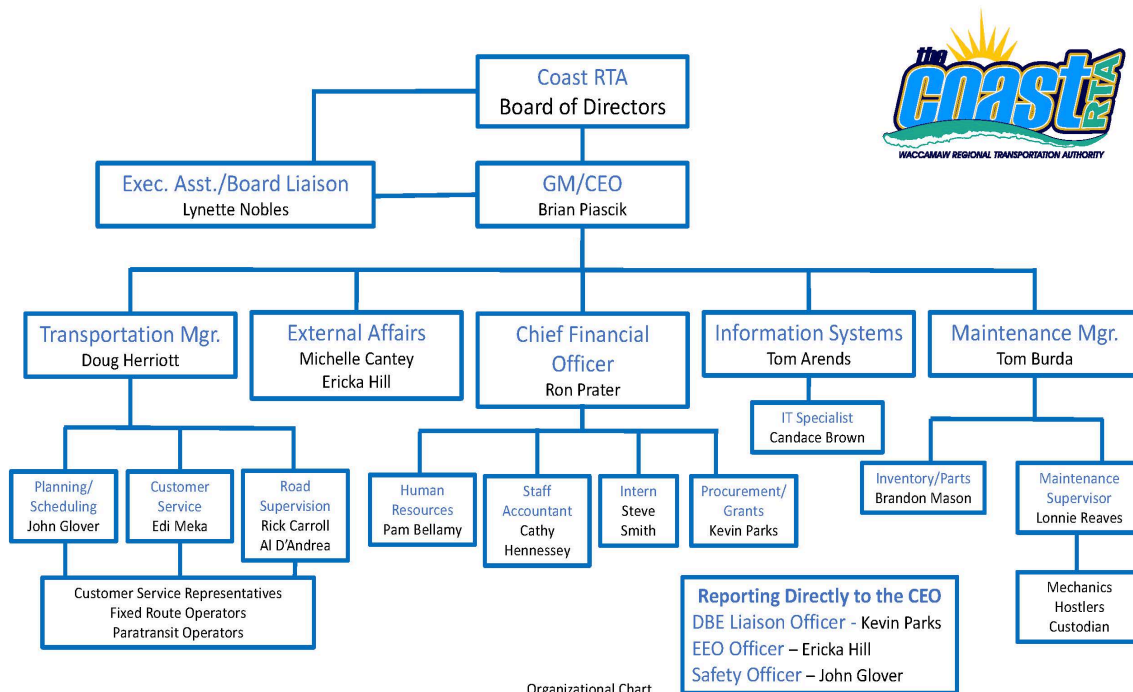
### 4.1 Introduction to Coast RTA and Organizational Structure

Located in Conway, SC, the Waccamaw Regional Transportation Authority, doing business as Coast RTA, was established by state statute (Title 58, Chapter 20) in 1999. Operating within Horry County and Georgetown County, SC, Coast RTA provides fixed route and ADA complementary paratransit service. Cities served include Conway, Myrtle Beach, Surfside Beach, Garden City, Murrells Inlet, Litchfield Beach, Pawleys Island, Georgetown, and Andrews.

Coast RTA has 70 employees and directly operates a fleet of 18 full-size buses, three vintage trolleys, two mid-size buses, and nine van cutaways from its primary operating facility in Conway. The fixed route system consists of seven year-round routes operating daily from 4 a.m. to 8 p.m. except Thanksgiving, Christmas and New Year's Day. An additional seasonal route operates from 11 a.m. to 11 p.m. between Memorial Day and Labor Day. Monthly ridership is 40,000 trips.

An 11-member board of directors oversees Coast RTA, with representation from Horry County (three members), the state legislative delegation from Coast RTA's service area (three members), and one member each from the Cities of Myrtle Beach, North Myrtle Beach, Conway and Georgetown, and Georgetown County.

Kevin Parks, Grants & Procurement Manager, is the designated DBE Liaison Officer (DBELO) and is primarily responsible for all of Coast RTA's DBE-related activities. See organization chart.



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

Coast RTA's transit funding is from local, state, and Federal sources. In the 2014–2016 timeframe, Coast RTA received just under \$4.9 million in FTA funds as a direct recipient. Approximately 40 percent of this funding was used for capital expenditures (including preventive maintenance) with 60percent used for operating expenses. No funds were used for planning.

Coast RTA also received approximately \$3.3 million in FTA funds as a subrecipient to South Carolina DOT for Section 5311 rural formula grants. During this timeframe, Coast RTA reported awarding \$1,041,438 during this period with \$42,453 in DBE spending, or 4.1 percent, all of which involved direct purchases or engagement of DBE contractors. At the time of the site visit, Coast RTA did not have any FTA-assisted projects underway.

## **4.3 DBE Program**

Mr. Kevin Parks, Coast RTA's Grants and Procurement Manger, is the DBELO and oversees Coast RTA's DBE program. Coast RTA's FTA DBE goal has not changed over the two most recent triennial cycles: it has been and remains low at (1 percent). Coast RTA has improved efforts to increase DBE participation.

Coast RTA's low goal is partly due to its eastern South Carolina location. Much of the economy is seasonal, and the business community serves mostly tourists. According to Mr. Parks, the pool of DBE vendors in or near Coast RTA's service area is small. He works diligently to identify new business opportunities with DBE firms and encourages small businesses to apply for DBE certification.

## 5 Scope and Methodology

The purpose of this review is to provide FTA with a tool for determining whether a recipient of FTA funding is in compliance with the 49 CFR Part 26 DBE requirements. However, the deficiencies identified and findings made in this report are by necessity limited to the information available to and the observations made by the review team at the time of the site visit. A lack of findings in a particular review area does not constitute endorsement or approval of an entity's specific policies, procedures, or operations; instead, it simply indicates that no deficiencies were observed at the time of the review.

The scope of the review and the methodology employed by the review team are described in detail below.

### 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 Coast RTA'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 Coast RTA 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 over-concentration does (not) exists 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 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 Coast RTA 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 Coast RTA seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- Nondiscrimination and prompt payment clauses are included in all FTA-assisted contracts and a prompt payment verification process is in place. [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 FTA Office of Civil Rights sent a notification letter to Brian Piascik, Coast RTA General Manager/CEO, on November 4, 2016, to confirm the timeframe for the review and ask for information within 21 days. (See Attachment A.)

Before the site visit, the review team examined the requested materials, as well as documents available from FTA's TrAMS website and other sources. These include:

- DBE Program Plan
- DBE goal methodology
- List of FTA-assisted contracts, including requests for proposals (RFPs)
- Transit vehicle procurements
- DBE certification documents and website
- Shortfall analysis
- Semi-annual Uniform Reports from TrAMS

At the beginning of the compliance review, FTA representatives, Coast RTA staff, and the review team conducted an opening conference with the following participants:

- Kevin Parks, Procurement Officer and DBELO, Coast RTA
- Janelle Hinton, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- Dorothy Foster, Region IV Civil Rights Officer, FTA (by telephone)
- William Schwartz, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative

Following the opening conference, the review team examined Coast RTA's DBE Program Plan and other documents. They interviewed staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. They also examined a sample of contracts for their DBE elements.

At the end of the site visit, FTA representatives, Coast RTA staff, and the review team convened for the exit conference to discuss initial findings and corrective actions. Participants included:

- Kevin Parks, Grants & Procurement Manager, Coast RTA
- Ron Prater, Chief Financial Officer, Coast RTA
- Janelle Hinton, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- Dorothy Foster, Region IV Civil Rights Officer, FTA (by telephone)
- William Schwartz, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative

Coast RTA received a draft copy of the report to review and respond. See Attachment B.



## 5.3 Stakeholder Interviews

The review team contacted two SC-DOT certified DBEs that have worked for Coast RTA:

- Candies Construction—general contractor
- IST2—facilities contractor, vendor

Both companies undertook more than one project directly for Coast RTA and reported positive experiences, such as receiving payments promptly. Both companies also reported positive experiences working with SCDOT in obtaining and maintaining DBE certification.

The review team also contacted three organizations to discuss their interactions with Coast RTA on DBE and small business matters and related information.

### **South Carolina Chapter of the National Association of Minority Contractors**

This Columbia-based organization's goal is to address minority contractors' concerns regarding business opportunities across SC. The interviewee, a Columbia-based highway contractor, was not familiar with Coast RTA; his business is primarily as a subcontractor on state DOT highway projects. He characterized the SCDOT DBE program as well managed and cited no concerns with respect to contracting opportunities or receiving prompt payments.

### **Myrtle Beach Chamber of Commerce**

The Myrtle Beach Chamber of Commerce is a 2,700-member business and non-profit advocacy organization covering the Grand Strand from Little River south through Pawleys Island. Two councils within the Chamber, the Small Business Council and the Business Diversity Council, focus on the needs of area small businesses, including DBEs. The Chamber is aware of Coast RTA and expressed interest in participating with Coast RTA in future small business development outreach activities.

### **Greater Florence Chamber of Commerce**

The Greater Florence Chamber of Commerce's mission is to "promote and enhance a favorable business climate and improve the quality of life to make Florence the best community in which to live and operate a business. The Chamber is aware of Coast RTA and expressed interest in participating with Coast RTA in future small business development outreach activities.

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## 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 Coast RTA's DBE program are 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 recipient'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, no deficiencies were found with Coast RTA's DBE Program Plan. An advisory comment is made regarding plan organization.

The Program Plan (see Attachment C) contains all required elements and is generally organized according to the 49 CFR Part 26 DOT DBE regulations. The Program Plan also includes the following attachments:

- Organizational chart
- Link to South Carolina DOT DBE directory
- Monitoring and enforcement mechanisms/legal remedies
- Goal setting documentation
- Forms for documentation of good faith efforts and DBE Letter of Intent
- Instructions on obtaining DBE certification

The goal setting documentation attachment references the current goal setting timeframe (FY 2015–2017) while the goal setting discussion on pages 9–10 of the DBE Program Plan references FY 2012–2014. The discussion within the Plan does not reference the attachment and the language is inconsistent.

**Advisory Comment:** It is an effective practice to present information on DBE goals and other DBE program elements in an internally consistent and easy to understand manner.

## 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, no deficiencies were found with Coast RTA's DBE Policy Statement, which is included on Page 3 of the Program Plan. The Policy Statement, which is consistent with the requirements, reads:

It is the policy of Waccamaw Regional Transportation Authority to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of Waccamaw Regional Transportation Authority:

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

Coast RTA disseminates its DBE Policy Statement to all employees electronically with each revision.

## 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 General Manager/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, no deficiencies were found with these requirements. An advisory comment is made on providing the DBELO with additional training.

Mr. Kevin Parks, Grants and Procurement Manager, is Coast RTA's DBELO. He has direct and independent access to the General Manager/CEO. According to the DBE Program Plan (page 6):

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in conjunction with other appropriate officials. The DBELO does not have a staff. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.

6. Analyzes Waccamaw Regional Transportation Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings, as needed.
8. Advises the General Manager and/or governing body on DBE matters and achievement.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Receives and makes accessible, the South Carolina Unified Certification Program (SCUCP) updated directory of certified DBEs
12. Participates as a UCP partner with South Carolina Uniform Certification Program

Mr. Parks carries out all of the above duties as part of his DBELO role. He regularly confers with FTA's Regional Civil Rights Officer on DBE matters. Mr. Parks has not received formal training in the DBE program.

**Advisory Comment:** It is an effective practice to ensure those agency employees involved in DBE program activities obtain training in developing and implementing the program. This includes participation in the National Transit Institute DBE course and other state or FTA-sponsored training activities.

## 6.4 DBE Financial Institutions

**Basic Requirement: (49 CFR 26.27)** Recipient must investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT- assisted contracts to make use of these institutions.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, Coast RTA pledged to thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in South Carolina, to make reasonable efforts to use these institutions, and encourage their use by prime contractors.

The review team independently researched the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in the Coast RTA region via the FDIC website (<https://www.fdic.gov/regulations/resources/minority/MDI.html>) and did not identify any such banks.

## 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, no deficiencies were found with this requirement. Coast RTA is a member of South Carolina DOT's (SCDOT) Uniform Certification Program (UCP). Coast RTA maintains a copy of the directory and offers it to interested parties on request. In addition, Attachment 2 of the DBE Program Plan includes a link to the SCDOT directory, stating the directory is updated weekly.

## 6.6 Overconcentration

**Basic Requirement (49 CFR Part 26.33):** The recipient must determine if DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, and then devise appropriate measures to address this overconcentration.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. In its DBE Program Plan, Coast RTA asserts that overconcentration does not exist and pledges to regularly work with SCDOT to identify overconcentration. As discussed in Section 4.3, the pool of DBE vendors in Coast RTA's service area is small, as is Coast's utilization of such firms. Given the foregoing circumstances, there is little opportunity for overconcentration of DBE vendors.

## 6.7 Business Development Programs

**Basic Requirement (49 CFR Part 26.35):** The recipient may or must (upon FTA's direction) 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 this requirement. Coast RTA has not developed a BDP. An advisory comment is made regarding continued efforts to encourage small businesses to obtain DBE certification and work with Coast RTA.

Coast RTA is committed to increasing participation and reaching out to the regional business community. Just prior to the site visit DBELO Kevin Parks participated in a Martin Luther King Day small business workshop hosted by the City of Myrtle Beach. As discussed in Section 5.3, area business organizations such as chambers of commerce are encouraging DBE participation and are often able to facilitate business partnerships. Because of the dearth of area DBE firms, it is important to encourage minority- or women-owned business owners to apply for DBE certification, assuming they meet the eligibility requirements. As an inducement to apply, FTA encourages Coast RTA to communicate future business opportunities by identifying specific areas of procurement along with estimated spending.

**Advisory Comment:** It is an effective practice to work with area business organizations to encourage partnerships and to communicate categories of estimated agency spending so more firms will apply for DBE certification and pursue procurement opportunities.

## 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, deficiencies were found with Coast RTA's DBE goal calculation methodology, which is presented as an attachment to the DBE Program Plan. See Attachment C. Coast RTA's 1.0 percent DBE goal is the same as its prior goal, based on the Step One process tied to ready, willing, and able DBEs (using a base figure of .0092). Coast RTA cites business census data but provides no backup for this information in the goal documentation. Coast RTA was unable to provide the review team with any business census data or related documentation.

The review team examined Coast RTA's FY 2012–2014 DBE goal (submitted in 2011), which includes a more extensive analysis of ready, willing, and able firms based on census data for Horry and Georgetown

Counties, identifying 22 DBE firms and 1,496 companies overall (1.47 percent) in the NAICS code categories Coast RTA expected to use in the next FY. Coast RTA identified one capital project to which it applied specific work functions included in the project. Coast RTA identified the type of services required for the project to arrive at a Step 1 goal, then reviewed past DBE participation rates (1 percent in each of the three prior years), any available disparity studies, and other establish its 1 percent goal for the period. date to adjust its goal to 1 percent (all race neutral). Coast RTA is encouraged to base its initial analysis for the FY 2018–2020 period (due August 1, 2017) on this earlier methodology.

Coast RTA is also encouraged to consult SCDOT's bidder's list (see Section 6.14) and to work with SCDOT's Office of Minority and Business Affairs to obtain input on tailoring the SCDOT bidder's list to Coast RTA's market. Coast RTA is further encouraged to work with the regional planning agency and other economic development experts during the goal setting process. In addition, because Coast RTA is situated less than 30 miles from the North Carolina border, its market area should extend into NC and should consider any SC-certified DBE firms located in that portion of NC.

**Corrective Actions and Schedule:** Because Coast RTA will be submitting its DBE goal for FTA review by August 1, 2017, Coast RTA is directed to implement corrective actions to address this deficiency in its forthcoming submission. If Coast RTA elects to continue to use the Step 1 and Step 2 processes to calculate its goal, it must compile the necessary information to properly calculate this goal and present the full analysis in its DBE Program Plan submission. This includes estimating the availability of SCDOT-certified DBE and non-DBE firms in its market area, including nearby North Carolina, forecasting spending, and if making any adjustments, document the basis for such adjustments.

## **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 this requirement.

Coast RTA published its goal announcement on its website and in two local newspapers, *The Sun News* and *The Georgetown Times* and showed the review team images of the website notice, and copies of newspaper notices. Coast RTA placed its newspaper advertisements in the legal notices section of each paper, which included several other legal notices. While placing notices in this manner is an option, it may not be very effective. Coast RTA provided the review team with materials for a DBE workshop it held on August 20, 2014. Two attendees signed in. Coast RTA did not receive any comments from the workshop or from its public advertising.

Kevin Parks was not the DBELO during Coast RTA's 2014 goal setting process; the former DBELO is no longer with the agency. Since then, Coast RTA has undertaken efforts to increase DBE and small business participation through a range of outreach activities, including participating in outside workshops, hosting public meetings, and working with other agencies throughout the service area.

Coast RTA will undertake a new goal setting process later in 2017. This presents an opportunity to continue to work with external stakeholders such as the chambers of commerce in Conway, Florence County, Myrtle Beach, and elsewhere, and communicate directly with DBE firms and other small businesses. Coast RTA can also use DBE goal communications to describe and promote the potential business opportunities by elaborating on spending categories and funding amounts.

**Advisory Comments:** When establishing DBE goals, an effective practice is to work with external stakeholders and to directly communicate with known DBEs. It is also an effective practice to describe and promote potential business opportunities in such communications.



## 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, no deficiencies were found with the requirement related to race-neutral DBE participation. Coast RTA's 1 percent DBE goal is race neutral and its published policy meets the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. Pages 11 and 12 of the DBE Program Plan state:

The Waccamaw Regional Transportation Authority will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, the Waccamaw Regional Transportation Authority will:

1. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that offer greater participation by DBEs and other small businesses, and by making contracts more accessible to small businesses.
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g. ensuring the inclusion of DBEs and other small businesses, on the Waccamaw Regional Transportation Authority's mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
3. Attempt to establish endorsement of and assist new, local start-up firms, particularly in fields in which DBE participation has historically been low.
4. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

The Waccamaw Regional Transportation Authority will use contract goals to meet any portion of the overall goal, that the Waccamaw Regional Transportation Authority does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have sub-contracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Since becoming DBELO, Mr. Kevin Parks has strived to increase DBE participation in all agency procurements to the extent feasible. Mr. Parks has participated in workshops and communicated directly with DBE vendors. He has solicited quotes from DBE-owned companies for services and has purchased services and supplies from DBE-owned companies. As discussed in Section 6.7, Mr. Parks participated in a Martin Luther King Day small business workshop hosted by the City of Myrtle Beach in which he actively encouraged minority- and women-owned small businesses to obtain DBE certification.

## 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, no deficiencies were found with this requirement. Coast RTA's published policy is to use contract goals to meet any portion of the overall goal it does not project



being able to meet using race neutral means. Because Coast RTA was unable to meet its DBE goal in FY 2016, and because it issues few contracts that offer opportunities for prime contractors to include DBE subcontractors, it had recently advertised a bus stop sign project with a 20 percent DBE participation requirement. This was the only contracting opportunity with a contract goal.

## **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 the DBE submitted in response to the contract goal, written confirmation from each DBE listed, or GFEs 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 this requirement. Coast RTA's DBE Program Plan (pages 10–18) cites the Part 26.53 requirements covering good faith effort (GFE) procedures. Coast RTA's requires the following information from bidders on contracts with specified DBE goals:

The Waccamaw Regional Transportation Authority treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

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

Coast RTA's administrative reconsideration procedures state:

Within 5 working days of being informed by the Waccamaw Regional Transportation Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official:

General Manager  
Waccamaw Regional Transportation Authority  
1418 Third Avenue  
Conway, SC 29526

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

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

In part because Coast RTA has very few contracting opportunities that would include a prime contractor and DBE subcontractor, Coast RTA has not recently applied to the GFE process to any recent bids. Nevertheless, the review team examined the following contracts and RFPs to verify whether Coast RTA applied these and other contract requirements:

- Towing services (2012) – no DBE used; contained contract assurance clauses
- Facility renovation (2013) – no DBE used; contained contract assurance clauses
- Janitorial services RFP (2017) – no DBE requirement; contained contract assurance, GFE, and termination clauses; did not contain prompt payment clause
- Bus stop destination (sign installation) project RFP (2017) – 20 percent DBE requirement; contained contract assurance, GFE, and termination clauses; did not contain prompt payment clause

**Corrective Actions and Schedule:** Within 60 days of issuance of the final report, Coast RTA must include Good Faith Effort requirements in all RFPs and contracts containing DBE participation goals.

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

**Basic Requirements (49 CFR 26.53 and 26.13):** Recipients must implement mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform work of the terminated subcontractor with its own forces or those of an affiliate, or reducing the scope of the DBE contract) without the recipient's prior written consent. Failure to obtain written consent is a material breach of contract.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. Coast RTA's mechanisms regarding DBE terminations are described on pages 15–17 of the DBE Program Plan. See Attachment C. These provisions meet the requirements. The contracts and RFPs the review team examined (listed above) all contained the proper language covering this requirement, even when no DBEs were used.

## **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 are 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 Coast RTA's procedures for counting DBE participation. An advisory comment is made on implementing this requirement on the forthcoming bus stop sign project.

Coast RTA's DBE Program Plan (page 18) states, "We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55." Because all of Coast RTA's recent DBE expenditures have been through direct engagement of DBE firms, Coast RTA has not had to implement procedures to count DBE participation. Coast RTA's General Manager/CEO, Brian Piascik and DBELO Kevin Parks

explained to the review team their intent to oversee the upcoming bus sign contract for compliance. Given the small size of Coast RTA's management team, overseeing this upcoming contract throughout Coast RTA's large service area may prove challenging.

**Advisory Comment:** It is an effective practice to ensure proper management resources are in place when assessing the adequacy of DBE participation on construction contracts. Strategies for undertaking such assessments include adding personnel or engaging separate contractors to oversee field inspection and related activities.

## H) Quotas

**Basic Requirement (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 this requirement. Page 10 of the DBE Program Plan states, "The Waccamaw Regional Transportation Authority does not use quotas in any way in the administration of this DBE program." There was no indication that Coast RTA has engaged in the practice of establishing quotas for DBE participation.

## 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, no deficiencies were found with Coast RTA's shortfall analysis and corrective action plan. An advisory comment is made regarding additional actions Coast RTA may take to address future shortfalls and increase future DBE participation.

Table 6-1 summarizes Coast RTA's FTA DBE goal attainment for the FY 2014–2016 period. As shown, Coast RTA met its goal in 2014 and 2015, but did not meet its goal in 2016. Because Coast RTA directly operates transit service, most of its FTA funding is dedicated to salaries and overhead; contracting opportunities are limited. Coast RTA prepared and uploaded a shortfall analysis and corrective action plan for FY 2014, but incorrectly based its shortfall on the total FY 2014 FTA funding. No shortfall analysis was required.

**Table 6-1 Coast RTA DBE Goal (1.0 Percent) Attainment (FFY 2014–2016)**

FFY	FTA Funds	Contracts Awarded	DBE Spending	Percent
2014	\$1,752,864	\$268,670	\$6,897	2.6%
2015	\$1,172,985	\$279,500	\$33,103	11.8%
2016*	\$1,934,207	\$493,268	\$2,490	0.5%
<b>Total</b>	<b>\$4,860,056</b>	<b>\$1,041,438</b>	<b>\$42,490</b>	<b>4.1%</b>

\* Coast RTA switched its FY to align with FFY, reporting 15 months

Coast RTA appropriately prepared and submitted a shortfall analysis and corrective action plan for FY 2016. It attributed its FY 2016 shortfall to a limited pool of DBE firms within or adjacent to the service area. In addition, Coast RTA stated that some firms that might respond to Coast RTA procurement initiatives have not yet applied for DBE certification. Coast RTA anticipates future procurement opportunities such as the bus sign project will result in higher DBE participation. As part of its corrective actions, Coast RTA is attending small business meetings and is directing all departments to identify additional DBE spending opportunities.

The review team consulted with Coast RTA on specific areas of agency spending that might align with the SC-DOT certified DBE vendor community. For example, the review team identified a DBE vendor (recently certified) from whom Coast RTA may purchase fuel. In addition, the review team identified a

nearby Coast RTA vendor (Parnell's Driver Training & Services) that provides commercial vehicle driver training for FTA grantees. Coast RTA is encouraged to include these companies in its procurement outreach activities.

**Advisory Comment:** It is an effective practice to examine and compare transit agency spending categories with DBE vendor capabilities to identify potential areas of alignment.

## 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 this requirement. Coast RTA purchased 10 used 2003 NABI buses from Dallas Area Regional Transit (DART), spanning FY 2015 and FY 2016. Coast RTA paid its local equity share to DART and acquired the remaining Federal equity for each bus. DART provided Coast RTA with its TVM DBE documentation, copies of which are included in Coast RTA's procurement files.

## 6.11 Required Contract Provisions and Enforcement

### A) Contract Assurance

**Basic Requirement (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 a nondiscrimination clause detailed by the DBE regulations.

**Discussion:** During this compliance review, deficiencies were found with this requirement. Coast RTA's DBE Program Plan includes the following statement:

We will insure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure of 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 Waccamaw Regional Transportation Authority deems appropriate.

In addition to the contracts and RFPs (see Section 6.8), the review team examined two direct purchase orders Coast RTA used to engage DBE firms. One was an emergency procurement for facility repairs (\$29,700) that did not include the required nondiscrimination clause. The second, smaller procurement included the statement, "Coast RTA, a recipient of Federal funds, must comply with all regulations in FTA Circular 4220.1F regarding procurements involving a third party contract."

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, Coast RTA must implement procedures to confirm that all contracts contain the required nondiscrimination clause. Coast RTA must submit examples of such documents to the FTA Office of Civil Rights.

## B) Prompt Payment

**Basic Requirement (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. The recipient must provide appropriate means to enforce this requirement, which may include appropriate penalties for failure to comply.

**Discussion:** During this compliance review, a deficiency was found with this requirement. The DBE Program Plan (page 7) includes the requisite language regarding prompt payment and return of retainage, stating:

Waccamaw Regional Transportation Authority will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from Waccamaw Regional Transportation Authority. Any delay [or] postponement of payment from the above referenced time frame may occur only for good cause following written approval of Waccamaw Regional Transportation Authority. This clause applies to both DBE and non-DBE subcontracts.

Failure to do so will subject the prime contractor to sanctions and penalties according to the Waccamaw Regional Transportation Authority contract clause. Waccamaw Regional Transportation Authority will allow for contract mediation regarding payment disputes, for which the prime and subcontractor will share in cost of the dispute resolution.

The prime contractor agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Waccamaw Regional Transportation Authority. This clause applies to both DBE and non-DBE subcontracts.

These clauses are also included in the contract documents and one of the two RFPs the review team examined; Coast RTA did not include the clauses in the bus sign installation RFP. Given the use of the proper language in the janitorial services RFP, omission of the requirement in the other RFP was an oversight.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, Coast RTA must revise its RFP documents to include the prompt payment clauses in all RFPs with DBE goals.

## 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, no deficiencies were found with this requirement. Attachment 3 to Coast's DBE Program Plan states:

### Monitoring and Enforcement Mechanisms / Legal Remedies

The Waccamaw Regional Transportation Authority has several remedies available 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 to South Carolina Code Section 11-35-4230

3. 49 CFR Part 26 and 25A SC Code Ann. Regs 63-700 to 63-718 (Supp. 2007)

In addition, the Federal Government has several enforcement mechanisms available that it may apply to firms participating in the DBE program, 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

The contracts and RFPs the review team examined (see Section 6.8E – Good Faith Efforts), contain appropriate language and cite FTA Circular 4220.1D, covering breaches of contracts and dispute resolution. According to Mr. Kevin Parks, Coast RTA has not had occasion to apply any of these since he joined the agency in 2011.

## 6.12 Certification Standards

**Basic Requirements (49 CFR Parts 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:** During this compliance review, no deficiencies were found with this requirement. Coast RTA has been a member of South Carolina DOT (SCDOT) Uniform Certification Program (UCP) since at least 1990. Coast RTA was unable to locate a copy of a prior memorandum of understanding covering the UCP but furnished a current copy of the agreement dated January 27, 2017.

## 6.13 Certification Procedures

### A) Onsite Visits and Document Review

**Basic Requirement (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:** This requirement is not applicable because Coast RTA does not process any DBE certifications, but instead relies on the SCDOT UCP.

### 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:** This requirement is not applicable because Coast RTA does not process any DBE certifications, but instead relies on the SCDOT UCP.

### 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:** This requirement is not applicable because Coast RTA does not process any DBE certifications, but instead relies on the SCDOT UCP.

## **D) Denials**

**Basic Requirement (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:** This requirement is not applicable because Coast RTA does not process any DBE certifications, but instead relies on the SCDOT UCP

## **6.14 Record Keeping and Enforcements**

**Basic Requirements (49 CFR Parts 26.11 and 26.37):** The recipient must provide to FTA data about its DBE program on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA Transit Award Management System (TrAMS) (formerly TEAM), 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 closeout 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 respect to the bidders list requirement. No deficiencies were found with the monitoring requirements as Coast RTA has mechanisms in place to oversee compliance on contracts with DBE participation. Coast RTA has no subrecipients. Deficiencies were found with the semi-annual uniform reporting requirement.

### **Bidders List**

Coast RTA does not separately maintain a bidders list. According to SCDOT DBE Program and Compliance Manager Gary Lin, SCDOT internally maintains a bidders list containing the required information. The bidder's list is primarily for its highway program. As discussed in Section 6.8 (Goal Calculation), meeting this requirement will also help Coast RTA develop a more robust DBE goal during the upcoming goal-setting process.

### **Semi-Annual Uniform Reporting**

Coast RTA submitted all of its required semi-annual uniform reports in a timely fashion for the 2014–2016 timeframe. The June 2016 report incorrectly duplicated spending (\$2,569) from the December 2015 report. In addition, Coast RTA should have procedures in place to verify spending information for TrAMS reporting prior to future submissions.

### **Compliance Monitoring**

Coast RTA's compliance monitoring procedures are outlined on pages 10-11 of the DBE Program Plan, also in Attachment C, and state:

Contractor or subcontractor shall be required to furnish, either periodically or upon request, reports of DBE (Disadvantaged Business Enterprise) involvement, utilization, and payment. The solicitation of certified DBE's and the good faith efforts to do so, including replacement of DBE's

is the sole responsibility of the prime contractor, and these requirements along with remedied, and enforcement provisions will become a part of the solicitation and performance contract. The Waccamaw Regional Transportation Authority will also request verification from the prime contractors that subcontractors were paid within the timeframe specified in 26.29. The Waccamaw Regional Transportation Authority will bring to the attention of the South Carolina Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the necessary steps, such as referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 26.109.

The Waccamaw Regional Transportation Authority will consider similar action under own legal authorities, including responsibility determinations in future contracts. A monitoring and enforcement mechanism will verify that work committed to DBE's at contract award is actually performed by the DBE's. A Waccamaw Regional Transportation Authority representative will visit the worksite periodically and verbally and visually confirm the DBE firm is completing the work. This site visit will be done randomly until completion of the project. The Waccamaw Regional Transportation Authority will also monitor it through the bidding process, payroll reviews to include a running tally of actual payments to DBE firms, and maintenance of reports through the Finance department for quarterly DBE process to include a certification of contract reviews and will monitor at contract close-out on each contract/project which DBEs are participating. All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered to be part of the contract documents. All contracts between The Waccamaw Regional Transportation Authority and a contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this program. Additionally, The Waccamaw Regional Transportation Authority may audit the prime contractor of subcontractor records, insofar as is necessary, to insure compliance with 49 CFR Part 26.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, Coast RTA must submit a corrected June 2016 report via TrAMS. Coast must also maintain a bidders list containing all of the required information and provide a copy of its bidders list to the FTA Office of Civil Rights.



## 7 Summary Table of Compliance Review Findings

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	AC		
2.	Policy Statement	26.23	ND		
3.	DBE Liaison Officer	26.25	AC		
4.	Financial Institutions	26.27	ND		
5.	DBE Directory	26.31	ND		
6.	Overconcentration	26.33	ND		
7.	Business Development Programs	26.35	AC		
8.	Determining / Meeting Goals	See 8a–8h below			
8a	Calculation	26.45	D	Insufficient documentation of methodology	60/Aug-2017
8b	Public Participation	26.45	AC		
8c	Race-Neutral	26.51	ND		
8d	Race-Conscious	26.51	ND		
8e	Good Faith Efforts	26.53	D	GFE requirements were not included in RFPs with DBE participation goals.	60/Aug-2017
8f	Protecting Against Termination for Convenience	26.53 and 26.13	ND		
8g	Counting DBE Participation	26.55	AC		
8h	Quotas	26.43	ND		
9.	Shortfall Analysis and Corrective Action Plan	26.47	AC		
10.	TVM	26.49	ND		

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
11.	Required Contract Provisions	See 11a-c below			
11a	Contract Assurance	26.13	D	RFP documents did not contain correct language	60/Aug-2017
11b	Prompt Payment	26.29	D	RFP documents did not contain correct language	60/Aug-2017*
11c	Legal Remedies	26.37	ND		
12.	Certification Standards	26.67-26.71	ND		
13.	Certification Procedures	See 13a-d below			
13a.	Onsite Visit	26.83	ND		
13b	Annual Affidavit	26.83	ND		
13c	Interstate Certification	26.85	AC		
13d	Certification Appeals	26.86	ND		
14.	Record Keeping and Enforcements	26.11 and 26.37	D	Coast RTA does not maintain a bidders list One semi-annual uniform report included errors	60/Aug-2017 60/Aug-2017

**Attachment A**  
**FTA Notification Letter to Coast RTA**



U.S. Department  
Of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

November 4, 2016

Mr. Brian Piascik  
General Manager/CEO  
Waccamaw Regional Transportation Authority  
1418 Third Avenue  
Conway, SC 29526

Dear Mr. Piascik,

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Waccamaw Regional Transportation Authority (Coast) has been selected for a review of its overall DBE program to take place in 2016-2017.

The purpose of this review will be to determine whether Coast is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of the Collaborative, Inc. of Boston, MA to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: William Schwartz. Please do not remove this individual. FTA will do so at the close of the review. The Collaborative and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled for **Tuesday January 24, 2017**, at 9:00 a.m. Eastern to introduce the Collaborative team and FTA representatives to Coast. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents.

Please let us know if you will designate a member of your staff to serve as Coast liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward these materials to the following contact person:

Bill Schwartz  
The Collaborative, Inc.  
122 South Street Boston, MA 02111  
617-306-9466  
*wschwartz@thecollaborative.com*

We request the exit conference be scheduled for **Thursday January 26, 2017**, at 3:00 p.m. Eastern to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to Coast, will be considered public documents subject to release under the Freedom of Information Act, upon request.

Coast representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Britney Berry, Program Manager for this compliance review, at 202-366-1065 or via e-mail at *britney.berry@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day  
Program Manager for Policy & Technical Assistance

cc: Yvette Taylor, Regional Administrator, FTA Region IV  
Dee Foster, Regional Civil Rights Officer, FTA Region IV  
Kevin Parks, Coast Grants and Procurement, TrAMS User Manager  
Bill Schwartz, the Collaborative, Inc.

Waccamaw Regional Transportation Authority (Coast)  
Disadvantaged Business Enterprise Program Compliance Review

**Enclosure 1**

**You must submit the following information to Bill Schwartz at the Collaborative within 21 calendar days from the date of this letter.**

1. Current DBE Program Plan (which should include Coast's organization chart).
2. Goal methodology submission for the submitted DBE Program Plan and for each of the past 3 Fiscal Years (FY)
3. Any ARRA reports for 2011. The reviewers are able to access Coast's other ARRA and DBE semi-annual reports through FTA's TrAMS system or as attachments to the TrAMS recipient screen.
4. Current Memorandum of Understanding or similar documents for Coast's participation in the Unified Certification Program
5. Any additional certification criteria/guidelines used by Coast in determining DBE eligibility, if applicable
6. Provide the number of DBE applications Coast has reviewed, approved, and denied each year from FY2012 through FY2015. Include the number of DBE applications and the names of applicants that are currently pending review.
7. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts, and worksite locations, where applicable.
8. Provide contract records to include:
  - a) The last 15 FTA-assisted contracts awarded by Coast in FY 2016
  - b) The last 15 FTA-assisted contracts completed by Coast in FY 2016
  - c) The last 15 FTA-assisted contracts with DBE goals awarded by Coast in FY 2016
  - d) The last 15 FTA-assisted contracts with DBE goals completed by Coast in FY 2016
9. The identification of firms, if any, that have worked on Coast's projects and have graduated from Coast's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified
10. Information identifying FTA-funded contracts awarded during FYs 2012 to present by Coast and its subrecipients. The Federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
11. Good Faith Effort criteria established by Coast
12. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms)
13. Small Business element as implemented by Coast
14. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer
15. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years

Waccamaw Regional Transportation Authority (Coast)  
Disadvantaged Business Enterprise Program Compliance Review

16. List of all bids accepted for the RFPs provided in response to transit vehicle procurements
17. Shortfall analysis and corrective action plan for the last three (3) years
18. List of any subrecipients and the amount of FTA funds allocated to each subrecipient from 2014 through present
19. Names of interested a party (external organizations) with which Coast has interacted on the DBE program issues
20. Any complaints received concerning Coast's DBE program over the past five (5) years
21. The DBELO official position description
22. Other pertinent information determined by Coast's staff to shed light on its DBE compliance efforts





**Attachment B**  
**Coast RTA Response**

May 26, 2017 Email from Brian Piascik, Coast GM/CEO to John Day, FTA

John,

We have only one comment.

6.8 E. Good Faith Efforts cites no deficiencies, however, there is a corrective action. The consultants should either make it finding or change the corrective action to an advisory comment. Obviously, we'd prefer the latter. Of the contracts reviewed; two are old (from 2012-2013) where we will make sure the clauses get into subsequent contracts for those services; one in 2017 for janitorial services is a single provider and does not have subs where the prompt payment is needed; and the last one for the Bus Stop Designation Program does not have a negotiated contract yet. Coast RTA will make sure that contract includes the requisite clauses.

We see in the summary that 6.8E has a D in the deficiency column, so the narrative portion may just be an oversight. Another case for keeping this section as an advisory comment is that there are findings in 6.11a and 6.11b for essentially the same issues on contract language. Is it FTAs intent to have such closely related info under GFE and Contract Provisions?

That's it from us. Look forward to getting the final report.

**Attachment C**  
**Coast RTA DBE Program Plan**



WACCAMAW REGIONAL TRANSPORTATION AUTHORITY

“THE COAST RTA”

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM



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WACCAMAW REGIONAL TRANSPORTATION AUTHORITY  
 “THE COAST RTA”  
 DBE PROGRAM

July 21, 2014

Revised January 27, 2016

## 49 CFR PART 26

### **Objectives/Policy Statement (Sections 26.1 and 26.23)**

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

It is the policy of Waccamaw Regional Transportation Authority to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of Waccamaw Regional Transportation Authority:

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

The Waccamaw Regional Transportation Authority Compliance Officer has been delegated as the DBE Liaison Officer. In that capacity, the Compliance Officer is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Waccamaw Regional Transportation Authority in its financial assistance agreements with the US Department of Transportation.

The Waccamaw Regional Transportation Authority has disseminated this policy statement to the Waccamaw Regional Transportation Authority Board of Directors and all the components of the Waccamaw Regional Transportation Authority organization. The Waccamaw Regional Transportation Authority has made available, this statement to DBE and non-DBE business communities that perform work for the Waccamaw Regional Transportation Authority on DOT-assisted contracts by inclusion of the DBE policy statement in proposal, bid, and contracts which receive DOT assistance.

\_\_\_\_\_  
Brian Piascik, General Manager

Date: \_\_\_\_\_

### **Objectives (Section 26.1 and 6.23)**



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

### **Applicability (Section 26.3)**

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

### **Definitions (Section 26.5)**

The Waccamaw Regional Transportation Authority will adopt the definitions contained in Section 26.5 of Part 26 for this program. The Waccamaw Regional Transportation Authority will ensure that all definitions from the regulations are included and correct; that the Waccamaw Regional Transportation Authority will add and include any new/amended definitions as they are provided by USDOT; and not to add any definitions for terms not included. ~~in the definitions found in Section 26.5 of Part 26.~~

### **Non-discrimination (Section 26.7)**

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

In administering its DBE Program, the Waccamaw Regional Transportation Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

### **Record Keeping Requirements (Section 26.11)**

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

The Waccamaw Regional Transportation Authority will report DBE participation to the relevant operating administration (FTA) using the Uniform Report of DBE Awards or Commitments and Payments found in Appendix B to the DBE regulation.

DBE Uniform Reports shall be submitted Semi-Annually for the Federal Fiscal periods ending March 31 and September 30 to Region 4 RCRO and for the State Fiscal periods ending June 30 and December 31 to SCDOT.

Annual DBE goal achievement analysis (goal met or shortfall analysis) shall be completed and submitted to Region 4 RCRO annually.

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

The Waccamaw Regional Transportation Authority will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE/non DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

We will require prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts and request firms quoting on subcontracts to report information directly to the Waccamaw Regional Transportation Authority.

### **Assurances (Section 26.13)**

The Waccamaw Regional Transportation Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration.

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

The Waccamaw Regional Transportation Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Waccamaw Regional Transportation Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification of The Waccamaw Regional Transportation Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and could, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

#### **Contract Assurance: 26.13b**

We will insure that the following clause is placed in every DOT-assisted contract and subcontract:

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

### **SUBPART B - ADMINISTRATIVE REQUIREMENTS DBE Program Updates (Section 26.21)**

Since The Waccamaw Regional Transportation Authority has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

#### **DBE Liaison Officer (DBELO) (Section 26.25)**

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

Kevin Parks, Grants & Procurement Manager, Compliance Officer

Waccamaw Regional Transportation Authority

1418 Third Avenue

Conway, SC 29526

Phone: (843) 438-3015

[kparks@coastrta.com](mailto:kparks@coastrta.com)

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

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in conjunction with other appropriate officials. The DBELO does not have a staff. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes The Waccamaw Regional Transportation Authority progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings, as needed.
8. Advises the General Manager and/or governing body on DBE matters and achievement.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Receives and makes accessible, the South Carolina Unified Certification Program (SCUCP) updated directory of certified DBEs
12. Participates as a UCP partner with South Carolina Uniform Certification Program

#### **DBE Financial Institutions (Section 26.27)**

It is the policy of The Waccamaw Regional Transportation Authority to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable effort to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions: We have investigated and found there are no socially or economically disadvantaged individuals who own or control a financial institution in the Conway, SC Area. We will check

the directory each year to determine if any of these types of institutions have been added to the directory.

#### **Prompt Payment Mechanisms (Section 26.29)**

The Waccamaw Regional Transportation Authority will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from The Waccamaw Regional Transportation Authority. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of The Waccamaw Regional Transportation Authority. This clause applies to both DBE and non-DBE subcontracts.

Failure to do so will subject the prime contractor to sanctions and penalties according to the Waccamaw Regional Transportation Authority contract clause. The Waccamaw Regional Transportation Authority will allow for contract mediation regarding payment disputes, for which the prime and subcontractor will share in cost of the dispute resolution.

#### **Retainage (Section 26.29a)**

The prime contractor agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of The Waccamaw Regional Transportation Authority. This clause applies to both DBE and non-DBE subcontracts.

#### **Monitoring and Enforcement: (Section 26.29b)**

Contractor or subcontractor shall be required to furnish, either periodically or upon request, reports of DBE (Disadvantaged Business Enterprise) involvement, utilization, and payment. The solicitation of certified DBE's and the good faith efforts to do so, including replacement of DBE's is the sole responsibility of the prime contractor, and these requirements along with remedied, and enforcement provisions will become a part of the solicitation and performance contract. The Waccamaw Regional Transportation Authority will also request verification from the prime contractors that subcontractors were paid within the timeframe specified in 26.29. The Waccamaw Regional Transportation Authority will bring to the attention of the South Carolina Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the necessary steps, such as referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 26.109. The Waccamaw Regional Transportation Authority will consider similar action under own legal authorities, including responsibility determinations in future contracts. A monitoring and enforcement mechanism will verify that work committed to DBE's at contract award is actually performed by the DBE's. A Waccamaw Regional Transportation Authority representative will visit the worksite periodically and verbally and visually confirm the DBE firm is completing the work. This site visit will be done randomly until completion of the project. The Waccamaw Regional Transportation Authority will also monitor it through the bidding process, payroll reviews to include a running tally of actual payments to DBE firms, and maintenance of reports

through the Finance department for quarterly DBE process to include a certification of contract reviews and will monitor at contract close-out on each contract/project which DBEs are participating. All documentation submitted at time of bid, as well as additional data provided by the successful bidder, is considered to be part of the contract documents. All contracts between The Waccamaw Regional Transportation Authority and a contractor shall contain an appropriate provision to the effect that failure by the Contractor to comply with the DBE Program shall constitute a breach of contract, exposing the Contractor to a potential termination of the contract or other appropriate remedy, including withholding of funds, until such time as the contractor complies with all the DBE requirements of this program. Additionally, The Waccamaw Regional Transportation Authority may audit the prime contractor of subcontractor records, insofar as is necessary, to insure compliance with 49 CFR Part 26.

### **Directory (Section 26.31)**

The Waccamaw Regional Transportation Authority maintains a copy of the DBE Directory published and updated monthly by the Office of Business Development and Special Programs of the South Carolina Department of Transportation. The Waccamaw Regional Transportation Authority will make the directory available to interested parties by having interested parties contact our DBELO, Kevin Parks at (843) 438-3015 or email [kparks@coastrta.com](mailto:kparks@coastrta.com).

### **Overconcentration (Section 26.33)**

The Waccamaw Regional Transportation Authority has not identified that overconcentration exists in the types of work DBEs perform.

WRTA will work with SC Uniform Certification Program to identify if any overconcentration of DBES exists on an ongoing basis as needed.

### **Business Development Programs (Section 26.35)**

The Waccamaw Regional Transportation Authority will refer eligible firms as identified to the business development program established by SCDOT for the SC Uniform Certification Program.

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

The Waccamaw Regional Transportation Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26. The monitoring steps will include the following:

1. We will bring to the attention of the South Carolina Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that SCDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. Review of bid package documentation to obtain clarity if necessary.
4. Review all information on the subcontract awards made to DBE and Non-DBEs, including the name, scope of work to be performed, and contract amount.
5. Conduct necessary desk audits to review monthly reports to ensure adherence to this Program as represented in bid documents and as stipulated in 49 CFR Part 26.
6. Monitor records of all progress payments to DBEs through monthly reports from prime contractors. Records will be periodically verified by obtaining certified statements from DBE subcontractors.
7. Monitor progress of DBEs work through on-site reviews and communications with DBEs.
8. Conduct any additional investigation that may be necessary due to a lack of proper record keeping; failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evidence of unsatisfactory performance; other evidence as may warrant further investigation.
9. Use the legal instrument of the contract clause to enforce 49 CFR Part 26 requirements. Documentation of noncompliance will include the specific areas in which the contractor failed to comply. In these instances, appropriate legal action consistent with the DBE Program and other contract provisions will be taken.
10. Ensure that prime contractors and DBEs immediately notify the SCDOT and/or FTA of any changes in their firm's information to include ownership, trade license(s), and areas of expertise, addresses, telephone numbers and contact person.
11. The Waccamaw Regional Transportation Authority 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 FTA. This reporting requirement also extends to any certified DBE subcontractor.
12. The Waccamaw Regional Transportation Authority will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
13. The Waccamaw Regional Transportation Authority will perform interim audits for contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### **Small Business Participation (Section 26.39)**

The Waccamaw Regional Transportation Authority has incorporated the following non-discriminatory element to its DBE (Disadvantaged Business Enterprise) program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses): Examples of what The Waccamaw Regional Transportation Authority will do include: removal of unnecessary and unjustified bundling of contract requirements; race-neutral small business set-asides for prime contracts below a certain value (\$10,000); requiring bidders on large contracts, for the Waccamaw Regional Transportation Authority, unforeseen contract amounts over \$50,000 to identify and/or provide specific subcontracts appropriate for small business participation; development of acquisition strategies and structuring procurements to facilitate bids by and awards to small business consortia or joint ventures; letting prime contract of a size (under \$50,000) that small businesses can reasonably compete for and perform. A small business is defined according to the Small Business Administration (SBA) standards found in 13 CFR Part 121. To meet the size requirements of the small business program, a firm, including its affiliates, must have

average annual gross receipts, over the firm's previous three fiscal years that do not exceed size standards in a particular area of work (NAICS code). The size standards and limits by NAICS code can be found at [www.sba.gov](http://www.sba.gov). The North American Industry Classification System (NAICS) codes can be found at <http://www.census.gov/eos/www/naics/>. The Waccamaw Regional Transportation Authority also utilizes the SC Small Business Enterprise Unified SBE Directory for projects which may come up for bids or to obtain quotes. We also make known to other agencies via agency meetings that Waccamaw Regional Transportation Authority staff attends, which consist of members from the areas serviced by the Authority, as we convey upcoming projects and various information.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

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

The Waccamaw Regional Transportation Authority does not use quotas in any way in the administration of this DBE program.

### **Overall Goals (Section 26.45)**

In accordance with Section 26.45, The Waccamaw Regional Transportation Authority will submit its triennial overall DBE goal to the FTA by the August deadline of the year specified by FTA. The FTA has been informed by The Waccamaw Regional Transportation Authority that it will submit its goal every three years. The Waccamaw Regional Transportation Authority last goal submission was done in FY 2011 to expire through July 31, 2014 and the goal was approved by the FTA Region 4 Office in Atlanta, Ga.

The Waccamaw Regional Transportation Authority will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by the FTA.

The process generally used by The Waccamaw Regional Transportation Authority to establish overall DBE goals is as follows: The WRTA uses the Step 1 and Step 2 process described in 49 CFR Part 26, Section 26.45(c)-(d). Before establishing the overall goal each year, The Waccamaw Regional Transportation Authority will consult with the SCDOT Office of Business Development and Special Programs to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs (Disadvantaged Business Enterprise), and the Waccamaw Regional Transportation Authority's efforts to establish a level playing field for the participation of DBEs. Through research for our surrounding areas and with the number of projects that The Waccamaw Regional Transportation Authority has and anticipate, there are a limited number of DBE's listed which can perform the type of work, which are non-construction types. Upon communicating with many DBE firms, they feel that the playing field is not level due to the amount of resources it has to compete with the larger firms, thus they try to get business with the larger firms. To aid in combating this, The Waccamaw Regional Transportation Authority incorporates solicitations directly to the small businesses and DBE's so that they too can be aware of the project opportunities as they become available.

Following the consultation, we published a notice of the proposed overall goal in the local newspapers The Sun News and The Georgetown Times, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our office located at 1418 Third Avenue, Conway, SC 29526 for 30 days following the date of



the notice. The Waccamaw Regional Transportation Authority and SCDOT will accept comments on the goals for 45 days from the date of the notice. Comments addressed to The Waccamaw Regional Transportation Authority can be mailed to 1418 Third Avenue, Conway, SC 29526 or via email at [kparks@coastrta.com](mailto:kparks@coastrta.com). Comments for SCDOT can be addressed to SCDOT, Office of DBE Program Development, 955 Park Street, Columbia, SC 29201. We routinely issue this notice by June 1. Our overall goal submission to FTA and SCDOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and any comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by the FTA.

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

If the awards and commitments shown on The Waccamaw Regional Transportation Authority 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, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Submit the plan to FTA within 90 days of the end of the affected fiscal year. *[Note: submission to DOT operating assistance is only required if you are a state DOT; one of the largest 50 transit authorities as determined by FTA, or an Operational Evolution Partnership Plan airport or other airport designated by FAA. However, please also note that recipients for whom submission/approval is not required must still perform the analysis, establish and implement a corrective action plan, and maintain information/records regarding the analysis and efforts made.]*

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

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

#### **Meeting Overall Goals/Contract Goals (Section 26.49a)**

The Waccamaw Regional Transportation Authority will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, The Waccamaw Regional Transportation Authority will:



1. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that offer greater participation by DBEs and other small businesses, and by making contracts more accessible to small businesses.
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g. ensuring the inclusion of DBEs and other small businesses, on The Waccamaw Regional Transportation Authority's mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
3. Attempt to establish endorsement of and assist new, local start-up firms, particularly in fields in which DBE participation has historically been low.
4. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

The Waccamaw Regional Transportation Authority will use contract goals to meet any portion of the overall goal, that the Waccamaw Regional Transportation Authority does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have sub-contracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

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

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

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, The Waccamaw Regional Transportation Authority 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.

#### **Evaluation of Good Faith Efforts: (26.53)**

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive:

#### **DBELO and Chief Financial Officer with SCDOT Consultation (26.53a)**

The process used to determine whether good-faith efforts have been made by a bidder is as follows:

- I) When The Waccamaw Regional Transportation Authority establishes a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make

good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- II) In any situation in which we have established a contract goal, part 26 requires us to use the good faith efforts mechanism of this part. As a recipient, it is up to The Waccamaw Regional Transportation Authority to make a fair and reasonable judgment whether a bidder did or did not make adequate good faith efforts. It is important for us to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. Determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III) The Department also strongly cautions us against requiring that a bidder meet a contract goal (*i.e.* obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV) The following is a list of types of actions which should be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - D) Two Parts:
    - i) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of

- DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- ii) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
  - F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
  - G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  - H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

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

**Information to be submitted: ( 26.53b)**

The Waccamaw Regional Transportation Authority treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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

**Administrative Reconsideration: ( 26.53c)**

Within 5 working days of being informed by The Waccamaw Regional Transportation Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official:

General Manager

Waccamaw Regional Transportation Authority

1418 Third Avenue

Conway, SC 29526

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

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

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

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

**NOTE:**

For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CPR Parts 180, 215 and 1,200 or applicable state law;
6. You have determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, The Waccamaw Regional Transportation Authority requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

We must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

The Waccamaw Regional Transportation Authority must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, we count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Before transmitting to The Waccamaw Regional Transportation Authority its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to The Waccamaw Regional Transportation Authority prior

to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise The Waccamaw Regional Transportation Authority of why it objects to the proposed termination.

*[Note: the five day period may be reduced if the matter is one of public necessity -e.g., safety.]*

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

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding

#### **Sample Bid Specification:**

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

[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offers of the requirements to make good faith efforts. The forms found at Attachment 5 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included 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.]

#### **Counting DBE Participation (Section 26.55)**

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

#### **SUBPARTS D & E CERTIFICATION**

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

The Waccamaw Regional Transportation Authority does not certify DBEs. The Waccamaw Regional Transportation Authority utilizes DBEs who have been certified by the Unified Certification Program of the State of South Carolina which is a part of the South Carolina Department of Transportation.

##### **Unified Certification Programs (Section 26.81)**

The Waccamaw Regional Transportation Authority is the member of a Unified Certification Program (UCP) administered by the South Carolina Department of Transportation. The UCP will meet all of the requirements of this section. The Waccamaw Regional Transportation Authority will use and count for DBE credit only those DBE firms certified by the South Carolina UCP.

##### **Procedures for Certification Decisions (Section 26.83-26.91)**

The Waccamaw Regional Transportation Authority will follow the certification processes of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of South Carolina UCP is available at:

DBE Program and Compliance Supervisor

Office of DBE Program Development

South Carolina Department of Transportation

955 Park Street Columbia, SC 29201

Phone (803) 737-1372

Any firm or complainant may appeal a South Carolina UCP decision in a certification matter to DOT. 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

The Waccamaw Regional Transportation Authority will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT- assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

#### **SUBPART F – COMPLIANCE AND ENFORCEMENT Section 26.109 Information, Confidentiality, Cooperation**

The Waccamaw Regional Transportation Authority will safeguard from disclosure to third parties, any information that may be reasonably regarded as confidential business information, consistent with Federal, state, and local law. The South Carolina Freedom of Information Act (SCFOIA), South Carolina Code of Laws Section 30-4-50, declares as public information that information contained in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies. Notwithstanding any contrary provisions of the SCFOIA, The Waccamaw Regional Transportation Authority will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

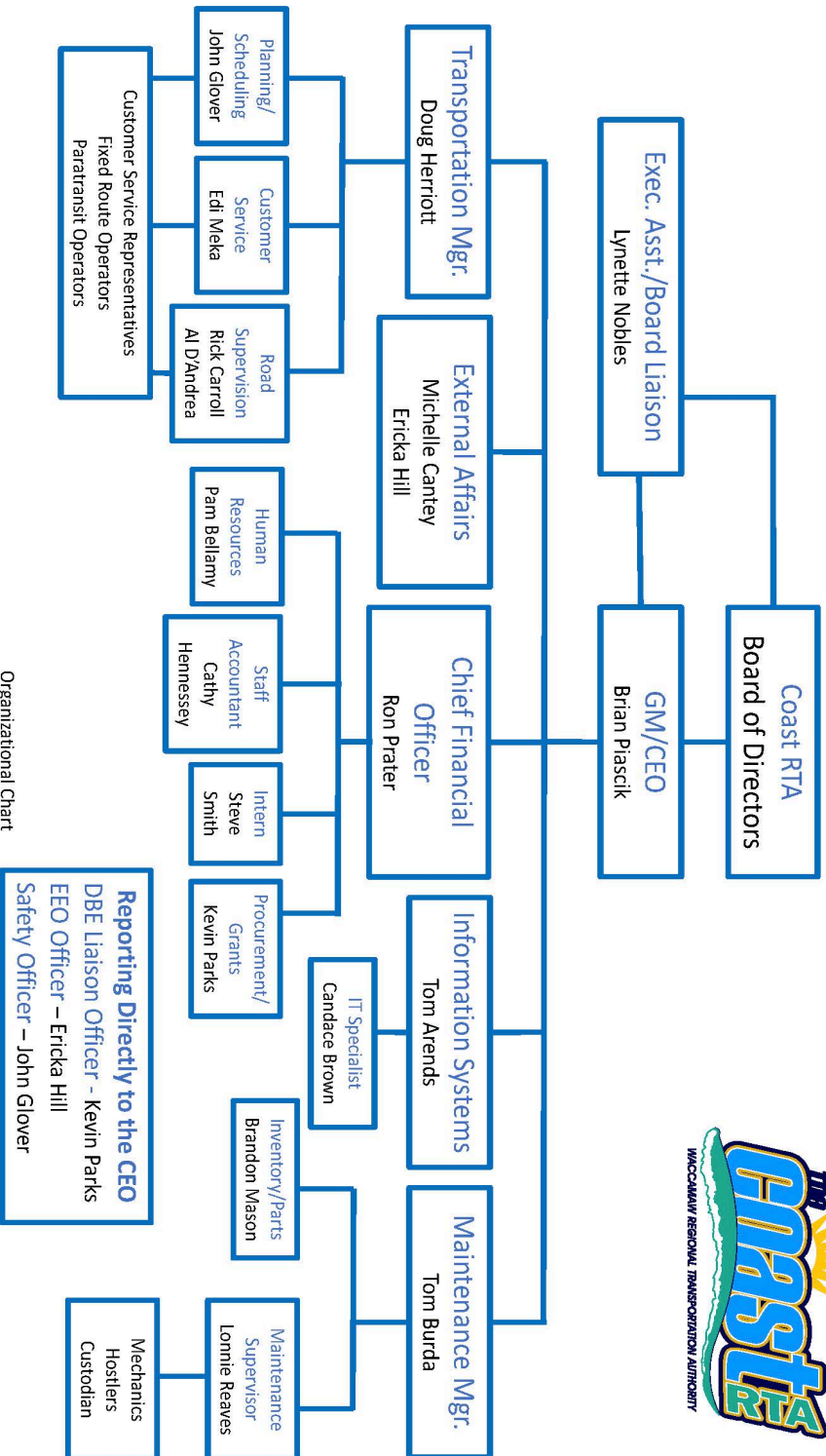
#### **Monitoring Payments to DBEs**

The Waccamaw Regional Transportation Authority 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 The Waccamaw Regional Transportation Authority or DOT. This reporting requirement also extends to any certified DBE subcontractor. The Waccamaw Regional Transportation Authority will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

#### **Attachments**

- Attachment 1: Organizational Chart
- Attachment 2: DBE Directory
- Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies
- Attachment 4: Goal Setting
- Attachment 5: Faith Efforts Forms
- Attachment 6: Certification Forms
- Attachment 7: DBE Regulation, 49 CFR Part 26





Organizational Chart  
January 1, 2016

**Attachment 2**

The South Carolina DBE Directory is updated weekly. The current issue is available at this link. <http://www.scdot.org/doing/businessDevelopSCUnified.aspx>.

### **Attachment 3**

#### **Monitoring and Enforcement Mechanisms / Legal Remedies**

The Waccamaw Regional Transportation Authority has several remedies available 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 to South Carolina Code Section 11-35-4230
3. 49 CFR Part 26 and 25A SC Code Ann. Regs 63-700 to 63-718 (Supp. 2007)

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

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

## **Attachment 4**

### **Section 26.45: Overall Goal Calculation**

The Waccamaw Regional Transportation Authority will be using the Step One process.

#### **Amount of Goal:**

The Waccamaw Regional Transportation's overall goal for FY 2015 – FY 2017 is the following:

- a. 1 % of the Federal financial assistance will be expended in DOT - assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles and operations.

[FTA recipients add: exclusive of FTA funds to be used for the purchase of transit vehicles and operations.

Or

- a. \_\_\_\_\_% of the Federal financial assistance will be expended DOT - assisted contracts.

[FTA recipients add: exclusive of FTA funds to be used for the purchase of transit vehicles and operations.

- b. \$\_\_\_\_\_ dollar amount of DOT assisted contracts that Waccamaw Regional Transportation Authority expects to award during FY 2014-FY 2015.

This means that The Waccamaw Regional Transportation Authority has set a goal of expending \$\_\_\_\_\_ during this fiscal year/project.

#### **Methodology used to Calculate Overall Goal**

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

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows: Ready, willing, and able DBEs

Base figure = 0092

All firms ready, willing and able with DBEs

The data source or demonstrable evidence used to derive the numerator was: first to define the market areas for each project, then utilize the DOT UCP DBE Directory to count all firms who can handle the project work in that market area. This process was done for each project individually.

The data source or demonstrable evidence used to derive the denominator was: the business census data was taken from the website- [www.censtats.census.gov](http://www.censtats.census.gov). The number of firms per project was defined by the market area and the NAICS code, which was established prior to utilizing the census website. Then, the number of firms was added together per each market area for that particular project. This was done for each project.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was 1%.

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

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0%, we used the rounded weighted base figure.

The data used to determine the adjustment to the base figure was: no adjustment made due to the past participation figure being similar to our Step One base figure.

The reason we chose to adjust our figure using this data was because: N/A

From this data, we have adjusted our base figure to: N/A

## **Public Participation**

DBE goal information will be published and viewed in at least, the regional The Sun News newspaper.

Public meetings were held in August 2014, comments received by individuals or organizations or members of the public were captured.

Our responses to these comments are: N/A

## **Section 26.51: Breakout of Estimated**

### **Race-Neutral & Race Conscious Participation**

The Waccamaw Regional Transportation Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Waccamaw Regional Transportation Authority uses the following race-neutral means to increase DBE participation: Solicit directly to DBEs from the UCP DBE directory to those firms who perform the needed type of work, solicit through internet company searches, Chamber of Commerce's small business listing, and advertisements through the South Carolina Business Opportunity website.

We estimate that, in meeting our overall goal of 1%, we will obtain 1% from race-neutral participation and 0% through race-conscious measures.

## Attachment 5

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

### FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

\_\_\_\_\_ The bidder/offeror (if unable to meet the established goal of \_\_\_\_\_% DBE participation) is committed to a minimum of \_\_\_\_\_% DBE participation on this contract and submits documentation demonstrating good faith effort.

Name of Bidder/Offeror's Firm:

\_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Firm's Federal ID# \_\_\_\_\_ - \_\_\_\_\_

Name of Firm Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### FORM 2: LETTER OF INTENT

Name of Prime Bidder/Offeror's

Firm: \_\_\_\_\_

Address \_\_\_\_\_

City, State,  
Zip \_\_\_\_\_

Firm's Federal ID# \_\_\_\_\_ - \_\_\_\_\_

Name of DBE:

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_

Affirmation:

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Date)

If the Bidder/Offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

**(Submit this page for each DBE subcontractor)**



**Attachment 6**

DBE Certification forms may be obtained by contacting the following:

South Carolina Department of Transportation

Office of DBE Program Development

955 Park Street

Columbia, SC 29201

Phone: (803) 737-137

**Attachment 7**

The DBE Regulation, 49 CFR Part 26, is available at the following link:

<http://osdbu.dot.gov/DBEProgram/>