

COUNTY OF CAPE MAY
Disadvantaged Business Enterprise (DBE) Program

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the County of Cape May 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.

The County Administrator has been delegated as the DBE Liaison Officer. In that capacity, the County Administrator is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the County of Cape May in its financial assistance agreements with the Department of Transportation.

The County of Cape May has disseminated this policy statement to the Board of Chosen Freeholders and all of the components of our organization. We have posted this statement to the County website in the areas where procurement documents are advertised to inform DBE and non-DBE business communities that perform work for us on DOT assisted contracts.

Daniel Beyel, Director Board of Chosen Freeholders

Date

Stephen O'Connor, County Administrator

Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The County of Cape May will adopt the applicability standards as indicated in Section 26.5 of 49 CFR Part 26 as can be found on the United States Government Printing Office website (www.gpo.gov).

Section 26.5 Definitions

The County of Cape May will adopt the definitions contained in Section 26.5 of 49 CFR Part 26 as can be found on the United States Government Printing Office website (www.gpo.gov).

Section 26.7 Non-discrimination Requirements

The County of Cape May 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 County of Cape May 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)

The County will report DBE participation to DOT as follows:

- When receiving funding from FAA, the County will submit annually DOT Form 4630, as modified for use by FAA recipients.
- When receiving funding from FTA, the County will report DBE participation as required by Circular 5010 and submit the uniform report of DBE award and payment in the TEAM system (and/or as identified in the Federal Register Notice). These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

- When receiving funding from FHWA, the County will report DBE participation on a semi-annual basis, using DOT form 4630.

Bidders List: 26.11(c)

The State of New Jersey has created a Unified Certification Program, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The database is available on line at <http://www.njucp.net/>. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

1. a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;
2. a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient;
3. use of the State created and maintained Unified Certification Program (UCP) DBE directory.

Section 26.13 Federal Financial Assistance Agreement

County of Cape May has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

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

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

Contract Assurance: 26.13b

We will ensure that the following clauses are placed verbatim in every DOT assisted contract and subcontract:

1. Non-Discrimination Clause:

- a. 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the County of Cape May expects to receive a grant in calendar year 2012 from FTA in the amount of \$995,000 we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide updates to DOT representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the County Administrator as our DBE Liaison Officer. The current Administrator is:

Stephen O'Connor
County Administrator
4 Moore Road
Cape May Court House, NJ 08210
(609)465-1065
soconnor@co.cape-may.nj.us

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO will rely on staff from the County Department in receipt of the federal funding and other County Departments involved in the project to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with County Departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.

6. Analyzes Cape May County's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the County of Cape May 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. We have made the following efforts to identify and use such institutions:

1. The County Chamber of Commerce has a website with contact information for local businesses. This website was used to obtain a mailing list for local financial institutions.
2. A letter has been sent to local financial institutions per the Chamber mailing list in an effort to gather DBE status. Sample below.
3. These institutions will be encouraged to register in the NJUCP for ease of future reference.
4. Currently, there are no local financial institutions registered with the NJUCP.

To date we have identified the following such institutions: none.

Sample Bank Letter:

May 3, 2011
«AddressBlock»

Dear Bank Official,

The County of Cape May is formalizing a policy to promote the use of Disadvantage Business Enterprises (DBEs) in federally funded construction projects. While this policy is already in effect for DOT funded road construction projects, a new opportunity for funding directly from FTA has presented itself and we need to update our policy. One of the requirements of the federal regulation regarding this policy is the listing of local financial institutions who are considered to be DBEs. Definitions are provided on the attached page.

The County is required to list the institutions in our policy; however, it would be additionally helpful if you would register in the UCP. There is a State program, called the Unified Certification Program (UCP), which aggregates all DBEs in one database for ease of access by all agencies who require this information. Listing in this database will provide a resource for construction contractors and funding agencies to track compliance with the DBE policy. Many federally funded projects require compliance with DBE goals.

If you believe your financial institution meets the requirements of a DBE, please register with the State UCP and also copy me with your registration materials so the County can place you on our list. More information and application materials can be found at: <http://www.state.nj.us/transportation/business/civilrights/dbe-shtm> or you can contact me via phone, email, or in person at the contact information listed below.

Sincerely,

Brad Rosenthal
Coordinator for Federal and State Aid, 4 Moore Road, Cape May Court House, NJ 08210
(609) 463-5199, rosenthalb@co.cape-may.nj.us

Section 26.29 Prompt Payment Mechanisms

The County of Cape May 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 (thirty) days from the receipt of each payment the prime contract receives from County of Cape May. The prime contractor agrees further to return retainage payments to each subcontractor within 30 (thirty) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of Cape May. This clause applies to both DBE and non-DBE subcontracts.

See Section 26.37 for details about enforcement mechanisms.

Section 26.31 Directory

NJDOT has partnered with NJ TRANSIT, and The Port Authority of NY/NJ under the New Jersey Unified Certification Program (NJUCP) to insure DBE participation in business opportunities statewide on federally funded contracts. Under the NJUCP, a DBE may submit a single application to any one of the three certifying partners. All USDOT fund recipients statewide will then honor the certification of any NJUCP partner. Firms that are certified as DBEs by any of these agencies are automatically included in the [NJUCP Directory](#). The Directory may be found online at <http://www.njucp.net/> and is also referenced in Attachment 2 to this program document.

A DBE wishing to register with the Unified Certification Program can obtain application guidance and materials online:

<http://www.state.nj.us/transportation/business/civilrights/dbe.shtm>.

Section 26.33 Overconcentration

The County of Cape May has not identified that overconcentration exists in the types of work that DBEs perform. A search of the State's UCP and prior experience with DOT funded construction projects prove this to be the case. In past County experience it has been necessary for the Prime Contractors to use DBE Contractors from out of the area to comply with DBE goals.

Section 26.35 Business Development Programs

County of Cape May has not established a business development program. When someone requests information on business development they are referred to The Small Business Administration.

Section 26.37 Monitoring and Enforcement Mechanisms

The County of Cape May will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- 1) We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- 2) We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 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 provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by:
 - (a) Submission of certified payroll within 10 business days of payment of wages.
 - (b) Wage rate inspections.
 - (c) Submission of contractor monthly report.
 - (d) Submission of end of job report.
 - (e) Worksite inspections and monitoring to verify and subsequently certify that a DBE contractor is actually performing the work as committed to by the prime contractor at the time of contract award.
 - (i) This monitoring may be done in conjunction with other worksite inspections.
 - (ii) Each time an inspector visits a site a written certification will be made by the inspector indicating that they have reviewed contracting records and checked the work site for DBE compliance.
 - (iii) This certification document will be maintained in the project file.
- 4) We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The County of Cape May does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. A project specific goal has been determined and will be used in relation to the design and construction of a Vehicle Wash Facility.

In accordance with Section 26.45(f) the County of Cape May will submit its DBE goal to DOT prior to pre-award authority being granted. If federal funds are received from FAA or FTA, or when submitting a DBE goal, the date of submission will be determined by the operating administration. Before establishing the overall goal each year, the County of Cape May will obtain information from the Cape May County Chamber of Commerce, the New Jersey Small Business Association, and the New Jersey Unified Certification Program (NJUCP) concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the County of Cape May's efforts to establish a level playing field for the participation of DBEs.

Following this review, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Engineer's office for 30 days following the date of the notice, and informing the public that the County will accept comments on the goals for 45 days from the date of the notice. The notice will be available in the County Freeholders Office and posted in the newspaper of record and on the County website, www.capemaycountygov.net. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a copy of the actual published notice, summary of information and comments received during this public participation process and our responses.

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

As appropriate, the County will request the use of DBE goals consistent with the requirements set out in 49 CFR 26.45(f)(2).

Section 26.49 Transit Vehicle Manufacturers Goals

County of Cape May will check the FTA website for contractors eligible to bid on federally funded transit agency contracts.

http://www.fta.dot.gov/documents/FY_2011_TVM_Chart.April_21.2011.docb.pdf

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 4 to this program. This section of the program will be updated whenever the goal calculation is updated.

Section 26.51(d-g) Goal setting

The County of Cape May will not set contract goals because its program is 100% race neutral.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the DBE goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following is a list of types of actions from Appendix A to Part 26 item IV which will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- 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. 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.
- E. 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.
- F. 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 DBE goal.
- G. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- H. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- I. 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.

The County Administrator in consultation with the department head managing the procurement is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

The Prime Contractor may not remove a DBE from the project/contract without prior written approval from the County, and only with good cause. The Prime Contractor must first notify

the DBE and the County of its reasoned intent to terminate and/or substitute the DBE contractor. The DBE contractor then has five-days to respond to the Prime Contractor and the County (barring some public safety concern). The County Administrator will make a decision based on the reasoned arguments of the parties and notify the Prime contractor and DBE in writing within 5 business days. Good cause includes the following circumstances:

- I. The listed DBE subcontractor fails or refuses to execute a written contract;
- II. 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;
- III. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- IV. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- V. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- VI. You have determined that the listed DBE subcontractor is not a responsible contractor;
- VII. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- VIII. The listed DBE is ineligible to receive DBE credit for the type of work required;
- IX. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- X. Other documented good cause that you determine compels the termination of the DBE subcontractor.

Information to be submitted (26.53(b))

County of Cape May treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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

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 the DBE 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 DBE goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 10 days of being informed by County of Cape May that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Barbara Bakley-Marino, County Counsel, 4 Moore Road, DN 104, Cape May Court House, NJ 08210, (609)465-6885, countycounsel@co.cape-may.nj.us. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. 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.

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

County of Cape May 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 DBE 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 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 County of Cape May 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 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 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 DBE 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 DBE goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Section removed as unnecessary because the County is not a Certifying agency for DBE's, please see Subpart E for certification procedures and contact information.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

County of Cape May is the member of a Unified Certification Program (UCP) administered by the New Jersey Department of Transportation. The UCP will meet all of the requirements of this section. The following is a description of the UCP:

NJDOT has partnered with NJ TRANSIT, and The Port Authority of NY/NJ under the New Jersey Unified Certification Program (NJUCP) to insure DBE participation in business opportunities statewide on federally funded contracts. Under the NJUCP, a DBE may submit a single application to any one of the three certifying partners. All USDOT fund recipients statewide will then honor the certification of any NJUCP partner. Firms that are certified as DBEs by any of these agencies are automatically included in the [NJUCP Directory](#).

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

New Jersey Department of Transportation
Division of Civil Rights and Affirmative Action
Disadvantaged and Small Business Programs Unit
1035 Parkway Ave
PO Box 600
Trenton, NJ 08625-0600

<http://www.state.nj.us/transportation/business/civilrights/dbe.shtm>

Certification application forms and documentation requirements are found at the above website.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, 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 contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The County will perform site inspections during the course of the project to certify and ensure that the DBEs are performing the work they were contracted to do in order to authorize payment.

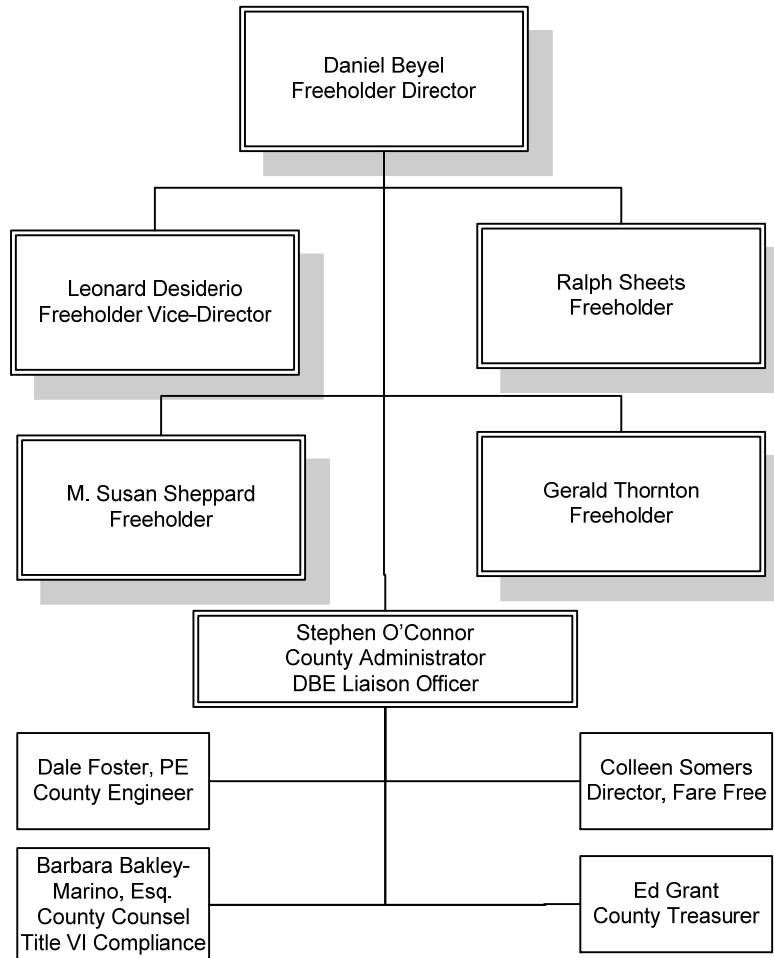
We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County of Cape May or DOT. This reporting requirement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

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

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
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Attachment 1 Organizational Chart September 12, 2011



Attachment 2 DBE Directory - NJUCP

The Directory of Certified DBE businesses can be found on the internet at:

<http://www.njucp.net/>. If you cannot access the web site, a paper copy of the directory will be produced for you upon request at the costs of making the copies per Freeholder Resolution 160-11.

Attachment 3 Monitoring and Enforcement Mechanisms

The County 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 N.J.S.A. 40A:11-1 *et. Seq.*

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.

Attachment 4 Section 26.45: Overall Goal Calculation

Amount of Goal

1. The County of Cape May's overall goal for this project is the following: 4.5% of the Federal Financial assistance we will expend on this project. The County of Cape May will be making an application to receive \$995,000 of federal grant money towards a \$1.2 million project budget for fiscal year 2012.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Using the methodology provided in the guidance document from the FTA, a base figure was determined by dividing the total number of ready, willing and able DBE's by the number of all firms ready, willing and able within the state of New Jersey. Data from the NJDOT Unified Certification Program (UCP) was used to determine the numerator. Data from the US Census 2007 Economic Census: Survey of Business Owners was used to determine the denominator.

NAICS Code	Description	DBE firms (NJ)	Total willing firms (NJ)
236220	Comm. Blding. Constr.	105	1113
238110	Concrete Floors	38	486
238130	Framing	14	385
238140	Masonry	30	912
238160	Roofing	12	438
238210	Electrical	60	2647
238220	Plumbing	27	3478
238910	Site Prep	62	1088
238990	Asphalt	77	990
541330	Engineering	175	1754
TOTAL		600	13291

The DBE goal calculated as a result of the process was 4.5%. The number of ready willing and able DBE's was found to be 600 (numerator). The total number of firms ready, willing, and able was found to be 13,291 (denominator).

The DBE goal was calculated by compiling a list of various trades and services that can and will be utilized to construct the vehicle wash facility. Engineering services were included in the calculations in addition to the trades because there will be design and environmental requirements that can be provided by a DBE firm. Trades and services within in the entire state of New Jersey were used in the calculations because these firms are typical of those that bid on and perform work in Cape May County. Due to the geographical location of the County within the state of New Jersey, the County rarely receives bids from firms from surrounding states.

Step 1: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment was needed to the base figure in order to arrive at the DBE goal. It was determined that the base figure adequately meets the needs of the County, this project, and is in compliance with the regulations. No evidence to the contrary was discovered.

Public Participation

We published our goal information in these publications: Cape May County Herald, and on the Cape May County Official Website:

<http://www.capemaycountygov.net/Cit-e-Access/webpage.cfm?TID=5&TPID=1977>.

We will solicit comments from these individuals or organizations:

- Cape May County Chamber of Commerce
- NJ Small Business Administration
- Atlantic Cape Community College; The Center for Regional and Business Research
- Soroptimist Club of Cape May County
- NAACP Cape May county Branch
- Cape Human Resources, Inc.
- One Stop Career Center

Summaries of these comments are as follows:

Our responses to these comments are:

Attachment 5 Section 26.51

Breakout of Estimated Race-Neutral & Race Conscious Participation

County of Cape May will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The County of Cape May uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Attachment 6 Demonstration of Good Faith Efforts

DBE LETTER OF INTENT (sample contract solicitation)

Name of bidder/offeror's firm: _____

State Registration No. _____

Address: _____

City: _____ State: _____ Zip: _____

The bidder/offeror is committed to utilizing the below named DBE firm(s) for the work described. The estimated total dollar value of this work is \$ _____.

The bidder/offeror anticipates achieving a minimum of _____ % DBE utilization on this contract demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

By _____
(Signature) (Title)

Name of DBE firm(s): _____

State Registration No. _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm(s):

(Signature)

Title

DBE Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Attachment 7 Certification Application Forms

All necessary forms are available online at:

<http://www.state.nj.us/transportation/business/civilrights/dbe.shtm>. If you cannot access the web site, a paper copy of the directory will be produced for you by the County at the costs of making the copies per Freeholder Resolution 160-11.

Attachment 8 Procedures for Removal of DBE's Eligibility

Attachment content deleted because Cape May County is not a certifying authority

Attachment 9 Regulations: 49 CFR Part 26

The Federal regulations governing and supporting this policy can be found on the United States Department of Transportation's Federal Highway Administrations website:

<http://www.fhwa.dot.gov/hep/49cfr26.htm> - As of June 22, 2011.

Attachment 10 Language from this Document Required for Bid Specification

1. Non-Discrimination Clause:
 - a. 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.
2. Prompt Payment Clause:
 - a. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 (thirty) days from the receipt of each payment the prime contract receives from County of Cape May. The prime contractor agrees further to return retainage payments to each subcontractor within 30 (thirty) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of Cape May. This clause applies to both DBE and non-DBE subcontracts.

3. Good Faith Effort Clause:

- a. 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 County of Cape May 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 goal of 4.5 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 DBE 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 DBE 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 DBE goal is not met, evidence of good faith efforts.

4. Attachment 6 – Letter of Intent