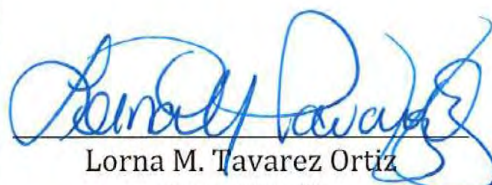



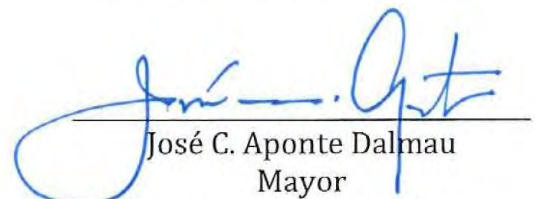
COMMONWEALTH OF PUERTO RICO  
AUTONOMOUS MUNICIPAL GOVERNMENT OF CAROLINA  
ADMINISTRATION AREA  
*Human Resources Department*  
*Equal Employment Opportunity Office*

**FY 2018-2021**  
**DBE Program**  
**Municipality of Carolina**

  
Lorna M. Tavaréz Ortiz  
Executive II  
*Equal Employment Opportunity Office*  
Human Resources Department

  
Nydia Talavera Forty  
Director  
Human Resources Department

  
Manuel I. Mangual Rodríguez  
Manager  
Administration Area

  
José C. Aponte Dalmau  
Mayor  
Municipality of Carolina



June 16, 2017





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## POLICY STATEMENT

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The Municipality of Carolina 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 Municipality of Carolina has received Federal financial assistance from the Department of Transportation, and as a condition of receiving assistance, the Municipality of Carolina has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Municipality of Carolina to ensure that DBE's, are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

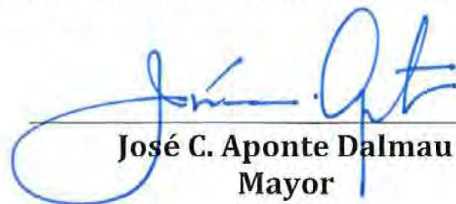
1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms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

Mrs. Nydia Talavera Forty, Director of Human Resources Department has been delegated as the DBE Liaison Officer. In this capacity Mrs. Talavera with Mrs. Lorna M. Tavarez Ortiz, EEO Officer are responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Municipality of Carolina in its financial assistance agreements with the Department of Transportation.

The Municipality of Carolina has disseminated this policy statement to the Municipal Assembly and all the components of our organization. We have distributed this statement to DBE and non-DBE business community that performs work for use on DOT assisted contracts by means of mail and wide circulation press.

7/7/17

Date

  
José C. Aponte Dalmau  
Mayor





## SUBPART A – GENERAL REQUIREMENTS

---

### Section 26.1, 26.23 - Objectives

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

In administering its DBE program, The Municipality of Carolina 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.

The purpose of the DBE Program is to implement the provisions of 49 CFR Part 26, other pertinent regulations, and source legislation. The objectives are:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts in the USDOT's highway, transit, and airport financial assistance programs.
2. To create a level playing field on which DBE's can compete fairly for USDOT assisted contracts.
3. To ensure that USDOT's DBE program is narrowly tailored in accordance with applicable law.
4. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR Part 26 are permitted to participate as DBE's.
5. To help remove barriers the participation of DBE's in USDOT assisted contracts.
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program.
7. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBE's.





## Section 26.3 - Applicability

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

## Section 26.5 - Definitions

The Municipality of Carolina will adopt the definitions contained in Section 26.5 of Part 26 for this program.

**COMMERCIALLY USEFUL FUNCTION (CUT):** means that a DBE is responsible for execution of a distinct element of the work of a contract or subcontractors and carries out its responsibilities by actually performing, managing and supervising the work involved, or provides professional services.

**COMPLIANCE:** means that a recipient has correctly implemented the requirements of this part.

**CONTRACT:** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

**CONTRACT GOAL:** means the percentage of DBE participation established by, if required, for a USDOT-Assisted Contract.

**CONTRACTOR:** means one who participates, through a contract or subcontract (at any tier), in an USDOT-assisted highway, transit, or airport program.

**DEPARTMENT:** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**DTPW (DTOP):** means the Puerto Rico Department of Transportation and Public Works.

**CONSULTANT:** means an individual, firm or partnership who contracts with Municipality of Carolina to provide services for engineering, business management, project management,





surveying, environmental, hazardous materials, subsurface utility engineering, and other services which require a rigorous, logical, science based approach for data acquisition to be use in the development of highway and transportation construction plans.

**DISADVANTAGED BUSINESS ENTERPRISE OR DBE:** means a for-profit small business concern, that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**FOSTERING SMALL BUSINESS PARTICIPATION:** means that is a 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.

**GOOD FAITH EFFORTS:** means efforts to achieve a DBE goal or other requirement of the DBE Program, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

**JOIN VENTURE:** means an association of a DBE firm and one or more firms to carry out a single, for profit business enterprise for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**NAICS:** North American Industrial Classification System – replaces the Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm.

**NONCOMPLIANCE:** means that a recipient has not correctly implemented the requirements of 49 CFR Part 26.

**CRO:** means Civil Rights Office of the DTPW.





**OPERATING ADMINISTRATION (OA):** means any of the following parts of USDOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The “The Administrator” of any OA includes his or her designees.

**OVER-CONCENTRATION:** means a condition in which DBE firms are being utilized in certain types of work to the extent that non-DBEs are unduly burdened from participating in this same type of work.

**PRIMARY INDUSTRY CLASSIFICATION:** means the four digit Standard Industrial Classification (SIC) Code designation that best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual.

**PRIMARY RECIPIENT:** means a recipient to which USDOT financial assistance is given and passes some or all of it on to another recipient.

**PROGRAM:** means any undertaking on a recipient’s part to use USDOT financial assistance, authorized by the laws to which this part applies.

**RACE-CONSCIOUS MEASURE:** means a program that is focused specifically on assisting only DBEs, including women-owned DBEs.

**RACE-NEUTRAL MEASURE:** means a program that is or can be, used to assist all small businesses. For purpose of this part, race-neutral includes gender-neutrality.

**READY, WILLING AND ABLE:** means, for the purpose of setting annual DBE goals, in the context of a DBE or non-DBE business, that it has the necessary license to per Certification of DBE Utilization work on USDOT-assisted contracts in its home state, is not currently suspended or debarred, and has demonstrated its interest in performing work on USDOT-assisted contract by submitting a bid, proposal, or quotation as a prospective prime contractor, subcontractor, supplier, trucker, consultant, or other relevant business entity, on a Puerto Rico USDOT-assisted contract within the current or two (2) previous federal fiscal years, or such shorter duration as established by the Department.

**RECIPIENT:** means any entity, public or private, to which USDOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA or who has applied for such assistance.







**SECRETARY:** means the Secretary of the U.S. Department of Transportation or his/her designee.

**REGULAR DEALER:** means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business, if the person both owns and distribution equipment shall be by a long-term lease agreement and not on an hoc or contract-by-contract basis. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not regular dealer.

**SMALL BUSINESS ADMINISTRATION (SBA):** means the United States Business Administration.

**SMALL BUSINESS CONCERN:** means with respect to firms seeking to participate DBEs in USDOT-assisted contract, a small business concern, as defined pursuant to section 3 of the Small Business act and Small Business Administration Regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).

**SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL:** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

Any individual in the following groups, members of which are reputably presumed to be socially and economically disadvantages;

- a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- b. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- c. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;





- d. "Asian-Pacific American", which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- e. "Subcontinent Asian Americans", which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- f. Women; and
- g. Allow DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

**STATE GOAL:** To determine the Autonomous Municipal Government of Carolina, calculated annually as a percentage of the level of DBE participation in USDOT-assisted contracts.

**DOT-ASSISTED CONTRACTS** - Any contract between a recipient and a contractor (at any level) to which all or part of funds provided to you with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for purchase land.

## **Section 26.7 - Non-Discrimination Requirements**

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

In administering its DBE program, the Municipality of Carolina 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**

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

---

The Municipality of Carolina will report DBE participation on December 1, to the relevant operating administration *FTA* using the Uniform Report of DBE Awards or Commitments and Payments.

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

---

We have a record of bidders. This record has it by the Auction Program and the Equal Employment Opportunity Office keeps track of the companies that are certified DBE and non-DBE. The 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 calculating overall goals. The bidder list includes the name, address, phone number, type of work, DBE non-DBE status, and annual gross receipts of firms.

## **Section 26.13 - Assurances**

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

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

---

We will ensure that the following clause is including in every DOT operating administration assisted contract and subcontract:

**“The Municipality of Carolina 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 Municipality of Carolina shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Municipality of Carolina, 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 Municipality of Carolina its failure to carry out its approved program, the United States Department of Transportation 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.*) Sanctions may include, but not limited to termination of contract, debarment, removal from bid list as deemed appropriate by the Department. Procedures shall be followed as outlined in the Good Faith Efforts evaluation determination”.

### **Contract Assurance: 26.13(b)**

---

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

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

**“The Municipality of Carolina fulfill with the stated specifications in the 49 CFR, Part 26, for the Minority Business Enterprises. For further information may contact the *Equal Employment Opportunity Office* (787) 757-2626 ext. 8243, or write to Government Municipality Autonomous of Carolina, PO Box 8, Carolina, PR 00986-0008”.**

**“To be eligible for contracts award, the bidder shall fulfill with the provision stated in the contract document that require the subcontract of economic and social disadvantage business and the right percentage use of them. No fulfillment of these provisions is enough cause to reject the proposal by the Municipality of Carolina”.**







## SUBPART B – ADMINISTRATIVE REQUIREMENTS

### Section 26.21 - DBE Program Updates

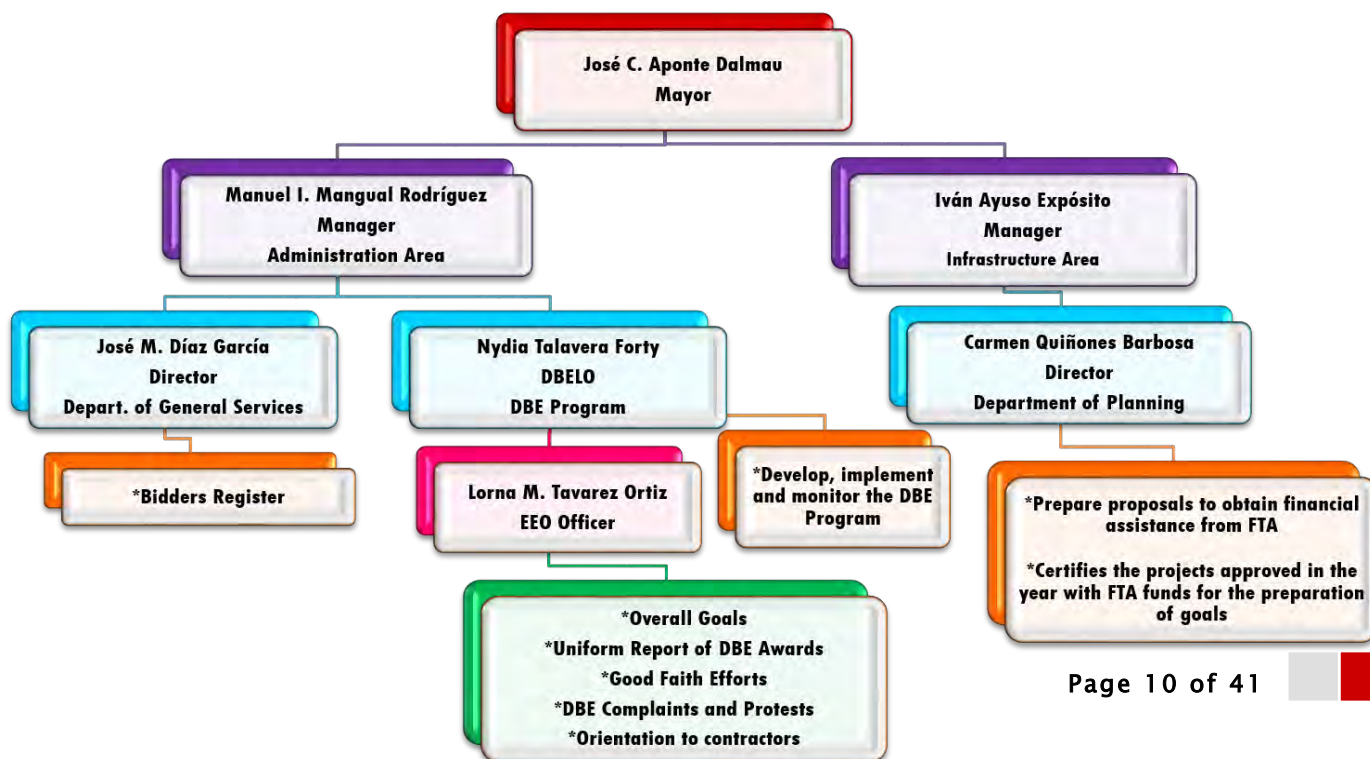
Since the Municipality of Carolina has received a grant of *FTA*, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

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

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

*Nydia Talavera Forty*  
*PO Box 8, Carolina, PR 00986-0008*  
*787-757-2626 ext. 8972*  
[ntalavera@carolina.pr.gov](mailto:ntalavera@carolina.pr.gov)

In that capacity Mrs. Nydia Talavera Forty with Mrs. Lorna M. Tavaréz Ortiz is responsible for implementing all aspects of the DBE Programs and ensures compliance with 49 CFR Part 26. The DBELO has direct independent access to José C. Aponte Dalmau, Mayor of Municipality of Carolina, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment to this program.





## **Specific Responsibilities**

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with Mrs. Lorna M. Tavaréz Ortiz. 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 DBE's in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes the Municipality's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Provides DBE's with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBE's and community organizations to advise them of opportunities.
13. Maintains the Municipality's updated directory with the State Department of Transportation and Public Works (DTPW) on certified DBE's.

## **Section 26.27 - DBE Financial Institutions**

It is the policy of the Municipality of Carolina to investigate the full extent of services offered by financial institutions to socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors to make use of this institution.





## **Section 26.29 - Prompt Payment Mechanisms**

### **Prompt Payment: 26.29(a)**

---

To ensure that all obligations under contracts awarded to DBE's are met, the Municipality of Carolina will review the contractor's DBE involvement effort during the performance of the contract. Prime contractors shall pay all subcontractors their respective subcontract amount by electronic transfer, if available, for Municipality of Carolina accepted work within thirty (30) calendar days after the contractor receives payment for such work from the Municipality of Carolina. The contract will be required to submit information by indicating all payments made to DBE's and non-DBE's within thirty (30) calendar days after the contractor receives payment for such work.

### **Retainage: 26.29(b)**

---

A prime contractor shall be required to fully document any alleged disputes with its subcontractors. The contractor shall ensure that all situations in which regularly schedule payments are not made to subcontractors are reported to the Municipality of Carolina. If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the Municipality of Carolina shall impose sanctions as stated under Penalties for Failure to Meet Overall Goals.

The contractor shall further be required to release retainage payments to the subcontractors within thirty (30) calendar days of satisfactory completion of the entire subcontractor's work and final payment of such work by the Municipality of Carolina.

### **Monitoring and Enforcement: 26.29(d)**

---

We 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 this contract no later than 30 days from the receipt of each payment the prime contractor receives from the Municipality of Carolina. The prime contractor agrees further to return retainer payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay**



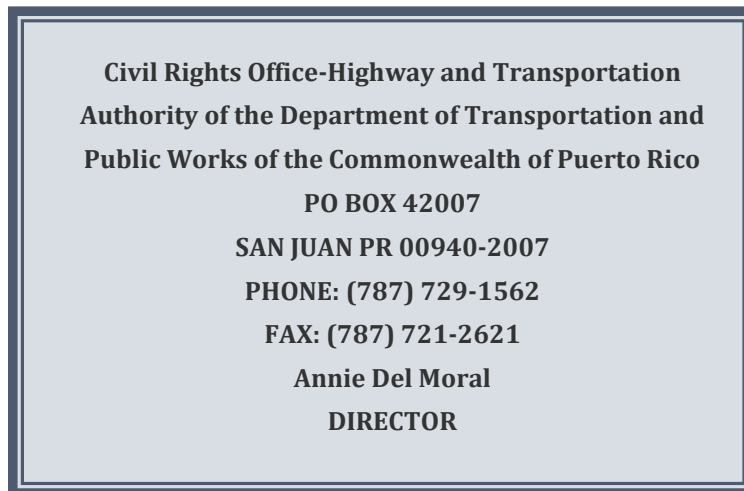


**or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Municipality of Carolina. This clause applies to both and DBE and non-DBE subcontractors”.**

## **Section 26.31 - DBE Directory**

The Municipality of Carolina uses the DBE Directory prepared by the Office of Civil Rights maintains a directory of all firms that have been identified as eligible to participate as DBE's. The directory lists these firms by name, address, phone number and the types of work. A DBE register has been published by the state and all local DBE's have been instructed to seek certification by the State Department of Transportation and Public Works (DTPW) in order to appear listed in this register. The Office of Federal Programs will maintain copies of the DBE directory.

We make the Directory available as follows:



The Directory may be found at: <http://www.dtop.gov.pr/directoria.asp>

## **Section 26.33 - Over Concentration**

If the Municipality of Carolina determines that DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the Municipality of Carolina will be working on the devising appropriate measures to address this overconcentration. In this moment we have not identified an over concentration in this jurisdiction, therefore no provisions have been made for this type of situation.







## **Section 26.35 - Business Development Programs**

There are no programs related to this subject matter operating in this area with relation to our plan.

## **Section 26.37 - Monitoring the Performance of other Program Participants**

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 steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment, or Program Fraud and Civil Penalties Rules), provided in 26.109.
2. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts. The Municipality of Carolina implements appropriate mechanisms to ensure compliance with the part's requirements by all program participants. The Municipality of Carolina set forth these mechanisms in your DBE program.
3. In our program we also including a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently are actually performed by the DBEs to which the work was committed. This mechanism includes written certifications that have reviewing contracting records and monitoring work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes.
4. This mechanism providing for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.





## **Section 26.39 - Fostering Small Business Participation**

In our DBE program, the Municipality of Carolina includes an 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.

As part of this program element you may include, but are not limited to, the following strategies:

1. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
2. We will identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
3. To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

The Municipality of Carolina actively implements in our program elements to foster small business participation.





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

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### Section 26.43 - Set-asides or Quotas

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

### Section 26.45 - Overall Goals

#### I. STEP ONE: BASE FIGURE

---

Pursuant to 49 CFR 26.45(c) (1), to arrive at the Base Figure, MOC elected to use the DBE's Director of the Civil Right Office of the Puerto Rico Highway and Transportation Authority (PRHTA) to determine the relative availability of DBE's in various fields.

We divided the total number of DBE firms in the respective Trade Description of the Director of the PRHTA were deemed ready, willing and able, by the number of all businesses relative of the U.S. Census Bureau, specifically on the Census County Business Patterns for Puerto. As a result, the Base Figure for MOC is 2%.

The initial phase of the Step One analysis required the compilation of critical data regarding MOC's contracting. MOC adopted the bidder's list methodology from 26.45 and reviewed the Statewide Transportation Improvement Program (STIP) for the Fiscal Years 2017-2020.

The relevant data considered for the Step One analysis included the following:

- Definition of the market area from an analysis of contracts awarded July 1, 2014 to June 30, 2017
- Classification of procurement areas by NAICS code

To determine the preliminary DBE goal base figure, we conducted the analyses and calculations described on the following pages, in accordance with 49 CFR §26.45.





## 1. Identification of Projects for FFY 2017-2020

The Municipality of Carolina identified first the anticipated FTA-assisted projects slated for FFY 2017-2020 to determine the type of projects where DBE participation was possible and the number of firms in the market, and the DBE qualified firms available in the relevant NAICS codes for inclusion in the baseline formula. The MOC's anticipated spend is shown in Table 2.

Table 2 represents project categories in the areas of Preventive Maintenance and Rehabilitation of buses to be awarded in FFYs 2017-2020. For the next three federal fiscal years we have two projects to development. The first one is a Preventive Maintenance the estimated funds \$1,380,900. The second one is Rehabilitation of 19 buses the estimated funds \$131,973.

**Table 2: Anticipated FTA-Assisted Expenditures for FFY 2017-2020**

Description Activity to consider contracting DBE	Annual Element	Three Years Program				Total
	2017	2018	2019	2020	Est. Cost	
Preventive Maintenance	\$544,130	\$276,153	\$278,914	\$281,703	<b>\$1,380,900</b>	
Additional Funds for the Rehabilitation of 19 buses	\$131,973					
<b>Sub-Total Federal Funds</b>	<b>\$676,103</b>	<b>\$276,153</b>	<b>\$278,914</b>	<b>\$281,703</b>	<b>\$1,512,873</b>	

Pursuant to 49 CFR §26.45, the overall DBE goal is expressed as a percentage of federal (FTA) funds projected to be expended in MOC's FTA-assisted contracts over the next three federal fiscal years. Therefore, staff calculated the percentage of federal dollars allocated to each project category, by dividing the estimated federal dollar share of each project category into the estimated federal dollar total of \$1,512,873 (from Table 2). The results of these calculations are shown below in Table 3.

**Table 3: Determine the weight of each type of work by NAICS Code:**

NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
1) See table 4	Preventive Maintenance	\$1,380,900	91%
2) See table 4	Additional Funds for the Rehabilitation of 19 buses	\$131,973	9%
<b>Total FTA-Assisted Contract Funds</b>		<b>\$1,512,873</b>	<b>100%</b>





## 2. Selection of Relevant NAICS Codes

The selection of relevant NAICS codes for FFY 2017-2020 projects was based upon the anticipated construction and study projects. Table 4 displays the projects anticipated for this period. Actual projects undertaken are dependent upon available funding.

Staff then analyzed the scope of work of each project category and assigned North American Industry Classification System (NAICS) codes to the applicable work elements, as shown in Table 4a for project of Construction and Table 4b for project of study or consulting.

After identification of the projects the relevant NAICS Codes were selected for determining the number of ready, willing and able firms to be counted in the baseline calculation.

**Table 4a: Classification by NAICS Title and Industry Code for Repair and Maintenance**

Industry Code	Industry code description	Total establishments
811198	Automotive emissions testing services	
811198	Automotive rustproofing and undercoating shops	
811198	Automotive safety inspection services	
811198	Automotive tire repair (except retreading) shops	
811198	Diagnostic centers without repair, automotive	
811198	Emissions testing without repair, automotive	
811198	Garages, do-it-yourself automotive repair	
811198	Rustproofing shops, automotive	
811198	Spray-on bedliner installation for trucks	
811198	Tire repair shops (except retreading), automotive	
811198	Undercoating shops, automotive	
811198	Automotive emissions testing services	
811198	Automotive rustproofing and undercoating shops	
811198	Automotive safety inspection services	
811198	Automotive tire repair (except retreading) shops	
<b>Total</b>		<b>65</b>





### 3. DBE Directory

The Municipality of Carolina maintains a directory of all firms that have been identified as eligible to participate as DBE's. The directory lists these firms by name, address, phone number, the types of work and NAIC Code. A DBE register has been published by the state and all local DBE's have been instructed to seek certification by the State Department of Transportation and Public Works (DTPW) in order to appear listed in this register. The following companies are available and certified as DBE by type of construction and consulting.

**Table 5: DBE available in the DBE Directory 2017**

#### 1. Project: Preventive Maintenance

Company Name	Trade Description	NAICS Code
Pepino Heavy Parts, Inc.	Services: automotive truck parts & accessories stores, oil change and lubrication, transmission repairs and all other automotive and maintenance	#811198
<b>Total of Services Trade</b>	<b>1</b>	

#### 2. Project: Rehabilitation Buses

Company Name	Trade Description	NAICS Code
Pepino Heavy Parts, Inc.	Services: automotive truck parts & accessories stores, oil change and lubrication, transmission repairs and all other automotive and maintenance	#811198
<b>Total of Services Trade</b>	<b>1</b>	





## B. Base Figure Determination

The base figure is intended to be a measurement of the relative percentage of ready, willing, and able businesses that are DBEs. The recipient is required to measure willing and able businesses in its marketplace, using the best available evidence, to derive a fair and accurate base figure that represents the percentage of available DBEs. According to Section 26.45(c) and *USDOT Tips*, the overall goal must be based on demonstrable evidence of available ready, willing, and able DBEs relative to all ready, willing, and able non DBEs to participate on MOC's federally assisted contracts.

To establish the relative availability of DBEs to all comparable firms (DBE and Non-DBEs) in MOC's market area, in applicable work categories (NAICS codes) identified in Table 4, we followed one of the prescribed goal-setting methodologies in accordance with 49 CFR §26.45. We determined the DBE availability percentage by performing a query of the Puerto Rico Unified Certification Program (PRUCP) DBE directory and the most recently available (2015) U.S. Census Bureau County Business Patterns (CBP) database.

For each NAICS code/subsector, staff calculated the number of DBEs (numerator) and the number of all firms (denominator) in each NAICS code/subsector, and then arrived at a percentage of DBEs to all firms for each project category.

## 2. Relative Base Figure

**Table 6: Base Figure**

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	See table 4a	Preventive Maintenance	1	65	0.0154
2)	See table 4a	Additional Funds for the Rehabilitation of 19 buses	1	65	0.0154
	<b>Combined Totals</b>		<b>2</b>	<b>130</b>	<b>2%</b>





*USDOT Tips* requires the calculation of the relative base figure by dividing the number of market area DBEs by all market area businesses (DBEs and non-DBEs), which produces a relative base figure of **1.54 percent**, as shown in Table 6.

$$\text{Base Figure} = \frac{\text{Ready, willing and able DBEs}}{\text{All ready, willing and able businesses (Including DBEs and non-DBEs)}}$$

$$\text{Base Figure} = 2\% = \frac{2 \text{ DBE's}}{130 \text{ Total Businesses}}$$

This number is simply the percentage of DBEs in the market area. The relative base figure calculation essentially over counts the number of available DBEs as it assumes that every DBE has equal weight and equal opportunity to perform MOC contracts. However, in the practical application of the overall DBE goal, not all DBEs have equal opportunity for participation as opportunity is dependent on the spend in each NAICS code. To more accurately reflect the nature and the scope of work, the *USDOT Tips* recommend a weighted calculation of availability. This calculation, which is based on the spend in each NAICS code, is also presented.

## 2. Weighted Base Figure

Weighting is recommended in *USDOT Tips* to ensure that the overall goal accurately reflects the scope of work. The first step is to calculate a weight for each NAICS code, which is the percentage of the budget for past contracts. Due to the fact that MOC's federally funded contracts are identified on a contract-by-contract basis after federal funding is received, weights cannot be calculated based on anticipated contracts.

The percentage of DBEs to all firms (from Table 6) for each project category was then weighted (multiplied) by the percentage of federal funds allocated to each project category (from Table 3). The resulting ratios were then added to arrive at the preliminary base figure, as shown in Table 7.







**Table 7: Weight Base Figure**

NAICS Code		Project	Weight	Availability	Weighted Base Figure
1)	See table 4a	Preventive Maintenance	0.9128	0.0154	0.0140
2)	See table 4a	Additional Funds for the Rehabilitation of 19 buses	0.0872	0.0154	0.0014
Total					0.0154
Expressed as a % (*100)					1.54%
Rounded, Weighted Base Figure:					2%





## **II. STEP TWO: BASE FIGURE ADJUSTMENT**

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### **A. Consideration for Adjustments to the Base Figure**

According to 49 CFR Part 26, step two of the calculation process should examine the evidence to determine if adjustments are needed in the base figure to arrive at an overall goal. We have considered all evidence available in our jurisdiction to determine if such adjustment is necessary by utilizing the participation of DBEs performed in recent years and no adjustment is necessary.

Almost all participant and/or possible bidders in our transportation and construction project are minorities (Hispanics) as defined by regulation 49 CFR Part 26. The MOC has established for this federal fiscal year DBE participation of a two (2%) percent and the factor considered to maintain our overall annual DBE goal at this percentage is the analysis of federally assisted contracts and bidder's list records for FFYs 2014, 2015 and 2016 and the amount of projects awarded.

The following factors were considered for the Step Two adjustment and it was determined that a modest adjustment to the weighted base figure would be made due to:

- Past DBE Participation
- Saturation of the Market Area

#### **1. Past DBE Utilization**

For the FFYs 2014, 2015 and 2016 MOC performed eight (8) federally bids USDOT-assisted contracts. In those bids the total numbers of all participating firms that have expressed an interest in participating, worked, solicited and/or received contract awards/purchase orders, assisted contracts, and subcontracts were twenty-four (24) participating firms. Of which four (4) firms were DBE ready, willing and able actively pursuing contracting/subcontracting opportunities during the past fiscal year.





We will try to conduct assessment surveys of possible bidders, contracts and/or professional services to obtain pertinent data and measure more efficiently the capacity of the DBE community. The Municipality of Carolina will try to implement a more aggressive participation within the board of bids, in pre-bid meetings to explain and monitor compliance with the DBE requirements.

**Table 8: DBE Past Participation**

Fiscal Year	FTA Bid	Participation Firms	DBE's	Participation
2014-2015	0	0	0	0%
2015-2016	3	10	1	10%
2016-2017	5	14	3	21%
<b>Total</b>	<b>8</b>	<b>24</b>	<b>4</b>	<b>17%</b>





### **III. PUBLIC NOTICE OF PROPOSED OVERALL DBE GOALS**

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#### **Section 26.45 (G) (2) - Public Participation and Outreach Efforts**

In accordance with 49 CFR 26.45(g), the Municipality of Carolina provided an opportunity for public participation in establishing its overall DBE goal. The notification process has two objectives:

- To provide public notice of the proposed overall goal by making the goal setting methodology and rationale available for public inspection.
- To consult with minority, women, and general contractor groups; community organizations; and other officials that could be expected to have information concerning DBE and non-DBE availability, the effects of discrimination on opportunities for DBE's, and Municipality of Carolina's efforts to establish a level playing field for the participation of DBE's.

Before establishing the overall goal the Municipality of Carolina will consult its advisors to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and the Municipality of Carolina's efforts to establish a level playing field for the participation of DBE's. These advisors change from year to year and include individuals from, but are not limited to, minorities, women groups, general contractor groups, community organizations and other officials or organizations.

Following this consultation, we will publish notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that the Municipality of Carolina and DOT will accept comments on the goals for 45 days from the date of notice. Normally we will publish this notice by the first of June of each year. The notice includes the address to which comments may be sent and address where the proposal may be reviewed.

After the preparation of the goals we will publish in the general circulation media, the same in the month of June this year. Additional, will send the proposal to the certified DBE companies listed in the Directory of DBE goals.





### **Section 26.47 - Failure to Meet Overall Goals**

The Municipality of Carolina 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 the Municipality of Carolina 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.

### **Section 26.49 - Transit Vehicle Manufactures Goals**

The Municipality of Carolina will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Due to in Puerto Rico any company sell mass transit vehicles, we do not request DBE certification to the broker dealer. Alternatively, the Municipality of Carolina may, at its discretion and with FTA approval, establish project specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.







## IV. RACE AND GENDER-NEUTRAL GOAL

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### Section 26.51 - Meeting Overall Goals/Contract Goals

#### A. Formulation of the Race and Gender-Conscious/Neutral Portions of the Goal

Race and gender neutral participation involves affirmative action to assist and include all small business contractors and subcontractors. Due to Puerto Rico's unique situation, almost all bidders and participants in the agency bidding are considered minority business enterprises – MBE and the amount of participation will be monitored throughout the year. In addition, we have been meeting our overall goal utilizing race-neutral measures. For that reason, after a review of the overall DBE participation for FFYs 2018-2020, the Municipality of Carolina has elected to continue its policy of 100% race neutral contracting methods as a means of attaining our DBE 2% goal for the coming year. Race neutral subcontracting opportunities for DBE's has accomplished our expectancy in achieving our two percent (2%) overall for three years coming.

Race conscious DBE participation will also remain at zero percent (0%) unless it is determined that race-neutral means are not effective in achieving the two percent (2%) overall annual goal. We will encourage prime contractors to subcontract portions of work normally done by their own forces to do good faith efforts through the contract DBE Special Provision.

However, if after implanting race neutral contracting measures, the PRHTA determines that DBE utilization will fall substantially below the overall 2% goal, then Municipality of Carolina shall implement race conscious measures to meet the overall goal. In order to ensure that our DBE program will be narrowly tailored to overcome the effect of discrimination, if contract goals are used, we will adjust the estimated breakout of race neutral and race conscious participation as needed to reflect actual DBE participation in accordance with 49 CFR Part 26.51 (f).

For reporting purposes race neutral DBE participation includes, but is not necessarily limited to the following:

- DBE participation through a prime contract that a DBE through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract as an additional good faith effort;





- DBE participation on a prime contract exceeding any contract goals, if implemented; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Based on the unique peculiarity of the Island, where most are minorities as defined in regulation, the Municipality of Carolina expects to meet most, if not all, of its overall goal through race neutral means using the following to increase DBE participation:

- Providing technical assistance in responding to requests for bids,
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing,
- Assistance in understanding contracting procedures and identifying contract opportunities,
- Providing assistance with the certification process,
- Ensuring distribution of the DBE Directory through print and electronic means,
- Providing the names, phone number and email address for additional information concerning contract.

The annual goal shall be a performance standard for measuring progress toward the achievement of the anticipated level of DBE participation and a partial means for assessing compliance with the Department's regulations.

## **B. CONTRACT GOALS**

Under 49 CFR Part 26, the principal race-conscious tool available for recipients is setting individual contract goals. Under these regulations, the Municipality of Carolina will not institute a race-conscious quota program for USDOT-assisted contract because the majority of the population in the Island falls under the definition established in the regulation as Hispanics. Procedures to implement other corrective action deemed appropriate to remediate instances of discrimination shall be established, as permitted by law. If the Municipality of Carolina has reason to believe it will not meet its overall annual goal, contract specific goals may be established only on those federally assisted contract that may have subcontracting possibilities so that over the period to which the overall goal applies, it will cumulatively result in meeting any part of our overall goal to be met through the use of race neutral means.





Moreover the Municipality of Carolina will try to conduct assessment surveys of possible bidders, contract and/or professional services to obtain pertinent data and measure more efficiently the capacity of DBE's. The Municipality of Carolina will continue participating in the Board of Bids, pre-bids meeting to monitor compliance with DBE regulation as specified in 49 CFR Part 26.

### **Section 26.53 - Good Faith Efforts Procedures**

In accordance with Section 26.53, the Municipality of Carolina requires a bidder/proposer to submit a Certificate of Good Faith Efforts form, along with supporting documentation, in instances where the participation goal is not met.

When the Municipality of Carolina has set a goal for DBE's contract on an individual project assisted by the USDOT awarded the contract only to a bidder that meets the stated goal or make good faith efforts to achieve it. The granting of the contract will be provided to meet the requirements of this section. The Municipality of Carolina will determine whether a bidder has made good faith efforts if your documents, or they can meet the goal contractual DBE's documented that it has obtained commitments for sufficient participation of companies DBE or documents made adequate efforts in good faith to meet the goal contractual DBE showing that it took all necessary and reasonable measures which, because of its scope and intensity, and appropriateness of the goal satisfies the goal, that can reasonably be expected to obtain sufficient participation of DBE's, even though the bidder has not been fully successful.

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

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In those instances where a contract-specific DBE goal is included in a procurement /solicitation, the Municipality of Carolina will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.





## **Section 26.53(a) & (c) - Evaluation of Good Faith Efforts**

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The Municipality of Carolina treats bidders/offered compliance with good faith effort requirements as a matter of responsibility.

The obligation of the bidder/offered is to make good faith efforts. The bidder/ offered can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. The process used to determine whether good faiths efforts have been made by a bidder are as follows:

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a



firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Under 49 CFR Part 26, the principal race-conscious tool available for recipients is setting individual contract goals. Under these regulations, the Municipality of Carolina will not institute a race-conscious quota program for USDOT-assisted contract because the majority of the population in the Island falls under the definition established in the regulation as Hispanics. Procedures to implement other corrective action deemed appropriate to remediate instances of discrimination shall be established, as permitted by law. If the Municipality of Carolina has reason to believe it will not meet its overall annual goal, contract specific goals may be established only on those federally assisted contract that may have subcontracting possibilities so that over the period to which the overall goal applies, it will cumulatively result in meeting any part of our overall goal to be met through the use of race neutral means.





Moreover the Municipality of Carolina will try to conduct assessment surveys of possible bidders, contract and/or professional services to obtain pertinent data and measure more efficiently the capacity of DBEs. The Municipality of Carolina will try to implement a more aggressive participation with the Board of Bids, pre-bids meeting to monitor compliance with DBE regulation as specified in 49 CFR Part 26.

The Municipality of Carolina treats bidders/offered compliance with good faith effort requirements as a matter of responsibility.

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

- *Lorna M. Tavaréz Ortiz, Official of EEO*  
*Office of Equal Employment Opportunity*  
*Department of Human Resources*
- *Nydia Talavera Forty, Director*  
*Department of Human Resources*
- *Manuel I. Mangual Rodríguez, Manager*  
*Administration Area*
- *José C. Aponte Dalmau, Mayor*  
*Municipality of Carolina*

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

### **Section 26.53(b) - Information to be Submitted**

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Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information that they are the successful bidders, but before the contract is executed:







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.

#### **Section 26.53(d) - Administrative Reconsideration**

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Within 5 business days of being informed by Municipality of Carolina that has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

#### **Section 26.53(f) - Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals**

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The Municipality of Carolina 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.

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 the Municipality of Carolina to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each



DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

## **SECTION 26.55 COUNTING DBE PARTICIPATION**

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





## **SUBPARTS D & E – CERTIFICATION**

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

The Municipality does not certify companies interested in being certified as DBE. The Office of Equal Employment Opportunity delivers guidance documents for certification and refers companies interested in becoming certified to the State Department of Transportation and Public Works at the Office of Civil Rights.

### **Section 26.81 Unified Certification Programs**

A Unified Certification Program is in effect in our jurisdiction. Even though our offices assess those companies that request it, all companies seeking certification are given instructions on filing a request for certification with the State Department of Transportation and Public Works. This Department will certify qualified firms seeking certification and will include them in a state wide DBE directory.

### **Section 26.83-26.91 Procedure for Certification Decisions**

The Municipality of Carolina will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. A copy of certification procedures and/or UCP program is available in the State Department of Transportation and Public Works, Office of Civil Rights.

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

**Annie Del Moral, Director, Civil Rights Office**  
PO Box 42007  
San Juan PR 00940-2007  
Phone: (787) 729-1562  
[ADelMoral@dtop.gov.pr](mailto:ADelMoral@dtop.gov.pr)





Any firm or complainant may appeal a [state UCP's] decision in a certification matter to DOT. Such appeals may be sent to:

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

We 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**

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### **SECTION 26.109 INFORMATION, CONFIDENTIALITY, AND COOPERATION**

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

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 DBE's**

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

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







## **ATTACHMENTS**

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1. Attachment 1: Organizational Chart
2. Attachment 2: DBE Directory
3. Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies
4. Attachment 4: Bidder's Collectors Form (DBE Certificate of Good Faith Efforts)
5. Attachment 5: Demonstration of Good Faith Efforts (Form 1: DBE Utilization)
6. Attachment 6: DBE Letter of Intent
7. Attachment 7: Fostering Small Business
8. Attachment 8: DBE Certification Application Information
9. Attachment 9: DBE Regulation, 49 CFR Part 26

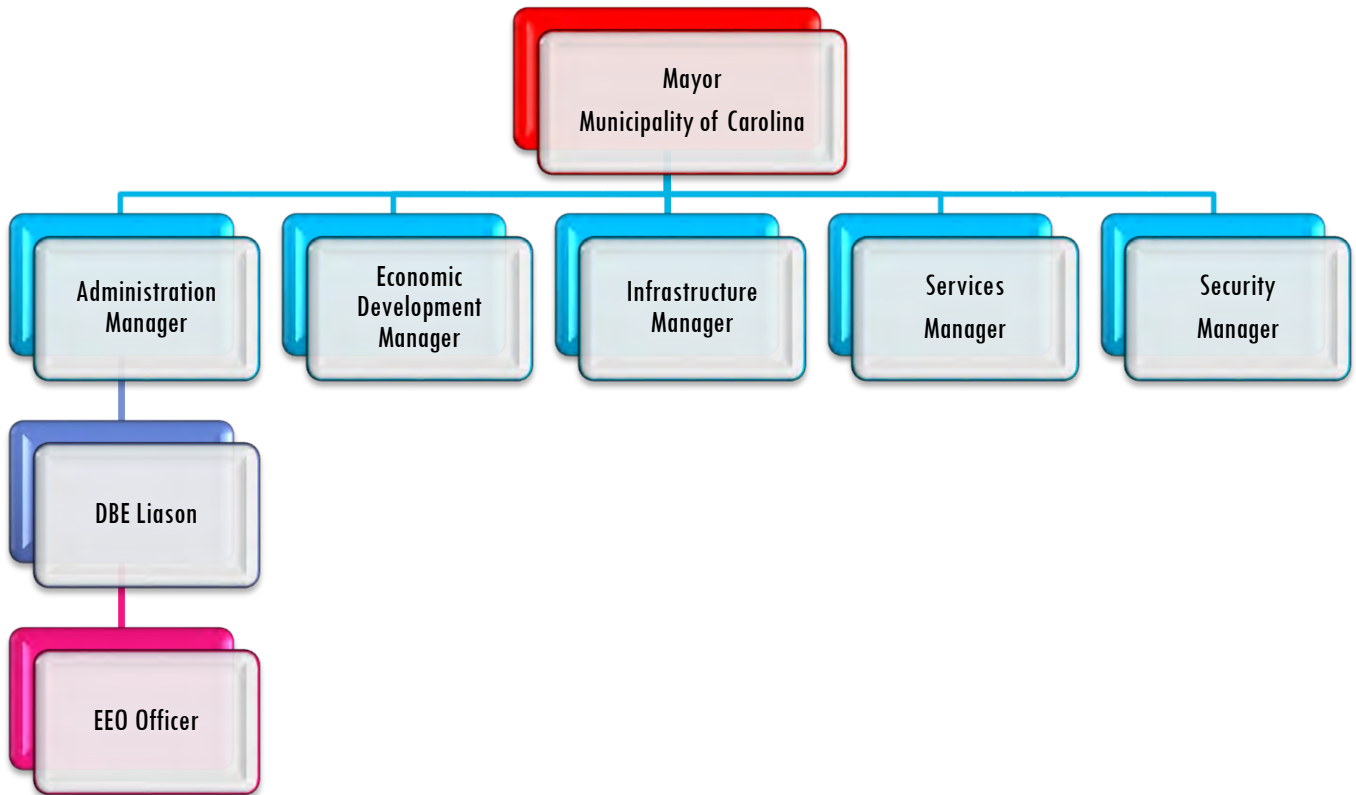




## ATTACHMENT 1

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### ORGANIZATION CHART





## ATTACHMENT 2

### DBE DIRECTORY

<http://www.dtop.gov.pr/directoria.asp>

#### **AAA COFFEE BREAK SERVICE, INC.**

CUBITA 649  
Bo. LOS FRAILES  
GUAYNABO PR 00969

PO BOX 9505  
SANTURCE PR 00908

**PHONE:** (787) 731-8760  
**FAX:** (787) 731-8763  
**E-MAIL:** luis@aaacoffeebreak.com

**CONTACT PERSON:** MR. LUIS ALONSO  
**SERVICES:** VENDING MACHINE OPERATORS  
**NAICS:** #454210  
PRPA

#### **ADIELCO CONTRACTORS CORPORATION**

867 AVENIDA MUÑOZ RIVERA  
EDIFICIO VICK CENTER, SUITE 301-A  
Río PIEDRAS PR 00925

HC-03 BOX 16888  
COROZAL PR 00783

**PHONE:** (787) 274-8653  
**FAX:** (787) 274-8653  
**CELLULAR:** (787) 612-2594  
**E-MAIL:** adielco@coqui.net

**CONTACT PERSON:** MR. ADALBERTO GARCÍA, Ms. MARITZA BETANCOURT  
**CONTRACTOR:** HIGHWAY, STREET AND BRIDGE CONSTRUCTION;  
**SITE PREPARATION CONTRACTORS (EARTH MOVEMENT)**  
**NAICS:** #237310, #238910

#### **ABC GROUP CONTRACTOR, INC.**

#117 CALLE C  
COSTA DE ORO  
DORADO PR 00646

PO BOX 948  
DORADO PR 00646

**PHONE:** (787) 796-1606, 509-5887  
**FAX:** (787) 278-4863  
**E-MAIL:** fsdavila@yahoo.com

**CONTACT PERSON:** MR. FÉLIX DÁVILA DE JESÚS  
**CONTRACTOR:** COMMERCIAL & INSTITUTIONAL BUILDING  
**CONSTRUCTION**  
**NAICS:** #236220  
PRPA

#### **ADVANTIX ENGINEERING, CORP.**

CALLE PINO 2 D-33, VILLA DEL REY  
CAROLINA PR 00725

MAR DE ISLA VERDE, SUITE 9-L  
CAROLINA PR 00979

**PHONE:** (787) 595-3777, 703-6400  
**FAX:** (787) 703-6400  
**E-MAIL:** josetq@gmail.com

**CONTACT PERSON:** MR. JAVIER G. CASTILLO  
**CONTRACTOR:** INDUSTRIAL BUILDING CONSTRUCTION  
**NAICS:** #236210  
PRPA

#### **A.C.R. SYSTEMS, INC.**

CALLE 2 OESTE No. 13, Río PLANTATION  
BAYAMÓN PR 00961

PO BOX 1819  
BAYAMÓN PR 00960-1819

**PHONE:** (787) 787-3098, (787) 740-4212  
**FAX:** (787) 740-3115  
**E-MAIL:** n.morales@acrsystemspr.com  
**WEBSITE:** www.acrsystemspr.com

**CONTACT PERSON:** MR. NORBERTO MORALES  
**CONTRACTOR:** PLUMBING, HEATING & AIR CONDITIONING  
**CONTRACTORS SERVICES; ELECTRICAL CONTRACTORS AND OTHER  
WIRING INSTALLATION CONTRACTORS**  
**NAICS:** #238220, #238210

#### **ALF GENERAL CONTRACTORS, INC.**

CARR. 511 KM. 2.0, Bo. REAL ANÓN  
PONCE PR 00780

PO BOX 800729  
COTO LAUREL PR 00780-0729

**PHONE:** (787) 848-7123  
**FAX:** (787) 259-3075  
**E-MAIL:** realanon@gmail.com

**CONTACT PERSON:** MR. ALFREDO L. FIGUEROA SUÁREZ  
**CONTRACTOR:** HIGHWAY, STREET & BRIDGE CONSTRUCTION  
**NAICS:** #237310



## ATTACHMENT 3

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### **DBE MONITORING AND ENFORCEMENT MECHANISMS/LEGAL REMEDIES**

The Municipality of Carolina has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to applicable laws and regulations;

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.





Municipality of Carolina  
DBE Program 2018-2021  
June 16, 2017

## ATTACHMENT 4

### BIDDER'S COLLECTION FORM

#### DBE CERTIFICATE OF GOOD FAITH EFFORTS TITLE 49 CFR 26

Project Name: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Low Bid: \_\_\_\_\_

DBE Goal: 3%

Total DBE Commitment: \_\_\_\_\_

#### LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Subcontractor/Supplier/Service Provider	DBE?		Small Business? (as defined by § 26.65)		Phone	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
	Yes	No	Yes	No		Letter	Phone		
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									

(Make additional copies of this form as necessary)

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF BID OPENING**





Municipality of Carolina  
DBE Program 2018-2021  
June 16, 2017

## ATTACHMENT 5

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### **DEMONSTRATION OF GOOD FAITH EFFORTS**

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

**DBE UTILIZATION STATEMENT**  
**TITLE 49 CFR 26**  
***Disadvantage Business Enterprise***

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner. *(Please mark the appropriate box)*

- ☐ The bidder/offeror is committed to minimum of 3% DBE utilization on this contract. Documentation will be submitted within 5 days of the bid opening.
- ☐ The bidder/offeror, while unable to meet the DBE goal of 3%, hereby commits to a minimum of \_\_\_\_\_% DBE utilization on this contract and also submits documentation, as an attachment demonstrating good faith efforts (GFE).
- ☐ The bidder/offeror is committed to allow for competition amongst small businesses and will document, as an attachment demonstrating good faith efforts (GFE).

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Bidder's/Offeror's Firm Name

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(Signature)

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(Title)

**FORM TO BE COMPLETED AND SUBMITTED WITH THE BID**







## ATTACHMENT 6

### DBE LETTER OF INTENT

#### TITLE 49 CFR 26.39

#### Disadvantage Business Enterprise

(This page shall be submitted for each DBE firm)

**Bidder/Offer:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DBE Firm:** DBE  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**DBE Contact Person:** Name: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_

**DBE Certifying Agency:** \_\_\_\_\_ Expiration Date: \_\_\_\_\_

*Each DBE Firm shall submit evidence (such a photocopy) of their certification status.*

**CLASSIFICATION:** ☐ Prime Contractor ☐ Subcontractor ☐ Joint Venture  
☐ Manufacturer ☐ Supplier

**DBE CATEGORY:** ☐ Black American ☐ Hispanic American ☐ Subcont. Asian American  
☐ Native American ☐ Asian Pacific American ☐ Non-minority Women

Work item(s) to be performed by Small Business Firm	Description of Work Item	Cost	Percentage of Total Contract

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above in an effort to meet the project DBE goal of 3%. The estimated participation is as follows:

DBE contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_ %.

#### AFFIRMATION:

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

By: \_\_\_\_\_  
(Signature) (Title)

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

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF BID OPENING**



## ATTACHMENT 7

### FOSTERING SMALL BUSINESS

#### FOSTERING SMALL BUSINESS PARTICIPATION TITLE 49 CFR 26.39

*(This page shall be submitted for each Small Business firm)*

In accordance with Section 26.39, detailed information shall be completed by the Prime Contractor for work items. The firms listed may or may not be certified DBE's.

**Bidder/Offer:**      **Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Small Business Firm:**      **Small Business Firm:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

**Contact Person:**      **Name:** \_\_\_\_\_ **Phone:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**CERTIFICATION:**      Is the firm a Small Business as defined by Section 26.65?

☐ Yes      ☐ No

**\*Proof of eligibility may be requested**

**CERTIFIED DBE:**      Is the firm a Certified DBE?

☐ Yes      ☐ No

Work item(s) to be performed by Small Business Firm	Description of Work Item	Cost	Percentage of Total Contract

The bidder/offeror is committed to utilizing the above-named Small Business Firm for the work described above in an effort to foster Small Business participation. The estimated participation is as follows:

Small Business contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_ %.

#### **AFFIRMATION:**

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

By: \_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Title)

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

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF BID OPENING**



## ATTACHMENT 8

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### DBE CERTIFICATION APPLICATION INFORMATION

#### DISADVANTAGED BUSINESS ENTERPRISE PROGRAM 49 C.F.R. PART 26

## UNIFORM CERTIFICATION APPLICATION

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### ROADMAP FOR APPLICANTS

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$22.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)





Municipality of Carolina  
DBE Program 2018-2021  
June 16, 2017

## ATTACHMENT 9

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### **Regulations: 49 CFR Part 26**

DOT published Part 26 in the Federal Register on February 2, 1999, and it became effective March 4, 1999 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, formally administered under 49 CFR Part 23. The Final Rule to 49 CFR Part 26 was published in the Federal Register, Volume 68, No. 115 on June 16, 2003. Four (4)) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010 and January 28, 2011 which made additional revisions to the regulation. The e-version of the regulations has combined all of these documents into one for easy reading <http://ecfr.gpoaccess.gov/>

