

CITY OF WINCHESTER
TRANSIT DEPARTMENT
DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

Objectives

It is the policy of the Winchester Transit to ensure that DBEs are defined in Part 26, have an equal opportunity to receive and participate in FTA–assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of FTA – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for FTA-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 FTA-assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program;
7. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Applicability

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

Definitions

Winchester Transit will adopt the definitions contained in Section 26.5 for this program.

Non-discrimination Requirements

Winchester Transit 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, Winchester Transit 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

Reporting to FTA:

Winchester Transit will report DBE participation to FTA as follows:

- DBE participation will be reported on a semi-annual basis, using the Uniform Report of DBE Commitments/Awards and Payments and uploaded into TEAM. These reports will reflect payments actually made to DBEs on FTA-assisted contracts.

Bidders List:

Winchester Transit will refer to the City of Winchester's Bidder's List, and will consult the Virginia Department of Minority Business Enterprise DBE list when establishing or updating a list for new procurement.

Federal Financial Assistance Agreement

Winchester Transit has signed the following assurances, applicable to all FTA-assisted contracts and their administration:

Assurance:

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

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

Contract Assurance:

Winchester Transit will ensure that the following clause is placed in every FTA-assisted contract and subcontract:

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

DBE Program Updates

Since Winchester Transit may receive grants 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 FTA financial assistance have been expended. We will provide to FTA updates representing significant changes in the program.

Policy Statement

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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;
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7. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

DBE Liaison Officer (DBELO)

Winchester Transit has designated the following individual as our DBE Liaison Officer:

- Grants Coordinator – 15 N. Cameron Street, Winchester, VA 22601 – (540) 667-1815

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 3 (three) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with the transit department 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 Winchester Transit's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises City Council on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

DBE Financial Institutions

It is the policy of Winchester Transit to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on FTA-assisted contract to make use of these institutions.

The Virginia Department of Minority Business does not currently list any DBE Financial Institutions in the area.

Prompt Payment Mechanisms

Winchester Transit will include the following clause in each FTA-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 (thirty) days from the receipt of each payment the prime contract receives from Winchester Transit. The prime contractor agrees further to return retainage payments to each subcontractor within 30 (thirty) 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 Winchester Transit. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory

Winchester Transit refers to the Virginia Department of Minority Enterprise Disadvantaged Business Enterprise (DBE) Vendors Directory which identifies firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory may be accessed at www.dmb.e.virginia.gov.

Overconcentration

Winchester Transit has not identified that overconcentration exists in the types of work that DBEs perform.

Business Development Programs

Winchester Transit has not established a business development program.

Monitoring and Enforcement Mechanisms

Winchester Transit will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished through quarterly reports submitted by the contractor.
3. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Quotas

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

Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) Winchester Transit will submit its overall goal to FTA on August 1 of each year. Before establishing the overall goal each year, Winchester Transit will consult the Virginia Department of Minority Business Enterprise DBE list to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses.

Winchester Transit will publish a notice of the proposed overall goals in local newspapers and on our website informing the public that the proposed goal and its rationale are available for inspection during normal business hours for 30 days following the date of the notice, and inform the public that we will accept comments on the goals for 45 days from the date of the notice. The notice will be published by June 15th of each year. The notice shall include addresses to which comments may be sent and addresses where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from FTA. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a FTA-assisted contract for the project.

Transit Vehicle Manufacturers Goals

Winchester Transit 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, Winchester Transit 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.

Breakout of Estimated Race-Neutral & Race-Conscious Participation

Winchester Transit shall meet the maximum feasible portion of its overall goal by using race neutral means:

- Breaking down contracts, where feasible, into smaller parts, prorating payments and delivery schedules.
- Simplify bidding forms, and minimizing other bidding constraints.
- Work closely with financial institutions, insurance and bonding companies in an effort to alleviate barriers to participation.
- Provide information via media, including minority owned, and/or language minority media, on DBE opportunities.
- Provide DBE's the opportunity to review similarly successful bid documents.
- Make available its DBE directory.
- Provide pre-bid conferences to answer questions, and explain DBE requirements.

Winchester Transit expects it will achieve 100% of its goal through race-neutral means and 0% through race-conscious means.

Contract Goals

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

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

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

Section 26.53 Good Faith Efforts Procedures

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The City of Winchester's Grant Coordinator, in conjunction with the city's Purchasing Agent, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted

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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration

Within 15 days of being informed by the City of Winchester 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: Mr. Dale Iman, City Manager, 15 N. Cameron Street, Winchester, VA 22601, (540) 667-1815, diman@ci.winchester.va.us. 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. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for the 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 Federal Transit Administration.

Good Faith Efforts when a DBE is replaced on a contract

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

In this situation, we will require the prime contractor to obtain 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 Winchester Transit to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, 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.

Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Certification Process

Winchester Transit does not certify DBEs.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

Winchester Transit is a member of a Unified Certification Program (UCP) administered by the Virginia Department of Transportation. The UCP will meet all of the requirements of this section.

COMPLIANCE AND ENFORCEMENT

Information, Confidentiality, Cooperation

Winchester Transit will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

Monitoring Payments to DBEs

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

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