



Tyler Transit

**DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM**

49 CFR Part 26

Revised 12/13/2019

Revised 11/27/2015

Contents

Section 26.1, 26.23 Objectives and Policy Statement	4
SUBPART A – GENERAL REQUIREMENTS	5
Section 26.1 Objectives	5
Section 26.3 Applicability	5
Section 26.5 Definitions.....	5
Section 26.7 Non-discrimination Requirements.....	5
Section 26.11 Record Keeping Requirements	5
Bidders List: 26.11(c)	5
Section 26.13 Federal Financial Assistance Agreement.....	5
Assurance: 26.13(a)	6
Contract Assurance: 26.13b	6
SUBPART B - ADMINISTRATIVE REQUIREMENTS	6
Section 26.21 DBE Program Updates.....	6
Section 26.23 Policy Statement	6
Section 26.25 DBE Liaison Officer (DBELO).....	7
Section 26.27 DBE Financial Institutions.....	8
Section 26.29 Prompt Payment Mechanisms.....	8
Section 26.31 Directory	9
Section 26.33 Over-concentration	9
Section 26.35 Business Development Programs	9
Section 26.37 Monitoring and Enforcement Mechanisms.....	9
Section 26.39 Fostering small business participation.....	10
SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING	10
Section 26.43 Set-asides or Quotas.....	10
Section 26.45 Overall Goals	10
Amount of Goal	10
Consultation and Public Participation.....	11
Methodology Used to Calculate Overall Goal.....	11
Breakout of Estimated Race-Neutral & Race Conscious Participation	15
Section 26.47 Failure to meet overall goals.....	15
Section 26.49 Transit Vehicle Manufacturers Goals	15
Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation	15
Section 26.51(d-g) Contract Goals	16
Section 26.53 Good Faith Efforts Procedures.....	16

Demonstration of good faith efforts (26.53(a) & (c)) 16

Information to be submitted (26.53(b)) 16

Administrative reconsideration (26.53(d))..... 17

Good Faith Efforts when a DBE is replaced on a contract (26.53(f)) 17

Section 26.55 Counting DBE Participation 19

SUBPART D – CERTIFICATION STANDARDS 19

 Section 26.61 – 26.73 Certification Process 19

SUBPART E – CERTIFICATION PROCEDURES 20

 Section 26.81 Unified Certification Programs 20

 Section 26.83 Procedures for Certification Decisions 20

 Re-certifications 26.83(a) & (c) 20

 “No Change” Affidavits and Notices of Change (26.83(j))..... 20

 Personal Net Worth, (26.67(b)) 21

 Section 26.86 Denials of Initial Requests for Certification 21

 Section 26.87 Removal of a DBE’s Eligibility 21

 Section 26.89 Certification Appeals..... 21

SUBPART F – COMPLIANCE AND ENFORCEMENT 22

 Section 26.109 Information, Confidentiality, Cooperation 22

 Monitoring Payments to DBEs 22

Attachments 23

 Attachment 1 Organizational Chart 23

 Attachment 9 Regulations: 49 CFR part 26..... 24

Section 26.1, 26.23 Objectives and Policy Statement

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

It is the policy of City of Tyler to ensure that DBEs as 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.

James Torres, Tyler Transit Assistant General Manager has been delegated as the DBE Liaison Officer (DBELO) for Tyler Transit. In that capacity James Torres 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 City of Tyler in its financial assistance agreements with the Department of Transportation.

City of Tyler and Transit Department have disseminated this policy statement to City of Tyler Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

- This Policy Statement will be prepared as a handout and made available at pre-bid conferences, or outreach meetings conducted by City of Tyler.
- Copies of the Policy Statement will be posted on City of Tyler website and mailed to all of the agencies or organizations during the development of the DBE goal methodology. This will make City of Tyler policy available to additional small, minority and women-owned business development agencies.



Robert Gil III, General Manager

December 13, 2019

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

City of Tyler 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

City of Tyler will adopt the definitions in section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

City of Tyler 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, City of Tyler 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:

City of Tyler - We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

City of Tyler will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The Bidders List form will include the name, address, DBE and non-DBE status, age of firm and annual gross receipts. This form will be provided to primary contractors at the time they purchase project plans for distribution to all sub-contractors. A sample of this form is provided in Attachment 3.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

City of Tyler 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. City of Tyler'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 City of Tyler of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 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 City of Tyler deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since City of Tyler has received a grant of \$250,000 or more for FTA funding for planning and operating assistance and capital (excluding bus purchases) in a federal fiscal year, we will continue to carry out this program until all funds from FTA financial assistance have been expended. We will provide to FTA updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding \$250,000 in FTA funds in that Federal fiscal year.

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 the following individual as our DBE Liaison Officer:

James Torres
Assistant General Manager
Tyler Transit
210 E Oakwood
Tyler, TX 75702
903-533-8057
jtorres@tylertexas.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that City of Tyler complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Transit Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials.

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) and monitors results.
6. Analyzes City of Tyler's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO or governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in Texas.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains City of Tyler's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

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

The DBELO has contacted various financial institutions in the area and determined that there are no institutions owned and controlled by social or economically disadvantaged individuals in the community.

Section 26.29 Prompt Payment Mechanisms

City of Tyler 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 30 days from the receipt of each payment the prime contractor receives from City of Tyler. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of City of Tyler. This clause applies to both DBE and non-DBE subcontractors.

If the prime contractor fails to make a payment to a subcontractor as described above, the subcontractor shall provide a written notice of this failure to both the prime contractor and to City of Tyler. The described written notices must be mailed certified mail, return receipt requested.

On notice that payment has not been made, City of Tyler shall retain all amounts equaling the delayed or postponed payment to subcontractor pending a response from the prime contractor. The prime contractor's response shall be in writing and mailed within 10 working days from the date of the subcontractor's notice. The response shall state that City of Tyler should either release payment to the subcontractor or continue to retain the subject payment, and then the response shall clearly set forth facts in dispute and good cause for such action.

If the response is not received from the prime contractor within 10 working days, City of Tyler will directly disburse the subject payment to the subcontractor. Any delay or postponement of payment due to a dispute may occur only for good cause. City of Tyler shall provide to both the prime contractor and subcontractor written approval for the delay of payment if good cause has been described. Whether good cause exists is to be determined solely by City of Tyler.

In the event that the payment dispute remains unresolved, the disputing parties agree to go to mediation. The mediation process will allow the disputing parties, with the assistance of a mediator, to negotiate toward a resolution of the conflict. The mediator shall be an impartial individual engaged by the disputing parties through an agreement evidenced by

a written record. All applicable sections of Section 154 of the Texas Civil Practices and Remedies Code shall apply to mediation processes mandated under this agreement, including confidentiality of communications.

If the parties reach settlement of the dispute through mediation, written confirmation that settlement has been reached must be presented to City of Tyler Grant Administrator of DBELO before related monies will be released to the prime contractor. If the parties are unable to settle the dispute through mediation, each party may pursue other appropriate legal action; however, City of Tyler will not provide any monies related to the dispute until the controversy is resolved.

This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

City of Tyler maintains a directory identifying all 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 revise the Directory annually. We make the Directory available as follows: www.tylerbus.com then click on the link for [TUCP/DBE Directory](#) or email James Torres (Jtorres@tylertexas.com), 210 E Oakwood, Tyler Texas 75702 for Tyler Transit. The Directory may be found in Attachment 4 to this program document.

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

City of Tyler has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

City of Tyler 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 26.107.

2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments.
4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT reporting form.

Section 26.39 Fostering small business participation

City of Tyler has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

City of Tyler small business program element is incorporated as Attachment 11 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

City of Tyler does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

Amount of Goal

Tyler Transit, the public transportation provider for the City of Tyler Texas, in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, hereby announces its Fiscal Year 2019 through 2021 Disadvantaged Business Enterprise (DBE) goal is 1.00% of the Federal Financial assistance Tyler Transit will expend in DOT-assisted contracts exclusive of Federal Transit Administration (FTA) funds to be used for the purchase of transit vehicles.

Race-Neutral & Race-Conscious Participation

The entire goal will be obtained through race-neutral means. The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a “level playing field” for ready, willing and able DBE’s seeking to participate in U.S. DOT-assisted contracts. Tyler Transit will ensure that DBE’s have the maximum opportunity to compete for and participate in the performance on contracts and subcontracts awarded by the agency. Tyler Transit and its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Tyler Transit contracts.

The goal is based on demonstrable evidence of the availability of ready, willing and able DBE's relative to all business ready, willing and able to participate in U.S. DOT-assisted contracts. It reflects the level of DBE participation that would be expected absent the effects of discrimination.

Consultation and Public Participation

Tyler Transit will make the proposed DBE goal and methodology available through public notice which will be published in Tyler Morning Telegraph. The published public notice will inform the public that the proposed overall goal and its rationale will be available for inspection for 30 calendar days following the date of publication of the notice. The notice will also inform the public that the Federal Transit Administration will accept comments on the goals for 45 calendar days from the date of the publication of the notice. The public notice will include the FTA regional Civil Rights Officer's business address in addition to Tyler Transit's contact information.

Actual Public Participation Notice and Template

Tyler Transit hereby announces its fiscal year 2019-2021 DBE goals for transit construction projects. The proposed goals and goal setting methodology are available for inspection between 8:00am and 5:00pm, Monday through Friday beginning March 4, 2019 through April 17, 2019 at Tyler Transit, 210 E Oakwood, and Tyler Texas 75702.

City of Tyler will accept comments on the DBE goals for 45 days beginning March 4, 2019 through April 18, 2019. Comments can be sent to either of the following addresses:

DBE Directory

James Torres
Disadvantaged Business Enterprise
Liaison Officer (DBELO)
Tyler Area Metropolitan Planning Organization/Tyler Transit
210 E. Oakwood
Tyler, TX 75702

Federal Transit Administration
Civil Rights Staff, ASW-9
2601 Meacham Boulevard
Fort Worth, TX 76137-0009

Notice of opportunity to review the proposed DBE goal was published in the Tyler Morning Telegraph newspaper on January 25, 2019. Comments will be received through March 18, 2019.

Methodology Used to Calculate Overall Goal

Step 1: Develop a Base Figure for the Relative Availability of DBE's

Acting as the primary link between Texas transportation infrastructure and businesses seeking to contract for sector-related activities, the Texas Department of Transportation (TXDOT)

maintains a web-based database for DBE businesses to certify under the Texas Unified Certification Program (TUCP). This is a consolidated and centralized DBE directory for the State of Texas. The TUCP requires interested disadvantaged businesses to complete a certification for federal DBE programs in Texas to one of six certifying agencies within the state.

As part of the goal setting process, Step 1 requires beginning with a base figure for the relative availability of DBE's. The base figure represents the number and relative availability of ready, willing and able DBE firms as compared to all firms ready, willing and able to perform work for Tyler Transit. The formula utilized to calculate this percentage is as follows:

$$\text{Base Figure} = \frac{\text{Ready, willing and able DBE's}}{\text{All firms ready, willing and able}}$$

Tyler Transit is a small urban transit system with the majority of federal funding allocated toward operating and capital expenses that are performed by in-house personnel. Therefore, Tyler Transit very rarely has contracts with sub-contracting opportunities.

To establish the Base Figure, contractible items were identified. In review of the contracting opportunities over the next three fiscal years, it has been determined that the list for FY 2019 through FY 2021 is representative of the contracting opportunities for each of the federal fiscal years under this submission cycle.

Listing the contracting opportunities by NAICS codes, Tyler Transit applied the number of relevant certified DBE's (5) in the Tyler Area MSA listed in the Texas Unified Certification Program (TUCP) as the numerator in the calculation for the base figure. Tyler Transit then applied the number of statewide businesses of the same NAICS codes according to the Census Bureau's County Business Patterns (CBP) database as the denominator (2019) in the base figure calculation (1278).

Based upon the figures above:

$$0.003\% = \frac{5 \text{ DBE's listed by NACIS Code}}{1278 \text{ Available Firms in Tyler MSA by NAICS Code}}$$

Due to the fact that the base figure of 0% would not be in compliance with 49 CFR Part 26, a different methodology was necessary to comply with 49 CFR. A review of the entire Tyler Area MSA was conducted utilizing all NAICS codes which revealed that only twenty-six (26) registered DBE's are located within the Tyler Area MSA region. A similar review was conducted utilizing the Census Bureau's County Business Patterns (CBP) and

all available NAICS codes listed. The review indicated 1,415 registered business's in CBP database utilizing the NAICS code. A Base Figure was recalculated utilizing the same methodology with a larger scope of the NAICS Codes.

26 Registered DBE's in Tyler MSA by all NAICS Codes

0.007% = _____

1,415 Registered Businesses in CBP Database for Tyler MSA

The Base Figure calculation weighs the relative availability of DBE firms to the relative amount of contractible federal funds available for total of all firms in the Tyler MSA. The calculation resulted in a Base Figure of 0.007% of contracting work available for DBE-certified firms.

Weight Table 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)	561162	transit security monitoring	\$800.00	0.0025
2)	238220	HVAC PM service	\$1,360.00	0.0043
3)	561710	Pest control	\$840.00	0.0026
4)	561330	TEMP Agency	\$140,000.00	0.4396
5)	454310	Fuel	\$165,000.00	0.5182
6)	424120	office supplies	\$6,800.00	0.0214
7)	448150	uniforms	\$3,640.00	0.4396
8)	485991			0.0000
9)				0.0000
10)				0.0000
	Total FTA-Assisted Contract Funds		\$318,440.00	1.4282

Step 2: Adjust the Base Figure

After calculating a Base Figure of the relative availability of DBE's and weighing the base figure relative to contracting opportunities, evidence was examined to determine what adjustment if any was needed to the base figure in order to arrive at the overall goal. Tyler Transit considered the lack of certified DBE's in the NAICS work categories and the lack of DBE participation in past contracting opportunities and a determination was made that an adjustment to the base figure is not warranted at this time.

Relative Availability of DBE's by NAICS Code

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)	561162	transit security monitoring	0	8	0.0000
2)	238220	HVAC PM service	0	5	0.0000
3)	561710	Pest control	1	18	0.0556
4)	561330	TEMP Agency	0	68	0.0000
5)	454310	Fuel	4	1165	0.0034
6)	424120	office supplies	0	5	0.0000
7)	448150	uniforms	0	2	0.0000
8)	485991	0	0	8	0.0000
9)	485991	0			
10)	0	0			
Combined Totals			5	1279	0.0039
					Overall availability of DBEs

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

	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1)	561162	transit security monitoring	0.00251	x	0.00000	
2)	238220	HVAC PM service	0.00427	x	0.00000	
3)	561710	Pest control	0.00264	x	0.05556	0.0002
4)	561330	TEMP Agency	0.43964	x	0.00000	
5)	454310	Fuel	0.51815	x	0.00343	0.0015
6)	424120	office supplies	0.02135	x	0.00000	
7)	448150	uniforms	0.43964	x	0.00000	
8)		0	0.00000	x	0.00000	
9)	485991	0	0.00000	x	0.00000	
10)	0	0	0.00000	x	0.00000	
Total						0.0017
Expressed as a % (*100)						0.17%
Rounded, Weighted Base Figure:						0%

Based on the above information, Tyler Transit has set an overall DBE goal of 0.007% in Federal Financial assistance will be expended in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles, for the submission cycle of FY 2019, 2020 and 2021.

Breakout of Estimated Race-Neutral & Race Conscious Participation

Tyler Transit anticipates meeting the overall FY 2019-2021 DBE goal of 1.00% entirely through race-neutral measures. These measures include but are not limited to the following:

- Arranging all possible aspects of solicitations, including delivery schedules, in ways that facilitate DBE participation
- Unbundling of contracts
- Reducing bonding requirements when possible
- Providing guidance on obtaining business assistance in areas such as business management, record keeping, and technical assistance
- Ensuring inclusion of DBE's on Tyler Transit's mailing list for bidders
- Ensuring the widest possible distribution of the DBE Directory which is the TUCP maintained by TXDOT
- Providing guidance on obtaining assistance for start-up businesses

Section 26.47 Failure to meet overall goals

City of Tyler will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If City of Tyler awards and commitments shown on our 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, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) City of Tyler will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FTA for approval.

Section 26.49 Transit Vehicle Manufacturers Goals

(This section is not applicable to City of Tyler at this time)

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

City of Tyler will use contract goals to meet any portion of the overall goal City of Tyler 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.

City of Tyler will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We 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.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder or offer' is to make good faith efforts. The bidder or offer' 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.

James Torres, DBELO for Tyler Transit, is responsible for determining whether a bidder or offer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

City of Tyler treats bidder or offers' compliance with good faith efforts' requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require all bidders/offers to submit the following information at the time of bid:

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

Administrative reconsideration (26.53(d))

Within three (3) business days of being informed by City of Tyler that it is not responsive because it has not documented sufficient good faith efforts, a bidder or offer' may request administrative reconsideration. Bidder offers should make this request in writing to the following reconsideration official: James Torres, Assistant General Manager, 210 E Oakwood, Tyler TX 75702, jtorres@tylertexas.com. The reconsideration official will not have played any role in the original determination that the bidder or offer' did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

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

In this situation, we will require the prime contractor to obtain 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 administrative 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 administrative office may issue a termination for default proceeding.

We will provide such written consent only if we agree, for reasons stated in our 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, non-discriminatory 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 to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined 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 us 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 us, 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 us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), we may provide a response period shorter than five days.

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

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 City OF TYLER 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 has been established for this contract. The bidder or offer' 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 or offer' 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 (6) 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. We will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

City of Tyler 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 ensure that the TUCP makes the certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

James Torres
Assistant General Manager
Tyler Transit
210 E. Oakwood
Tyler, TX 75702
903-533-8057
jtorres@tylertexas.com

Our certification application forms and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

City of Tyler is the member of Texas Unified Certification Program (TUCP) administered by DOT. The TUCP will insure that DBE's meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will ensure the TUCP reviews 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. (Attachment10)

For firms that we ensure TUCP have certified or reviewed and found eligible under Part 26, we will again review their eligibility every three years, on a case by case basis. Firms will be reviewed in the order of percentage of work performed as demonstrated in the table above. The review may require the completion of new certification forms.

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

The TUCP requires all DBEs owners 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 City of Tyler's application for certification.

The TUCP also requires all DBE owners we have certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] 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 [*name of DBE*]'s application for certification, except for any changes about which you have provided written notice to City of Tyler under 26.83(j). [*Name of firm*] 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 \$22.41 million.

The TUCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The TUCP will notify all currently certified DBE firms of these obligations prior to their term of renewal, by mail. 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.

Personal Net Worth, (26.67(b))

All disadvantaged owners of applicant firms and currently certified DBE firms whose eligibility under Part 26 is reviewed are required to submit a statement of personal net worth. Attachment 11 sets forth our personal net worth form and the documentation respondents must submit with it.

Section 26.86 Denials of Initial Requests for Certification

If we deny a firm’s application or decertify it, it may not reapply until 12 months have passed from our action. Attachment 9 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the TUCP will serve as the decision-maker in de-certification proceedings.

Section 26.87 Removal of a DBE’s Eligibility

Procedures in the TUCP Standard Operating Procedures (SOP) as stated below will be recognized as the method of removal of a DBE’s eligibility.

***NO CHANGE AFFIDAVIT** - A certified DBE firm must submit annually, on the anniversary of DBE certification, a No Change Affidavit. A No Change Affidavit is a sworn affidavit affirming that there have been no changes in the firm’s circumstances affecting its size, disadvantaged status, ownership or the control requirements of the regulation, or any material change in the information provided in its application for DBE certification, including the support documentation.*

- a. Each firm will be notified by the TUCP Certifying Partner at least 30 days in advance of its anniversary date, of the annual submission requirement and will be provided with the necessary affidavits to complete and return.*
- b. A firm failing to comply with the annual submission requirement will be notified in writing 30 days from the date that the submission was due, of the TUCP’s intent to decertify the DBE in accordance with §26.87 of the regulation.*
- c. A firm failing to comply with the annual submission requirement will be decertified under the procedures of §26.87.*

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:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Avenue S E
Washington, D.C. 20590
TTY: 202-366-9696
FAX: 202-366-5575

City of Tyler 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

City of Tyler will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. However, City of Tyler is bound by all applicable state freedom laws as set forth in the Texas Government Code, Chapter 551, related to open meeting requirements and Chapter 552, known as the Public Information Act. Generally, meetings called to discuss City Business must be preceded by an agenda posting at least 72 hours prior to the meeting unless an emergency exists, unless an exception to the general rule exists in Chapter D of the act. If a meeting within the definition of the Open Meetings Act is called pursuant to this provision, all applicable posting and recording procedures will be followed.

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

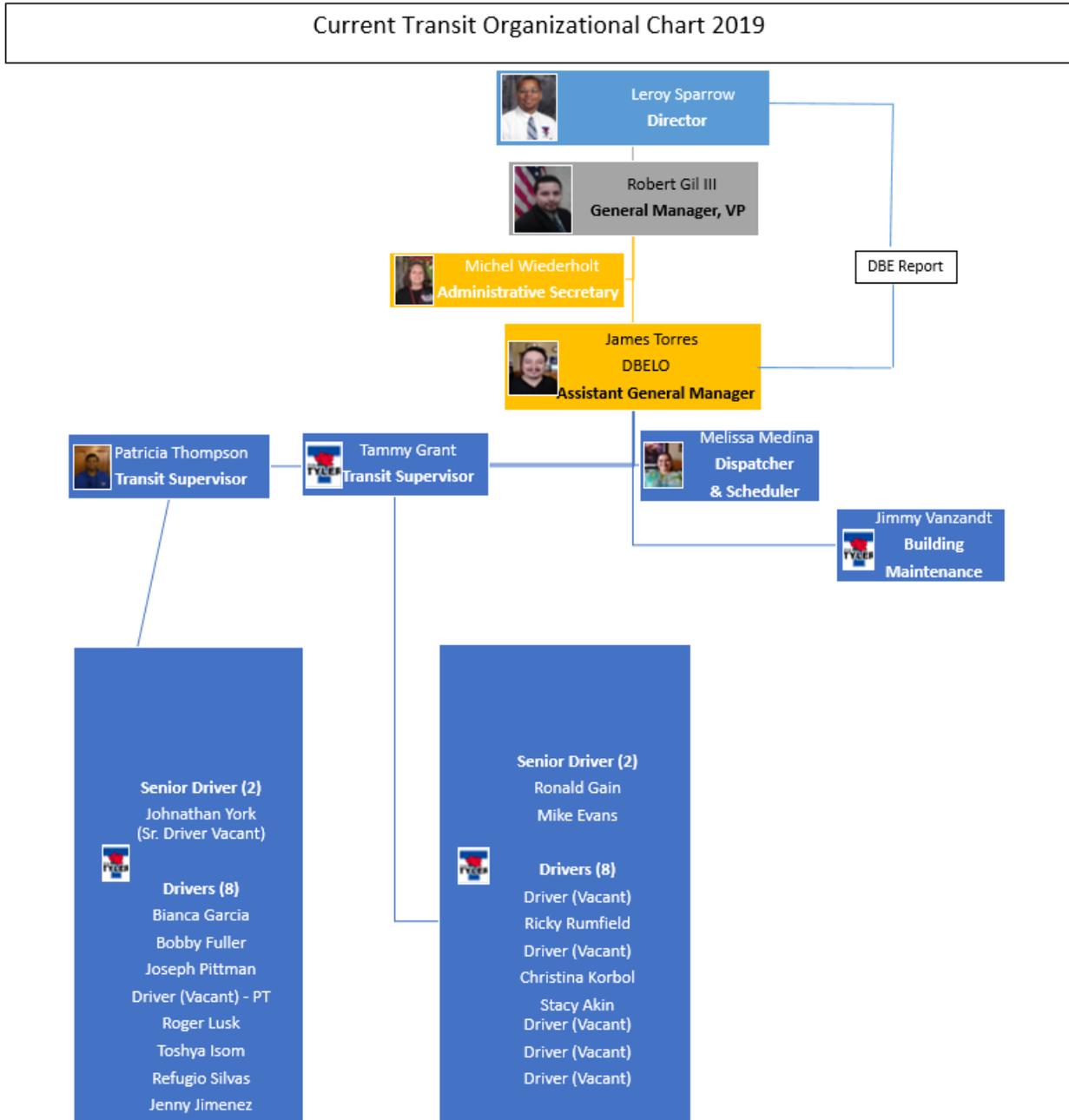
Monitoring Payments to DBEs

City of Tyler 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 City of Tyler or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

Attachments

Attachment 1 Organizational Chart



Attachment 9 Regulations: 49 CFR part 26

Subpart A—General

- §26.1 What are the objectives of this part?
- §26.3 To whom does this part apply?
- §26.5 What do the terms used in this part mean?
- §26.7 What discriminatory actions are forbidden?
- §26.9 How does the Department issue guidance and interpretations under this part?
- §26.11 What records do recipients keep and report?
- §26.13 What assurances must recipients and contractors make?
- §26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- §26.21 Who must have a DBE program?
- §26.23 What is the requirement for a policy statement?
- §26.25 What is the requirement for a liaison officer?
- §26.27 What efforts must recipients make concerning DBE financial institutions?
- §26.29 What prompt payment mechanisms must recipients have?
- §26.31 What information must you include in your DBE directory?
- §26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- §26.35 What role do business development and mentor-protégé programs have in the DBE program?
- §26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- §26.39 Fostering small business participation.

Subpart C—Goals, Good Faith Efforts, and Counting

- §26.41 What is the role of the statutory 10 percent goal in this program?
- §26.43 Can recipients use set-asides or quotas as part of this program?
- §26.45 How do recipients set overall goals?
- §26.47 Can recipients be penalized for failing to meet overall goals?
- §26.49 How are overall goals established for transit vehicle manufacturers?
- §26.51 What means do recipients use to meet overall goals?
- §26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
- §26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

- §26.61 How are burdens of proof allocated in the certification process?
- §26.63 What rules govern group membership determinations?
- §26.65 What rules govern business size determinations?
- §26.67 What rules determine social and economic disadvantage?

- §26.69 What rules govern determinations of ownership?
- §26.71 What rules govern determinations concerning control?
- §26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

- §26.81 What are the requirements for Unified Certification Programs?
- §26.83 What procedures do recipients follow in making certification decisions?
- §26.85 Interstate certification.
- §26.86 What rules govern recipients' denials of initial requests for certification?
- §26.87 What procedures does a recipient use to remove a DBE's eligibility?
- §26.88 Summary suspension of certification.
- §26.89 What is the process for certification appeals to the Department of Transportation?
- §26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

- §26.101 What compliance procedures apply to recipients?
- §26.103 What enforcement actions apply in FHWA and FTA programs?
- §26.105 What enforcement actions apply in FAA programs?
- §26.107 What enforcement actions apply to firms participating in the DBE program?
- §26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

Appendix C to Part 26—DBE Business Development Program Guidelines

Appendix D to Part 26—Mentor-Protégé Program Guidelines

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

Appendix F to Part 26—Uniform Certification Application Form

Appendix G to Part 26—Personal Net Worth Statement