



# **Disadvantaged Business Enterprise (DBE) Program**

**Prepared April 12, 2024  
DBE Liaison**

<b>GENERAL INFORMATION</b>		
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<b>Document Author(s)</b>	Brian Fahey, Mobility Services Manager / DBE Liaison	
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1.0	August 31, 2014	Original plan on file
2.0	September 1, 2022	Last update made under previous Transportation Department structure.
3.0	April 12, 2024	Complete plan update based on new transit management and oversight structure, and incorporating new practices for monitoring contractor compliance and increasing DBE participation
<b>EXECUTIVE SUMMARY</b>		
The purpose of the program plan is to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.		
<b>APPROVAL OF AUTHORIZING OFFICIAL</b>		
<div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="width: 45%; border-top: 1px solid black; text-align: center;"> <p>Director of Transportation</p> </div> <div style="width: 45%; border-top: 1px solid black; text-align: center;"> <p>Date</p> </div> </div>		

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# INTRODUCTION

## Our Mission

The City of Durham’s mission is to provide and maintain a safe, equitable, inclusive, and sustainable multimodal transportation system with high-quality infrastructure to improve mobility and to offer everyone in Durham access to necessities and opportunities.

## History

The City of Durham (GoDurham Transit; formerly Durham Area Transit Authority-DATA) provides fixed route bus and paratransit (Demand Response) services for residents and visitors of the City and County of Durham. GoDurham is the name and brand for transit services managed and funded by the City of Durham and delivered by third-party contractors, currently RATP Dev for fixed-route services and National Express Transit for paratransit services. During FY23, GoDurham provided over 5.6 million annual fixed route trips and approximately 138,000 annual paratransit trips to the City and County residents as well as visitors (the highest among our peer systems in the state of North Carolina). Additionally, GoDurham provides bus services to Duke University, Duke University Hospital, VA Hospital, Research Triangle Park, and North Carolina Central University. GoDurham managed to deliver all these services with a total of 60 buses and 51 paratransit vans.

GoDurham currently operates 19 bus routes. Service is provided seven days a week generally from 5:30 a.m. until 12:30 a.m., Monday through Saturday, and 6:30 a.m. until 9:30 p.m. on Sundays and holidays. Working together, GoDurham and the City of Durham will continue to build and operate a safe, efficient, and effective transit system that is the preferred choice of transportation now and in the future.

In 2010, an interlocal agreement was created with GoTriangle for management, oversight, planning, and marketing of the GoDurham service. First Transit was the fixed-route operator, and the Durham City Transit Company (DCTC) was the employment entity for transit service personnel as a subsidiary to First Transit. GoTriangle also held the contract with First Transit on behalf of GoDurham. Together, GoTriangle and DCTC managed and operated GoDurham until June 30th, 2023. GoTriangle also contracted with National Express Transit for the management, operations, and maintenance of the GoDurham ACCESS on-demand system.

In late 2023, the City of Durham and GoTriangle agreed to a mutual termination of the interlocal agreement from 2010, and the City of Durham procured a new contract for a full turnkey contract for the management, operations, and maintenance of the fixed-route system. Effective July 1, 2023, The City of Durham contracted with RATP Dev for the fixed-route system. In addition, the contract between GoTriangle and National Express Transit was assigned to the City of Durham.

# POLICY STATEMENT

## Objectives / Policy Statement (49 CFR Part 26.1, 26.3)

The City of Durham Transportation Department has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Durham is a recipient of Federal financial assistance from DOT through several programs of the Federal Transit Administration (FTA), and as a condition of receiving this assistance, the City of Durham has signed assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Durham to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 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 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 marketplace outside the DBE Program.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The DBE Liaison Officer is responsible for implementing all aspects of the DBE Program.

**Brian Fahey**  
**Mobility Services Manager**  
**101 City Hall Plaza, 4th Floor**  
**Durham, NC 27701**

**P: (919) 560-4366, ext. 36404**

**Email: [dbe@durhamnc.gov](mailto:dbe@durhamnc.gov)**

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City of Durham in its financial assistance agreements with the U.S. Department of Transportation.

This policy statement has been disseminated to the Durham City Council, the City of Durham employees, all contractors and subcontractors with whom the agency does business, to disadvantaged business organizations, non-disadvantaged business organizations and community organizations in the surrounding areas. The policy statement is also posted on the agency's website at [www.godurhamtransit.org](http://www.godurhamtransit.org).

### A. Objectives (49 CFR Part 26.1)

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing 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 marketplace outside the DBE Program.
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

## B. Applicability (49 CFR Part 26.3)

The City of Durham is the recipient of federal financial assistance from the United States Department of Transportation (US-DOT), acting through such agencies as the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA).

## C. Definitions (49 CFR Part 26.5)

The City of Durham will adopt the definitions contained in 49 CFR Part 26.5 for this DBE Program.

## D. Non-Discrimination Requirements (49 CFR Part 26.7)

The City of Durham shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex or national origin.

In administering its DBE Program, the City of Durham shall 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 this program with respect to individuals of a particular race, color, sex or national origin.

## E. Record Keeping Requirements

### *Reporting to FTA (26.11(b))*

The City of Durham will submit the Uniform Report of DBE Commitments/Awards and Payments form Bi- annually. Submission of the first half of the report (10/1 - 3/31) is due June 1 and the second half of the report (4/ 1- 9/30) is due December 1.

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

The City of Durham has created and maintained 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 bidders' list approach to calculate overall goals. The bidders list will include the firm's name, address, firm's status as a DBE or non-DBE, age of firms; and the annual gross receipts of the firms. We will collect this information by requiring prime bidders to report the names and addresses of all firms who quote to them on subcontracts. The form for collecting this information is shown in the Attachments.

## F. Federal Financial Assistance Agreement (49 CFR Part 26.13)

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

### *Assurance 49 CFR Part 26.13(A)*

The City of Durham shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federally assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City of Durham shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of federally assisted contracts, the City of Durham'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 City of Durham of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear verbatim in each financial assistance agreement signed by the City of Durham.

### *Contract Assurance: 49 CFR Part 26.13(B)*

The City of Durham will ensure that the following clause is placed in every federally assisted contract and subcontract:

The contractor, sub-recipient, or sub-contractor 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 federally 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. Some of these remedies may include, but not be limited to, imposing liquidated damages, or withholding payments, as may be appropriate.



# ADMINISTRATIVE REQUIREMENTS

## DBE Program Updates (49 CFR Part 2621)

Since the City of Durham has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, the City of Durham will continue to implement this program until all funds from DOT financial assistance have been expended. The City of Durham will provide to DOT any updates representing significant changes in the program.

## Policy Statement (49 CFR Part 26.23)

The policy statement is located on page 6 of this document.

## DBE Liaison Officer

The City of Durham has designated the following individual as its DBE Liaison Officer:

DBE Liaison Officer  
101 City Hall Plaza, 4th Floor  
Durham, NC 27701  
P: (919) 560-4366, ext. 36404  
Email: [dbe@durhamnc.gov](mailto:dbe@durhamnc.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and will work closely with staff and City Management to ensure that the City of Durham complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Director of Transportation concerning DBE Program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment 1 of this program.

## General Duties

1. Developing, managing, and implementing the DBE Program on a day-to-day basis
2. Advising the fixed route and Paratransit Managers on DBE matters and achievements
3. Acting as a liaison to the Uniform Certification Process (UCP) in North Carolina

## Outreach and Education

1. Providing outreach to DBEs and community organizations to advise them of opportunities
2. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance
3. Planning and participating in DBE training seminars
4. Providing assistance to DBEs in overcoming barriers in the procurement process such as inability to obtain financing or technical assistance

## Contract and Procurement Activities

1. Development of a budget for the implementation of coordinated program elements
2. Facilitating liaisons with the SBA and other management and technical assistance groups to maximize assistance to DBEs
3. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner
4. Identifying contracts and procurements so that DBE goals are included in solicitations

5. Participating in pre-bid meetings to provide firms an opportunity to inquire about the City of Durham’s DBE requirements
6. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance
7. Placing bid notices in local newspapers, especially publications focused toward the DBE community
8. Participating in a statewide Unified Certification Program in accordance with 49 CFR, Part 26

## Goal Setting

1. Working with staff to set overall annual DBE goals and project specific DBE goals
2. Identifying contracts and procurements so that DBE goals are included in solicitations

## Monitoring and Compliance

1. Gathering and reporting statistical data and other information required by DOT
2. Monitor overall DBE participation, adjusting overall goals and means of achievement as needed
3. Analyzing progress toward attainment of DBE goals and identifies ways to improve progress
4. Reviewing third party contracts and purchase requisitions for compliance with this program
5. Identifying interior barriers to DBE participation and implementing strategies to overcome it
6. Advising the Fixed Route and Paratransit managers on DBE matters and achievements

Other City of Durham staff also assist the DBELO with DBE Program implementation including, the fixed route and Para Transit managers, City's Project managers, Finance & Administrative, Purchasing, and Legal staff. Some of their responsibilities include:

1. Providing information to the DBELO on contracting opportunities and purchasing opportunities, together with a breakdown of subcontracting opportunities
2. Consulting with the DBELO on procurement policies and other requirements
3. Explaining the DBE participation requirements at pre-bid and pre-proposal conferences
4. Ensuring that solicitations contain the requisite clauses and goals
5. Reviewing contract provisions to assure that they comply with applicable law

## DBE Financial Institutions

It is the policy of the City of Durham to investigate the full extent of services offered by financial institutions that are 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.

To date we have identified the following such institution.

Mechanics & Farmers Bank  
 James H. Sills, III (Manager)  
 116. W Parrish St  
 Durham, NC 27701  
 P: (919) 687-7803  
 F: (919) 687-7821

Information on the availability of such institutions can be obtained from the DBELO.

## Prompt Payment Mechanisms

### Prompt Payment (26.29(a))

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contract receives from the City of Durham. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) 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 City of Durham. This clause applies to both DBE and non-DBE subcontracts.

### Retainage

The prime contractor agrees to return retainage payments to each subcontractor under this prime contract for satisfactory performance within seven 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 City of Durham. This clause applies both to DBE and non-DBE subcontracts.

### Monitoring Payments to DBEs

The City of Durham utilizes the Finance Department to process all invoices and payments. The City of Durham has staff dedicated solely to the payment of contractor and the tracking of retainage. The staff makes use of finance software with accounts payable modules that track this information. Additionally, project managers are assigned to all projects, who track retainage payments and invoices within their departments.

### Directory (49 CFR Part 26.31)

The City of Durham is a member (but non-certifying member) of the North Carolina Unified Certification Program (UCP). The City of Durham utilizes the statewide directory maintained and updated by the North Carolina Department of Transportation's (NCDOT) that identifies all firms eligible to participate as DBEs. The NCDOT serves as the lead certifying agency for all DBE firms seeking work on City of Durham contracts. The statewide UCP directory lists the firm names, addresses, telephone numbers, and types of work the firm has been certified to perform as a DBE. The City of Durham uses the directory as the primary resource in developing overall and contract-specific DBE goals and conducting outreach and other activities to promote DBE participation in U.S. DOT contracts. The NCDOT updates the electronic directory by including additions, deletions, and other changes as soon as they are made. The directory can be accessed through the NCDOT website at: <http://www.ncdot.org>.

### Over-Concentration (49 CFR Part 26.33)

The City of Durham has not identified that over-concentration exists in the types of work that DBEs perform.

### Business Development and Mentorship Program

The City of Durham has not established a business development program. We will re-evaluate the need for such a program three years at the time we consider our triennial overall DBE participation goal.

### Monitoring and Enforcement Mechanisms

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

Disadvantaged Business Enterprise (DBE) Program

1. The City of Durham 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 49 CFR Part 26.107.
2. The City of Durham will consider similar action to the extent permitted by applicable law, including responsibility determinations in future contracts. The City of Durham may impose such remedies as are available under federal, state and local law regulations for non-compliance with the DBE regulation by a participant in our procurement activities. Such remedies may include, but are not limited to, withholding of progress payments and contract retention, imposition of liquidated damages, and termination of the contract in whole or in part.
3. The City of Durham will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. The City of Durham shall monitor and track the actual DBE participation through contractor and subcontractor reports of payments, and other appropriate monitoring. The City of Durham shall also ensure that DBE participation is counted toward contract goals and the overall annual goal in accordance with the regulations.
4. The City of Durham will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. The City of Durham may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.
5. The City of Durham will certify that it has reviewed contracting records and monitored work sites (within the state) to ensure that work committed to DBEs at contract award or as a result of modification to the contract is actually performed by the DBEs to which the work was committed. Monitoring may consist of scheduled or unscheduled project site visits.

# SMALL BUSINESS PLAN – AMENDMENT

## Objectives (49 CFR Part 26.39)

The purpose of the Small Business Participation Plan is to provide the maximum practicable opportunity for DBEs and small businesses to have access to The City of Durham's contracting opportunities. The small business program element will facilitate competition and create additional opportunities for DBEs and small businesses. The City of Durham is committed to ensuring that qualified DBEs and small businesses have equal access to contracting opportunities. The City of Durham will meet its objectives using a combination of the following methods and strategies:

1. **Unbundling:** The City of Durham, where feasible may unbundle projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The City of Durham will review each ETA-assisted contract to determine whether portions of the project could be unbundled or bid separately. The determination will be made based on the estimated availability of small businesses the ability to provide the specific scope of work and will consider any economic or administrative burdens which may be associated with unbundling. Correspondingly, The City of Durham will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses. The City of Durham will assist prime contractors or prime consultants in identifying portions of work that may be unbundled and performed by small businesses.
2. **Identify components:** The City of Durham will review each contract and identify components of the work which represent subcontracting opportunities where practicable and identify the availability of small businesses to participate in proportion to total available subcontractors. Prime contractors will be encouraged to consider small businesses for components of the work for which there is a known supply of ready, willing, and able small businesses including DBE subcontractors, in preparing their bids.
3. **Outreach and technical assistance:** The City of Durham staff participates in business outreach workshops, conferences and other events conducted by local and non-profit agencies. Outreach includes the North Carolina Department of Transportation Annual Transportation Conference; local Chamber events; Minority Enterprise Development week; HUB Contractors Reception. The City of Durham also advertises contracting opportunities through various means, including local newspapers, minority-based publications and trade publications as well on its website. The City of Durham will monitor each method for effectiveness and make necessary adjustments, and efforts as needed based on the program objectives.

## Definitions

**Small Business** - A small business is an existing small business as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR, Part 121). Small businesses must meet current SBA size standards appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. A firm is not an eligible small business in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

**Disadvantaged Business Enterprise** - A DBE is a for-profit, small business that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and meets all criteria under 49 CFR, Part 26.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if she or he has a personal net worth exceeding \$1.32 million (excluding the individual's ownership interests in the small business concern and his or her primary residence).

The firm must be certified by the North Carolina Department of Transportation (NCDOT in accordance with 49 CFR, Part 26.)

For the purposes of the small business element of the City of Durham's DBE Program, small businesses which are owned and controlled by socially and disadvantaged individuals will be encouraged to seek DBE certification. Only certified DBE firms will be counted towards DBE race-neutral participation on FTA-assisted contracts.

## Certification and Verification Procedures

The City of Durham will accept the following certifications for participation in the small business element of its DBE program with applicable stipulations:

**NCDOT- DBE Certification:** Certification by the NCDOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the NCDOT.

**SBA 8(a) Business Development Certification** (as described in 13 CFR Parts 121 and 124) will require submittal of three years of business tax returns.

## Program Assurances

The DBE Program, including its small business element is not prohibited by state law; Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;

1. There are no geographical or local preferences or limitations imposed on any DOT-assisted contracts and the DBE Program is open to small businesses regardless of their location
2. There are no limits on the number of contracts awarded to firms participating in the DBE Program and every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses
3. Aggressive steps will be taken to encourage minority and women-owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified

## Implementation Schedule

The City of Durham will implement the small business element of the Small Business Plan after submitting the plan to FTA for approval. The City of Durham will implement the plan within five (5) months after FTA's approval.

# GOALS, GOOD FAITH EFFORTS, AND COUNTING

## Set-Asides or Quotas (49 CFR Part 26.43)

The City of Durham does not use quotas in any way in the administration of this DBE Program. The City of Durham will not use race or gender-conscious set-aside contracts for DBEs on DOT-assisted contracts, except that, in limited and extreme circumstances, when no other method could be reasonably expected to remedy egregious instances of discrimination. The City of Durham may implement race and gender-neutral set-asides to facilitate the participation of small businesses on DOT-assisted contracts.

## Overall Goals (49 CFR Part 26.45,47)

In accordance with 49 CFR Part 24.45(f) the City of Durham will submit its goal to FTA on August 1, every three years. A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment A, to this program. Before establishing the overall goal the City of Durham will consult with minority, women's and general contractor groups, community organizations, etc., to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts to establish a level playing field for the participation of DBEs.

Following the consultation, the City of Durham will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during regular business hours at the City of Durham main office for 30 days following the date of the notice, and informing the public that the City of Durham will accept comments on the goals for 45 days from the date of the notice. The City of Durham will publish the notice in local newspapers, minority-focused media, trade publications, and on the City of Durham's website.

The overall goal submission to FTA will include a summary of information and comments (if any) received during the public participation process and responses. The City of Durham develops overall goals on October 1 every third year unless it has received other instructions from the FTA and/or applicable law. If the City of Durham establishes a goal on an individual project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

In accordance with 49 CFR Part 26.47(c), should the City of Durham fail to attain its overall goal as shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year the City of Durham will submit a (1) detailed analysis and action plan to the FTA within 90 days of the end of the fiscal year. The analysis will detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year; (2) and establish specific steps and milestones to correct the problems identified in the analysis.

## Contract Goals (49 CFR Part 26.51(D-G))

The City of Durham will use contract goals to meet any portion of the overall goal the City of Durham 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, the City of Durham will establish contract goals only on those DOT-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).

The City of Durham will establish individual contract goals on a contract-by-contract basis by the DBELO in conjunction with City of Durham staff. Contract goals will be determined by considering the total dollar value of potential subcontract awards to DBEs, the total estimated dollar value of potential subcontract awards to DBEs, the total estimated dollar value of the prime contract, the scope of work to be performed, the availability of certified DBEs to perform the necessary work, and past experience on similar contracts.

## Transit Vehicle Manufacturers Goals (49 CFR Part 26.49)

The City of Durham requires 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, 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 element of the program.

## Good Faith Efforts Procedures (49 CFR Part 26.53 (A-F))

### Demonstration of Good Faith Efforts

The obligation of the bidder is to make good faith efforts to achieve Triangle Transit's DBE goal. The bidder can demonstrate that it has done so by meeting the contract goal or documenting its good faith efforts.

All bidders agree, by the submission of a bid for work on a project for which a contract is to be awarded by the City of Durham, to ensure that they will not discriminate against DBEs in assembling contract bids and that where there are contract goals, that they will either present a bid that meets the goals or provide documentation of good faith efforts made to meet the goals. Failure to make good faith efforts and to adequately document such efforts to the City of Durham will be grounds for disqualifying a bid as non-responsive.

Bidders shall not discriminate on the basis of race, color, national origin or gender in the award and performance of contracts. The City of Durham shall also ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before the City of Durham commits to the performance of the contract by the bidder.

### Information to be Submitted

The City of Durham treats bidder's compliance with good faith efforts requirements as a matter of bid responsiveness. All DBE participation and good faith efforts must be identified during the bidding process. Any increase in DBE participation which occurs after the bidding process will not be considered in determining the bidder's achievement of the verifiable goal or its good faith efforts to achieve the goal. The DBELO in collaboration with City of Durham staff shall make the initial determination as to whether or not the bidder has made sufficient good faith efforts. In making this determination, the DBELO will only consider documentation provided during the bidding process.

Each solicitation for which a contract goal has been established will require the bidders 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 and signed documentation of a commitment by the bidder to use a DBE sub-contractor 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

The City of Durham shall use fair and reasonable judgment to determine whether good faith efforts have been made to attain established contract goals. The following criteria will be considered and should be addressed point by point in the bidder's good faith efforts submission:

1. Whether the bidder attended any pre-bid, pre-award or other meetings scheduled by the City of Durham to inform DBEs of contracting and subcontracting opportunities and informed DBEs of contracting and subcontracting opportunities
2. Whether the bidder advertised in general circulation, trade association, and minority-focused media concerning subcontracting opportunities
3. Whether the bidder provided timely written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited; such notice shall include sufficient information about the project and work to be subcontracted to allow the DBE to make an informed response
4. Whether the bidder follow-up initial solicitations of interest by personal or telephone contact to DBEs to determine with certainty whether or not the DBEs were interested
5. Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of DBE participation (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation)
6. Whether the bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract
7. Whether the bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities
8. Whether the bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the City of Durham or the bidder
9. Whether the bidder effectively used the services of available minority community organizations; local, state, and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs
10. The bidder's record for subcontracting with DBEs and prior contracts as well as its utilization in its bid of subcontractors and suppliers who would qualify as DBEs

## Administrative Requirements

Within five (5) days of being informed by the City of Durham that it is not responsive because it has not documented good faith efforts, a bidder may request administrative reconsideration. The bidder should make this request in writing to the following administrative reconsideration official.

Director of Transportation  
 101 City Hall Plaza, 4th Floor  
 Durham NC, 27701  
 (919) 560-4366  
[transportation@durhamnc.gov](mailto:transportation@durhamnc.gov)

The reconsideration official will not have played any role in the original determination that the bidder did not document good faith efforts to do so. The bidder will have the opportunity to meet in person with the reconsideration

official to discuss whether it met the goal or made adequate good faith efforts to do so. The reconsideration official will send the bidder a written decision on the reconsideration, explaining the basis for the decision. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

## Good Faith Efforts When a DBE is Replaced

The City of Durham 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. The prime contractor must notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, the prime contractor must obtain the City of Durham's 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, the City of Durham may stop all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City of Durham may terminate for default.

1. The City of Durham requires that prime contractors not terminate a DBE subcontractor (or an approved substitute DBE firm) on a contract without the prior written consent of the City of Durham. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
2. The City of Durham may provide such written consent only if the City of Durham agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm.

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

1. The listed DBE subcontractor fails or refuses to execute a written contract
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal Industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, 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 CFR Parts 180, 215 and 1,200 or applicable state law
6. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal
7. The listed DBE is ineligible to receive DBE credit for the type of work required
8. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract
9. The City of Durham has determined that the listed DBE subcontractor is not a responsible contractor
10. Other documented good cause that the City of Durham determines 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 the City of Durham 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 City of Durham of its intent to request to terminate and/or substitute, and the reason for the request.

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

The City of Durham will include the following language in all bid documents to notify the bidder/offeror's of their requirement to make good faith DBE recruitment efforts.

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 Durham 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 requirement of this bid specification. These requirements apply to all bidder/offerors, including those who qualify as a DBE. A DBE contract goal of 8 % 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 commitments to use a DBE subcontractor whose participation it submits to 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 (49 CFR Part 26.55)

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

1. When a DBE participates on a contract, the City of Durham will count only the value of the work actually performed by the DBE toward the DBE goal.
2. Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces; include the cost of supplies and materials obtained by the DBE for the work of the contract; and include supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
3. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the City of Durham determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work will be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

5. When a DBE performs as a participant in a joint venture, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. GoDurham will determine if a contractor is performing a commercially useful function by considering the following:
  - a. A DBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether DBE is performing a commercially useful function, GoDurham will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.
  - b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, we will examine similar transactions, particularly those in which DBEs do not participate.
  - c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, we will presume that it is not performing a commercially useful function.
  - d. When a DBE is presumed not to be performing a commercially useful function as provided in the above paragraph of this section, the DBE may present evidence to rebut this presumption. We will determine if the evidence presented provides proof to the extent that we rescind our original decision. A reversal decision will only be made when it is determined that the firm is performing a commercially useful function given the type of work involved based on prevailing and normal industry practices.
  - e. In accordance with 49 CFR Part 26, the City of Durham decisions on commercially useful function matters are subject to review by FTA but will not be administratively appealable to DOT.
  - f. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(1) of 49 CFR Part 26.
  - g. The City of Durham will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward our overall goal.
  - h. The City of Durham will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or our overall goal until the amount being counted toward the goal has been paid to the DBE.

# CERTIFICATION

## Certification Process and Decisions (49 CFR Part 26.21 – 26.83)

The City of Durham (the City of Durham) is a member of the Unified Certification Program (UCP) administered by the North Carolina Department of Transportation (NCDOT). Certification decisions will be made using the process and standards of 49 CFR, Part 26.

## Unified Certification Program

The City of Durham is a member of the Unified Certification Program (UCP) administered by the North Carolina Department of Transportation (NCDOT). NCDOT is the only agency within the state which certifies DBE firms. The NCDOT may certify firms doing business in the state of North Carolina. Firms whose primary place of business is outside the State of North Carolina can be certified provided that the firm had previously obtained DBE certification from its home state UCP.

## Certification Appeals (49 CFR Part 26.89)

Any firm or complainant may appeal NCDOT's certification decision to the US DOT. Such appeals may be sent to:

U.S. Department of Transportation Office of Civil Rights  
1200 New Jersey Ave., S.E.  
Washington, DC 20590

# COMPLIANCE AND ENFORCEMENT

## Information, Confidentiality, Cooperation (49 CFR Part 26.109)

The City of Durham will safeguard from disclosure to third party's information that meets the requirements of confidential business information, established by applicable 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

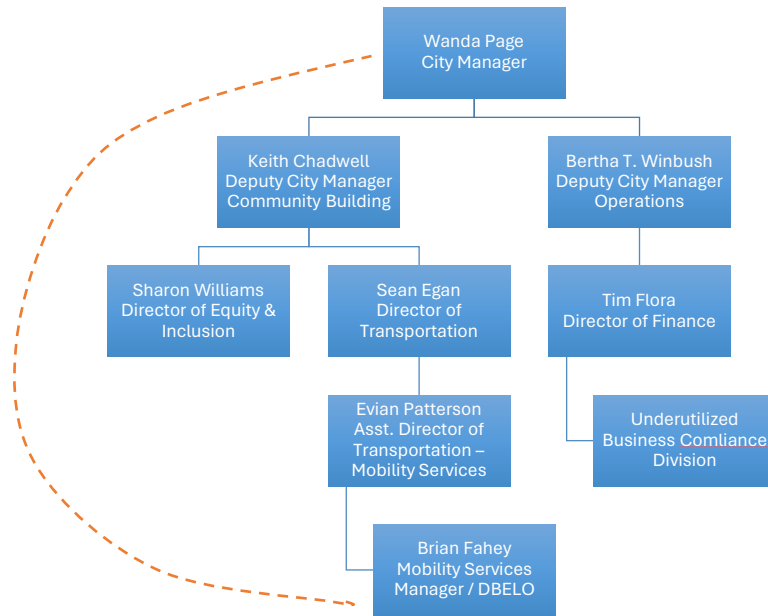
The City of Durham will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Durham or the FTA. This reporting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

The City of Durham will monitor payments to DBEs. The City of Durham 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.

# EXHIBITS

- A. ORGANIZATION CHART
- B. LINK TO DBE DIRECTORY
- C. MONITORING AND ENFORCEMENT MECHANISMS
- D. FORMS FOR DEMONSTRATION OF GOOD FAITH EFFORTS
- E. LINK TO 49 CFR PART 26

# Exhibit A. Organization Chart





## Exhibit B. Link to DBE Directory

The most current database of DBE firms serving the state of North Carolina can be found at:

<https://www.ebs.nc.gov/VendorDirectory/VendorDirectoryDBE.csv>.

# Exhibit C. Monitoring and Enforcement Mechanisms



The City of Durham has available several remedies to enforce the DBE requirements contained in its contracts, including but limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.
2. Liquidated damages to prime contractors as specified in contract terms for commitment to awarding sub-contracts to DBE firms.
3. Monitor records of all progress payments to DBEs through monthly reports from prime contractor. Records will be periodically verified by obtaining certified statements from DBE subcontractors
4. Monitor progress of DBE's work through on-site reviews and communications with DBEs.
5. Conduct any additional investigation that may be necessary due to lack of proper record keeping; failure of the prime contractor to cooperate; failure of DBEs to cooperate; visible evident of unsatisfactory performance; other evidence as may warrant further investigation.

In addition, the federal government has available several enforcement mechanisms 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



**DBE Compliance Monitoring Report**

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

Type of Work: \_\_\_\_\_

Contract Start Date: \_\_\_\_\_ Contract End Date: \_\_\_\_\_

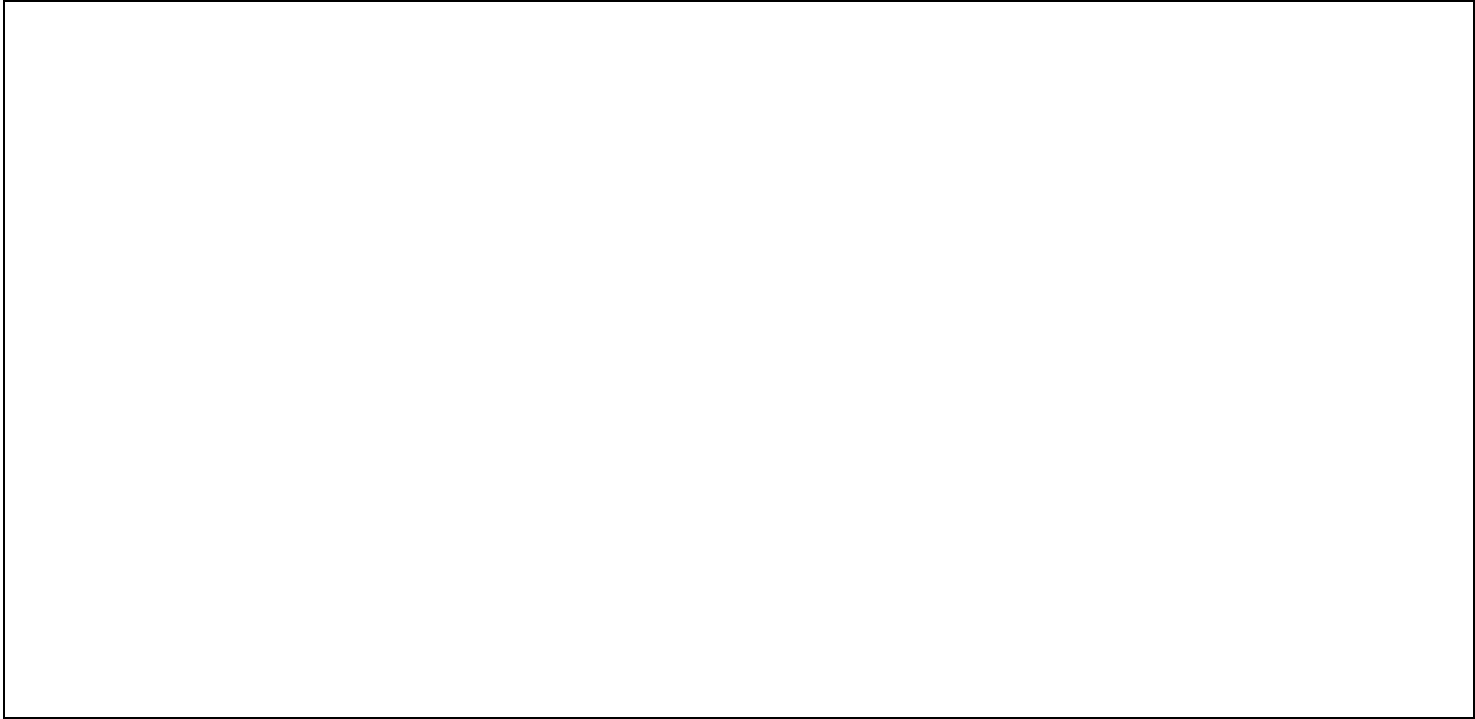
% of Work Completed: \_\_\_\_\_ Amount Paid To Date: \_\_\_\_\_

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

Contact Person: \_\_\_\_\_

Contact Number: \_\_\_\_\_

Inspector: _____		Location: _____
Item	(O) Satisfied (X) Requires Action (N/A) Not Applicable	Comments
Work Start Time		
Speed of Work		
Communication with contractor during project		
Number of people working		
Safety compliant		
Type of material used for work		
Quality of work done		
Hazards signals, signs, and tags used during work		
Time work was completed		
Overall satisfaction of job done		
<b>Please provide any additional comments in the box below.</b>		



## Exhibit D. Demonstration of Good Faith Efforts



**Disadvantaged Business Enterprise (DBE) Utilization**

The undersigned bidder/offeror has satisfied the requirement of the bid specification in the following manner.

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

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_% DBE utilization on this contract and shall submit documentation demonstrating good faith efforts toward this goal.

Name of Bidder/Offeror’s Firm: \_\_\_\_\_

State Registration Number: \_\_\_\_\_

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



**Letter of Intent**

Name of Bidder/Offeror’s Firm:	
Address:	
Phone Number:	
Name of DBE Firm:	
Address:	
Phone Number:	
Estimated Dollar Value of Work	\$
Description of the work to be completed.	
The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.	
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

\_\_\_\_\_

Printed Name

\_\_\_\_\_

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.



## Exhibit E. Link to 49 CFR PART 26

The most current copy of 49 CFR Part 26 can be found by going to the following web address:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>