

**City of Key West
DEPARTMENT OF TRANSPORTATION
DOT, DBE PROGRAM – 49 CFR PART 26**

POLICY STATEMENT

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

The City of Key West Department of Transportation (KWDoT) is establishing a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The KWDoT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance; KWDoT signs an assurance that it will comply with 49 CFR Part 26, hereafter.

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

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

The City of Key West Transit Director for the Department of Transportation, Mr. Norman Whitaker, has been delegated as the DBE Liaison Officer for transportation. In that capacity Mr. Whitaker is responsible for implementing all aspects of the DBE program.

Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Key West in its financial assistance agreements with the Department of Transportation. City of Key West has disseminated this policy statement to the City Commission, City Manager and Mayor of the City of Key West, public officials, and all of the components of our organization.

And, we will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Distribution is handled by internal and external mailings.

Norman Whitaker, Transit Director

Date

Bogdan Vitas, City Manager

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The KWDOT is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq. The KWDOT is the recipient of federal highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat., 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107. The KWDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The KWDOT will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows: We will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The KWDOT 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: A contract clause will require bidders to report name / address, and possible other information, of all firms who quote to them on subcontracts; a recipient-directed survey of a statistically sound sample of firms on a name/address list to get age/size information; a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, and etc. This will be compiled with our reports submitted to DOT.

Section 26.13 Federal Financial Assistance Agreement

KWDOT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

KWDoT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the KWDoT 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, verbatim, as stated in 26.13(a).

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT- assisted contract and subcontract: The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Language will be verbatim as stated in 26.13(b).

SUBPART B - ADMINISTRATIVE REQUIREMENTS**Section 26.21 DBE Program Updates**

Since KWDoT will receive a grant of \$250,000 or more in FTA 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.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

We have designated Mr. Norman Whitaker, Transit Director, as our DBE Liaison Officer.

Norman Whitaker, P.O. Box 1078, Key West, Florida 33040
(305) 809-3910, nwhitaker@keywestcity.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the KWDoT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager or his designee concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment "A" 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 four (4) 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 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 KWDOT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in the State of Florida.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintain KWDOT's updated directory on certified DBEs, who include the Manager's, Customer Service Specialist, Project & Grants Manager, Transit Supervisor, Fleet Technical Advisor and the Fleet Administrator (the last two of whom are at 50% split for time assignment of job duties).

Section 26.27 DBE Financial Institutions

It is the policy of the KWDOT to investigate and re-evaluate every three (3) years to 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 contract to make use of these institutions. Notification of solicitations of r financial services will be sent to the institutions identified in the United States Department of Treasury, Financial Management Services Division, Minority Bank Deposit Program listings of financial institutions in the State of Florida. The availability of such institutions can be obtained at the U.S Department of Treasury website http://www.fms.treas.gov/mbdp/current_list.html.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29 (a)

The KWDOT 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 thirty (30) days from the receipt of each payment the prime contract receives from KWDOT. Any delay or postponement of payment from the above reference time frame may occur only for good cause following written approval of KWDOT. This applies to both DBE and non-DBE subcontracts.

Retainage: 26.29 (b)

The prime contractor agrees further to return retainage payments to each subcontractor within 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 KWDOT. This clause applies to both DBE and non-DBE subcontracts.

In all cases, prompt payment will be required or further legal or remedial action will be initiated on behalf of the subcontractor as is permitted by law.

Monitoring and Enforcement: 26.29 (d)

KWDoT has established the following mechanism to monitor and enforce prompt payment and return of retainage.

- If KWDoT determines that the prime contractor has failed to comply with the prompt payment provisions set forth above, KWDoT shall give written notice to the contractor and the contract surety that if the default is not remedied within a specific period of time (at least 30 days), the contract may be suspended.
- The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have already performed.

Section 26.31 Directory

KWDoT shall maintain a directory identifying 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. We will update and revise the Directory annually, and make the directory available during regular business hours each July 1st, at the KWDoT office building, 627 Palm Avenue, Key West, Florida, 33040, or by a written request to P.O. Box 1078, Key West, Florida 33040, wherein a mail out will be replied to from KWDoT. KWDoT does intend to participate in the Uniform Directory efforts once our program is active.

Section 26.33 Overconcentration

KWDoT has not identified any areas of over-concentration. KWDoT will continue to monitor DBE participation and usage every three (3) years, and will take appropriate action to address any identified over-concentration.

Section 26.35 Business Development Programs

KWDoT has not established a business development, but is willing to look into establishing a program to assist with informing businesses who are not informed about DBE opportunities on how they may become a DBE business enterprise. We hope to re-evaluate this program once every third year.

Business opportunities are limited in the Florida Keys due to the unique demographics of the linear chain making up our land area; this may present business an opportunity to respond where they otherwise would not have an advantage in a disadvantaged marketplace.

If KWT establishes a program, it will be guided by the applicable Appendix of 49 CFR Part 26 and approved by FTA before being implemented.

Section 26.37 Monitoring and Enforcement Mechanisms

KWDoT 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 consider similar action under our own legal authorities, including responsibility determinations in future contracts. All Local, State and Federal regulations, provisions, and

contract remedies available in the events of non-compliance with regard to DBE regulations by a participant in our procurement activities will be applicable with assistance by the city attorney staff.

3. 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 by on site visits and records of same.

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 – Small Business Participation

The KWDOT has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted projects by Small Business concerns (both DBE and non-DBE small business).

City of Key West will require that Prime Contractors identify Small Business sub-contractors on large procurements / projects. In addition, KWDOT shall accomplish its DBE contract goals by including small businesses in the following:

The following efforts will be engaged to assure Small Businesses are included in Prime Contracts for goods and services:

- Unnecessary and unjustified bundling of contract requirements that may prevent small business participation in procurements as prime contracts or subcontracts
- Require bidders on large contract to identify and / or provide specific subcontracts appropriate for small business participation
- Evaluate City purchasing ordinance with regard to small business and local vendor preference clause
- Contract Unbundling / Assessment Utilize State of Florida UCP data base for small businesses when making purchases within their field or products/ services direct.
- Require bidders to submit business profile information as part of the bid packets – identifying business, employees, demographics, etc.

KWDOT will implement the Small Business program within nine (9) months of FTA approval of its DBE program and will verify business size through the DBE directory of Florida's UCP, maintained by FDOT.

As opportunities for growth become available, within transits authority, KWDOT will encourage and allow Small Business to partake in any bids for future construction projects or other services required to expand its transit agency.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

In accordance with Section 26.45, KWDOT will submit its triennial overall DBE goal to FTA on August 1 of the year specified by FTA. KWDOT will also request use of project-specific DBE goals as appropriate, and / or will establish project-specific DBE goals as directed by FTA.

KWDOT has established an overall goal for the three (3) year period of **16%** for DBE participation in USDOT assisted contracts. The goal is based upon the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and available to participate on USDOT assisted

contracts. The goal reflects the level of DBE participation anticipated, absent the effects of discrimination.

Methodology used to Calculate Overall Goals

In accordance with Section 26.45, KWDOT has employed a two-step process to calculate its DBE program goal. Step 1 involves determining a “base figure” for the relative availability of DBEs in the area. The base figure is a percentage calculated as the ratio of available and potentially eligible DBEs to all available firms. Step 2 involves examining available evidence to determine what adjustment, if any, was needed to the base figure in order to arrive at the overall goal that reflects as accurately as possible the DBE participation KWDOT would expect in the absence of discrimination. A description of the methodology to calculate the overall goal and the goal calculations is found in Attachment D.

Step 1:

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

The number of firms ready, willing and able is taken from data source or demonstrable evidence used to derive the numerator as is available from the purchasing records of the City of Key West and will be updated whenever available and with Unified Certification Program data when we achieve that level of program certification. Data source or demonstrable evidence used to derive the denominator is noted herein.

Step 2:

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 the three (3) year period.

The data used to determine the adjustment to the base figure was historic data based on the business composition of vendors dealing in our area and immediately adjoining areas of the Florida Keys who are willing to transport or mobilize for projects scheduled in our area. From this data, we have adjusted our base figure to reflect the three (3) year goal period required.

Public Participation

We publish our goals on the City's website as well as via block advertisement in the local newspaper, the Key West Citizen. We then report any comments received from these advertisement efforts, summarizing comments and responses to said comments as part of our final program submission to FTA, Region IV office in Atlanta, GA.

In accordance with Section 26.45(f) the KWDOT will submit its overall goal to DOT on August 1 every three (3) years, for their review and comments.

Before establishing the overall goal every three years, KWDOT will consult with the purchasing and finance departments of the City, and any other applicable identified agents who may assist us in obtaining information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and KWDOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we publish a notice of the proposed three (3) year overall goal, informing the public that the proposed goals and its rationale are available for inspection during normal business hours at the KWDOT principal work office site for thirty (30) days following the date of the notice. This also invites the public input and public comment of the calculation process

as well as the three (3) year goal – within a timely forty-five (45) day period prior to August 1 of every third (3rd) year beginning 2011, as the first fiscal year of implementation following the rule change, as well as the published notice in the local newspaper – The Key West Citizen.

Our overall three (3) year goal submission to DOT will include a summary of information and comments received during this public participation process; along with our responses. We will implement annual fiscal goals established consecutively with our annual fiscal year period, or October 1, through September 30, of each year, unless we have received other instructions from DOT. All dollar values used in calculating the three (3) year OVERALL goal is cumulative and not based on individual projects.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on KWDOT's "Uniform Report of Awards or Commitments and Payments" at the end of any fiscal year are less than the overall goal applicable to that fiscal year, KWDOT 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
- 3) Submit the plan to FTA within 90 days of the end of the affected fiscal year
- 4) Key West will conduct the analysis and keep it on file should FTA request it

Section 26.49 Transit Vehicle Manufacturers Goals

KWDOT 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, KWDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51 Meeting Overall Goals/Contract Goals

KWDOT will meet the maximum feasible portion of its three (3) year OVERALL goal by using race-neutral means of facilitating DBE participation. KWDOT uses the following race-neutral means to increase DBE participation:

- 1) KWDOT will notify appropriate Florida-based MBE's and DBE's of upcoming contracts available for bidding via industry specific media advertisements which covers beyond local advertisers market.
- 2) KWDOT will provide prime contractors a list of all DBE's for their use in order to assist with sub-contracting opportunities.

We estimate that in meeting our overall goal for the next 3 year period – the following will apply:

DBE 3 Year (2015 through 2017) calculation is 1%, of which we will obtain 0.5% from race-neutral participation and 0.5% from race-conscious measures.

This calculation is based on the number of available contractors to be awarded work via USDOT assisted contracts which we anticipate over the next three (3) year fiscal budget cycles of 2015 through 2017; with consideration given also to registered MBE's and small business.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following:

DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Section 26.53 Good Faith Effort Procedures

Demonstration of good faith efforts [26.53(a) & (c)] 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. Examples of good faith efforts are found in Appendix A to Part 26.

The Department Manager / Director will be responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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

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

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

Administrative Reconsideration: 26.53(d)

Within ten (10) days of being informed by KWDoT that the bidder/offeror is not responsible because they have not documented sufficient good faith efforts, an offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

- DBELO Norman Whitaker, Director
Department of Transportation
P.O. Box 1078,
Key West, Florida 33040
(305) 809-3910
nwhitaker@keywestcity.com

The DBELO 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 DBELO to discuss the issue of whether it met the goals or made adequate good faith efforts to do so. KWDOT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror 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 26.53(f)

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

A "good cause" includes but not limited to the following:

- The DBE fails or refuses to execute a written contract, to perform the work consistent with normal industry standards,
- Meet the prime contractor's nondiscriminatory bond requirements
- The DBE becomes bankrupt or has credit unworthiness,
- Is ineligible to work because of suspension and debarment,
- The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract, or other documented compelling reason.

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

In those instances where "good cause" exists to terminate a DBE's contract, KWDOT 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. KWDOT 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, KWDOT 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 City of Key West Department of Transportation 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.

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

KWDoT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. For information about the certification process or to apply for certification, firms should contact: Norman Whitaker, P.O. Box 1078, Key West, Florida, 33040 or at the city's website address: www.keywestcity.com

Our certification application forms and documentation requirements are found in Attachment “D” to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

KWDoT is a non certified member of the Unified Certification Program (UCP) administered by the Florida Department of Transportation. The Florida UCP will meet all of the requirements of 49 CFR Part 26. KWDoT will use and count for DBE credit only those DBE firms certified by the Florida UCP.

Section 26.83 Procedures for Certification Decisions Re-certifications 26.83(a) & (c)

We will review the eligibility of DBEs that we certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than three years from the most recent certification date of each firm. Our schedule for this review process will meet minimum requirements but is not established at this time due to this being a new program for KWDoT.

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility as is required by FTA standards, at a minimum every third (3rd) year, or whenever there is a considerable marketplace change or change in project goals originally identified.

These reviews may or may not include one or more of the following components:

- On site visit
- New application submittals

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

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with a KWDoT application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of _____ (business name) affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with _____ (business name) application for certification, except for any changes about which you have provided written notice to the KWDoT under 26.83(j). _____ (business name) meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million. We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts. We will notify all currently certified DBE firms of these obligations [program should state how and when]. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

If we deny a firm’s application or decertify it, it may not reapply until a minimum of six (6) months have passed from our action.

Section 26.87 Removal of a DBE’s Eligibility

In the event we propose to remove a DBE’s certification, we will follow procedures consistent with 26.87. Attachment “E” to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that the Finance Director of the City of Key West will serve as the decision-maker in de-certification proceedings. We have established an administrative “firewall” to ensure that the Finance Director will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C 20590

KWDoT 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

We 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) 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 making available for inspection upon request by any authorized representative of the KWDOT or DOT. 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.

ATTACHMENTS

Attachment A - Organizational Chart

Attachment B - DBE Directory

Attachment C - Monitoring and Enforcement Mechanisms / Legal Remedies

Attachment D – Goal Setting Methodology

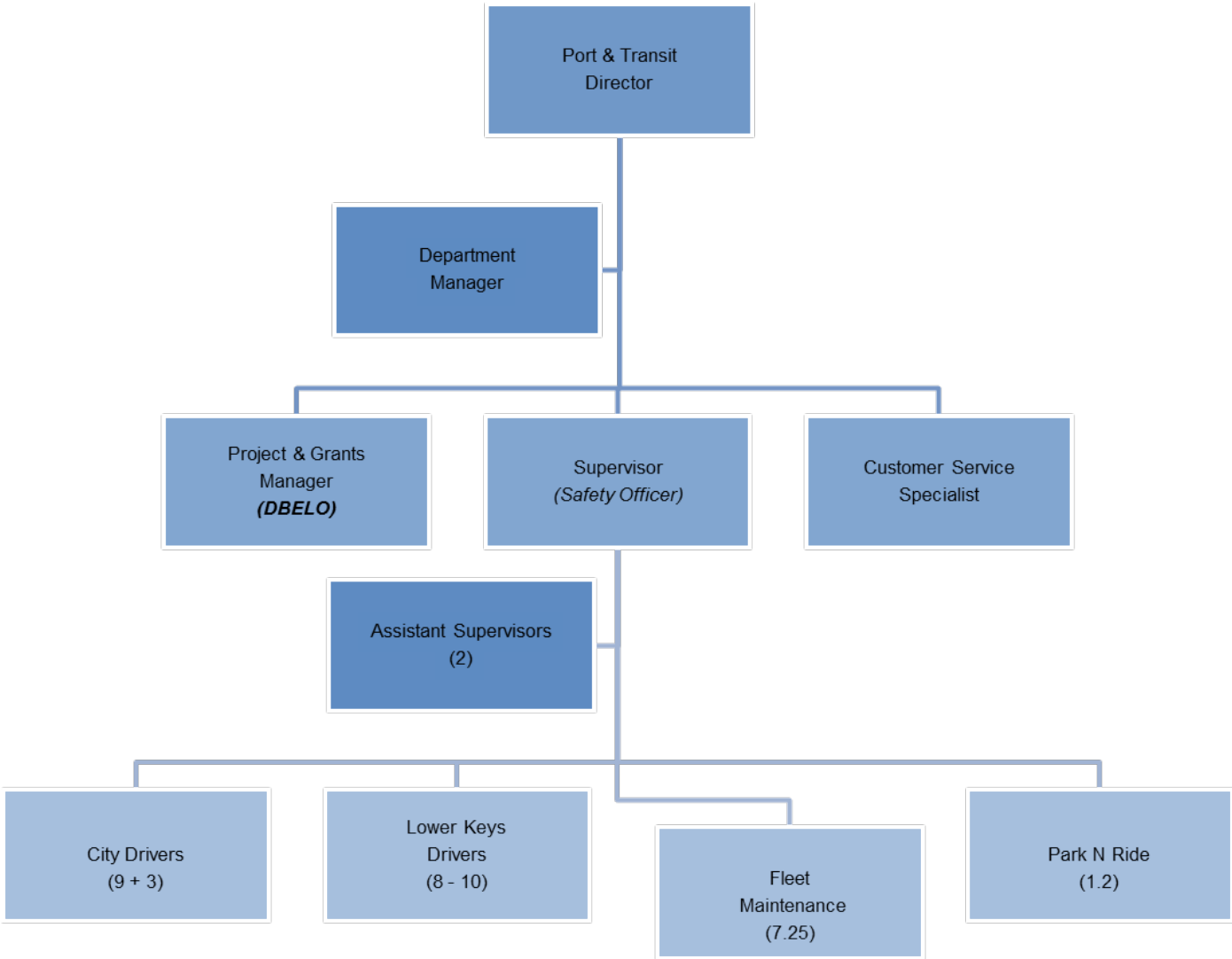
Attachment E – Good Faith Efforts Forms

Attachment F – Certification Forms

Attachment G – DBE Regulation, 49 CFR Part 26

CITY OF KEY WEST
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Organizational Chart



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DBE Directory

The most current DBE Directory may be found on the following websites:

<http://www.dot.state.fl.us/equalopportunityoffice/dbereports.shtm>

<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

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Monitoring and Enforcement Mechanisms

1. Breach of contract action, pursuant to the terms of the contract
2. Breach of contract action, pursuant to State of Florida Code
3. All Local, State and Federal enforcement mechanisms will be utilized

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

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

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Section 26.45 Overall Goal Calculations

As required by 49 CFR Part 26.45, City of Key West Department of Transportation (KWDoT) must submit the FY15, FY16 and FY17 DBE Goal to FTA on or before August 1, 2014.

The City of Key West Department of Transportation (KWDoT) is the only public transit service in Key West and the adjoining Keys, up to the City of Marathon, MM52.5 or 109th Street. KWDoT has a total of six (6) routes – four (4) operate seven (7) days a week and two (2) operate six (6) days a week. KWDoT has three (3) Federal Transit Administration (FTA) funded projects projected for the upcoming three (3) year period. One of our projects – New Transit Facility, will be completed by September 2015.

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

As of March 3, 2010, USDOT issued a final rule affecting the implementation and management of the DBE program. The department is required to submit three (3) year DBE goal and goal setting methodology.

Key West Department of Transportation's three (3) year DBE goals are:

3 Year – Thirty-six (36) Month – Overall Calculation for FY2015 to FY2017:

The City of Key West Department of Transportation has calculated the overall goal for fiscal year periods covering the required three (3) year and thirty-six (36) month time frame to be 1%, which represents a dollar value of \$1,000,000.00 as it relates to USDOT-assisted contracts that KWDoT expects to award during this three (3) year / thirty-six (36) month period. This summarizes that KWDoT has set a goal of expending \$10,000.00 with DBE's during the three (3) year period.

Methodology used to Calculate Overall Goal - Three (3) Year Period:

Step 1: 26.45(c)

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

The elements of work were identified along with the cost associated to determine the percentage of total work (weighted). The number of DBEs and non DBEs were identified by the elements of work to determine the relative availability. The weighted work was multiplied by the weighted relative availability to determine the percentage of anticipated DBE participation (see attachment A).

The data sources used to derive all firms available (including DBE's) were from the 2011 US Census for Florida Business. The data sources used to derive the ready, willing and able vendors were from the Florida Unified Certification Program. When using the Florida Unified Certification

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 Key West DoT
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Program, KWDOT used District 6, Broward County, Miami-Dade County, and Monroe County to arrive at the number of DBEs available to perform the work described in attachment A.

Utilizing available information of grant funds awarded to date, along with those requested and budgeted through FY 2017 period; KWDOT calculates the ready, willing, and able DBE's Base figure to be 11 / 3911, which equals 0.0028%.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal for the full three (3) year / thirty-six (36) month period, as our overall calculation.

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 the three (3) year period.

The data used to determine the adjustment to the base figure was historic data based on the business composition of vendors dealing in our area and immediately adjoining areas of the Florida Keys who are willing to transport or mobilize for projects scheduled in our area.

From this data, we have adjusted our base figure to reflect the three (3) year goal period required.

Public Participation

We publish our goals on the City's website as well as via block advertisement in the local newspaper, the Key West Citizen. We then report any comments received from these advertisement efforts, summarizing comments and responses to said comments as part of our final program submission to FTA, Region IV office in Atlanta, GA.

In accordance with Section 26.45(f), KWDOT submits its overall goal to USDOT on or before August 1 every three (3) years, for their review and comments. Before establishing the overall goal every three years - KWDOT consults with its' purchasing and finance departments to assure applicable data and other relative identified information such as registered DBE's as well as MBE's are included in our calculation process. KWDOT also meets with members of various local committees such as – Local Coordinating Board (LCB), Pedestrian Action Committee (PAC), and also Transportation Coordination Team (TCT), to name a few. This assures that there will be no discrimination of opportunities for DBE's, and the City of Key West's efforts to establish a level playing field for the participation of as many as possible DBE's as well as MBE's is thereby established by coordination with all internal support departments of the City.

Following this consultation, we publish a notice of the proposed three (3) year **OVERALL** goal informing the public that the proposed goal and calculation detail are available for inspection during normal business hours at the KWDOT work office site for thirty (45) days following the date of the notice. This also invites public input and public comment of the calculation process as well as the three (3) year goal - within a timely forty-five (45) day period prior to August 1 of every third (3rd) year.

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Our overall three (3) year goal submission to DOT will include a summary of information and comments received during this public participation process; along with our responses. We will implement annual fiscal goals established consecutively with our annual fiscal year period, or October 1, through September 30, of each year, unless we have received other instructions from USDOT. ***All dollar values used in calculating the three (3) year OVERALL goal is cumulative and based on individual projects. (Attachment A – Step 1)***

Section 26.51 Breakout of Estimated Race-Neutral & Race Conscious Participation

KWDoT will meet the maximum feasible portion of its three (3) year OVERALL goal by using race-neutral means of facilitating DBE participation. KWDoT uses the following race-neutral means to increase DBE participation:

- 1) KWDoT will notify appropriate Florida-based MBE's and DBE's of upcoming contracts available for bidding via industry specific media advertisements which covers beyond local advertisers market.
- 2) KWDoT will provide prime contractors a list of all DBE's for their use in order to assist with sub-contracting opportunities.

We estimate that in meeting our overall goal for the next 3 year period - the following will apply:

DBE 3 Year (2015 through 2017) calculation is 1%, of which we will obtain 0.5% from race-neutral participation and 0.5% from race-conscious measures.

This calculation is based on the number of available contractors to be awarded work via USDOT assisted contracts which we anticipate over the next three (3) year fiscal budget cycles of 2015 through 2017; with consideration given also to registered MBE's and small businesses.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Step 1 - Determine the weight of each type of work by NAICS Code:

* Enter all the FTA-assisted projects below. Project amounts should be assigned relevant NAICS Code(s).

	NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
1)				0.0000
2)		Bus Aprons		0.0000
3)	54137	* Survey	\$31,667.00	0.0317
4)				0.0000
5)	5414	* Design, Permitting	\$66,667.00	0.0667
6)				0.0000
7)	237310	* CEI Services / Construction Phase	\$901,666.00	0.9017
8)				0.0000
9)				0.0000
10)				0.0000
	Total FTA-Assisted Contract Funds		\$1,000,000.00	1

Step 2 – Determine the relative availability of DBE’s by NAICS Code:

*Use DBE Directory, census data and / or a bidders list to enter the number of available DBE firms and the number of available firms.

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability	
1)						
2)		Bus Aprons				
3)	54137	* Survey	2	628	0.0207	
4)						
5)	5414	* Design, Permitting	1	2793	0.0014	
6)						
7)	237310	* CEI Services / Construction Phase	8	490	0.1898	
8)						
9)						
10)						
	Combined Totals		11	3911	0.0028	Overall availability of DBEs

Step 3 - (Weight) x (Availability) = Weighted Base Figure

	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1)				x		
2)		Bus Aprons		x		
3)	54137	* Survey	0.03167	x	0.00318	0.0001
4)				x		
5)	5414	* Design, Permitting	0.06667	x	0.00036	0.000
6)				x		
7)	237310	* CEI Services / Construction Phase	0.90167	x	0.01633	0.0147
8)				x		
9)				x		
10)				x		
					Total	0.0148
					Expressed as a % (*100)	1.48%
					Rounded, Weighted Base Figure: 1%	

Forms 1 & 2 - Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Email: _____

Description of work to be performed by DBE firm:

The bidder/offer or is committed to utilizing the above-named DBE firm for the work described above.

The estimated dollar value of this work is \$ _____.

Affirmation:

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

By: _____
(Signature) (Title)

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

Certification Application Forms

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Email: _____

I, _____, as a duly authorized officer / agent of the above-named DBE firm hereby swears/affirms that it is in compliance with all required DOT DBE mandates and as such by signing below, we make formal application for certification to participate in the KWDoT / DOT / DBE Program with the City of Key West

By: _____
(Signature) (Title)

Witness (Signature / print name)

Witness (Signature / print name)

Notary Public

Regulations: 49 CFR Part 26

Attached hereto and made a part hereof is a complete copy of 49 CFR Part 26 for reference.