

# 49 CFR Part 26 Disadvantaged Business Enterprise Program

## Charles County Department of Planning and Growth Management, Transit Division DBE Program

### Policy Statement

#### Objectives / Policy Statement - Section 26.1, 26.23

Charles County Government (County), Transit Division 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 has received Federal financial assistance through the Maryland Department of Transportation Maryland Transit Administration (MDOT MTA), and as condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the County 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 MDOT MTA – assisted contracts:
2. To create a level playing field on which DBEs can compete fairly for MDOT MTA – assisted contracts.
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's
5. To help remove barriers to participation of DBEs in MDOT MTA assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Director of Planning and Growth Management (PGM) has been delegated as the DBE Liaison Officer. In that capacity, the Director of PGM or their designee 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 in its financial assistance agreements with MDOT MTA. The County has disseminated this policy statement to the elected Board of County Commissioners and all the components of our organization as appropriate. We distribute this statement to DBE and non-DBE business communities that perform work for us on MDOT MTA assisted contracts through direct distribution to vendors and posting of this statement on the County website.

Mark Belton  
Mark Belton (Jun 25, 2021 10:35 EDT)

Mark Belton, County Administrator

Jun 25, 2021

Date

## **SUBPART A - General Requirements**

### **Objectives - Section 26.1**

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

### **Applicability - Section 26.3**

The County is the recipient of federal transit funds authorized by Federal transit laws in Title 49, U.S. Code.

### **Definitions - Section 26.5**

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

### **Non-discrimination Requirements - Section 26.7**

The County 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 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.

### **Record Keeping Requirements - Section 26.11**

#### **Reporting to DOT/MTA: 26.11(b)**

We will monitor and report DBE participation to MDOT MTA on a quarterly basis, using MDOT MTA Forms. These reports will reflect payments actually made to DBEs on MDOT MTA assisted contracts.

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

The County will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on MDOT MTA assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information by including a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts and a notice in all solicitations.

#### **Federal Financial Assistance Agreement - Section 26.13**

The County has signed the following assurances, applicable to all MDOT MTA assisted contracts and their administration:

**Assurance: 26.13(a)**

The following assurance shall appear in any financial assistance agreement the County signs with a MDOT MTA operating administration:

*The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any MDOT MTA assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The County shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of MDOT MTA assisted contracts. The County's DBE Program, as required by 49 CFR part 26 and as approved by MDOT MTA, 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 its failure to carry out its approved program, MDOT MTA 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.).*

**Contract Assurance: 26.13b**

The County will ensure that the following clause is placed in every MDOT MTA 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 MDOT MTA 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**

### **DBE Program Updates - Section 26.21**

Since the County has received grants of \$250,000 or more in U.S Department of Transportation planning capital and or operating assistance through MDOT MTA in a federal fiscal year, the County will continue to carry out this program until all funds from MDOT MTA financial assistance have been expended. The County will provide to MDOT MTA updates representing significant changes in the program.

### **Policy Statement - Section 26.23**

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

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

The following individual is designated as the County DBE Liaison Officer: Director of Planning & Growth Management, Charles County Government, 200 Baltimore Street, La Plata, MD 20646. Phone 301-645-0627.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provision of 49 CFR Part 26. The DBELO has direct access to the County Administrator 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 MDOT MTA funded contracts DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by MDOT MTA.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals and to set project-specific goals for procurements \$25,000 over.
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 and monitors results.
6. Analyzes the County's progress toward attainment and monitors prime and DBE subcontractor compliance.
7. Participates in pre-bid meetings.
8. Advises the County Administrator and 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. Acts as liaison to the Uniform Certification Process at MDOT MTA.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

It is the policy of the County 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 MDOT MTA assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions:

The County obtains this information through the Federal Deposit Insurance Corporation's (FDIC) published historical data on Minority Depository Institutions (MDIs). FDIC defines MDIs as any depository institution where 51% or more of the stock is owned by one or more socially and economically disadvantaged individuals. FDIC provides this historical data on a year-by-year basis as well as quarterly revisions.

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

The County has not located any MDIs located within Charles County, Maryland.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

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

The County will include the following clause in each MDOT MTA assisted prime contract:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contractor receives from County. Any retainage held by the prime contractor at the completion of a subcontractor's work shall be returned to the subcontractor within thirty (30) days of the completion and the County's acceptance of the contractor's work. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontracts.*

### **Directory - Section 26.31**

The County uses the MDOT DBE certification process and directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. MDOT revises the Directory on a continuing basis. MDOT makes the Directory available on-line. The Directory may be found at <https://mbe.mdot.maryland.gov/directory/>.

### **Overconcentration - Section 26.33**

The County has not identified that overconcentration exists in the types of work that DBEs perform. The County will re-evaluate its DBE Program triennially to determine if overconcentration exists.

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

The County has not established a business development program as part of our DBE Program.

### **Monitoring and Enforcement Mechanisms - Section 26.37**

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

1. We will bring to the attention of MDOT MTA any false, fraudulent, or dishonest conduct in connection with the program, so that MDOT MTA can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the MDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
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 through monthly reporting by any prime contractor of the work performed monthly by their subcontractor DBE firms. Monthly reporting is on forms provided by MDOT/MTA
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**

### **Set-asides or Quotas - Section 26.43**

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

### **Overall Goals - Section 26.45**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this program. This section of the program will be updated annually. The County will use contract goals (addressed below) to meet any portion of the overall goal.

In accordance with Section 26.45(f) the County will submit its overall goal to MDOT MTA each year. Before establishing the overall goal each year, County will consult with the MDOT MTA to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the County's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, 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 our principal office for 30 days following the date of the notice, and informing the public that County and MDOT MTA will accept comments on the goals for 45 days from the date of the notice. This notice shall be published on the County's official internet web site. The notice must 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 MDOT MTA will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal as approved by MDOT MTA at the start of each fiscal year. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a MDOT MTA-assisted contract for the project.

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

The County will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on Federal Transit Administration (FTA) assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. The County will check the FTA DBE website to confirm the vendor is authorized to propose on FTA assisted vehicle procurements and will report vehicle awards to FTA via the on-line reporting tool.

### **Contract Goals - Section 26.51(d-g)**

Contract goals will be established for all procurements anticipated to be \$25,000 or over. Contract goals will be developed in consultation with MDOT MTA Office of Local Transit Support (OLTS), the MDOT MTA Office of Equal Opportunity Compliance Programs, and the MDOT MTA Procurement Review Group (PRG).

We will establish contract goals only on those MDOT MTA assisted contracts that have subcontracting possibilities and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

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

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

The Chief of Purchasing 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.

#### **Information to be submitted (26.53(b))**

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

Each solicitation for which a contract goal has been established will require the bidders/offerors 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

#### **Administrative reconsideration (26.53(d))**

Within ten (10) days of being informed by the County 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: Chief of Purchasing, 200 Baltimore Street, La Plata, MD 20646, 301-645-0656, [puradmin@charlescountymd.gov](mailto:puradmin@charlescountymd.gov). 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.

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

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

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our 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 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.

**Counting DBE Participation - Section 26.55**

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

## **SUBPART D - CERTIFICATION STANDARDS**

### **Certification Process - Section 26.61 - 26.73**

The County will use the MDOT DBE certification process to determine the eligibility of firms to participate as DBEs in MDOT MTA assisted contracts. The MDOT process meets the standards of Subpart D of Part 26. To be certified as a DBE, a firm must meet all certification eligibility standards. The County has been advised that MDOT makes certification decisions based on the facts as a whole.

## **SUBPART E - CERTIFICATION PROCEDURES**

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

The County is a member of a Unified Certification Program (UCP) administered by MDOT which meets all of the requirements of this section.

For information about the MDOT certification process or to apply for certification, firms should contact the MDOT Office of Minority Business Enterprise at (410) 865-1269 or (800) 544-6055, [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us), or:

Maryland Department of Transportation  
Office of Minority Business Enterprise  
7201 Corporate Center Drive  
Hanover, MD 21076

OMBE staff members are also available to conduct a preliminary review of your application packet at MDOT Headquarters, every Tuesday during regular business hours (excluding the first Tuesday of the month), and by appointment. To schedule an appointment, please call (410) 865-1269.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

### **Information, Confidentiality, Cooperation - Section 26.109**

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 MDOT MTA) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County or MDOT MTA. 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.

### **MDOT MTA Reporting**

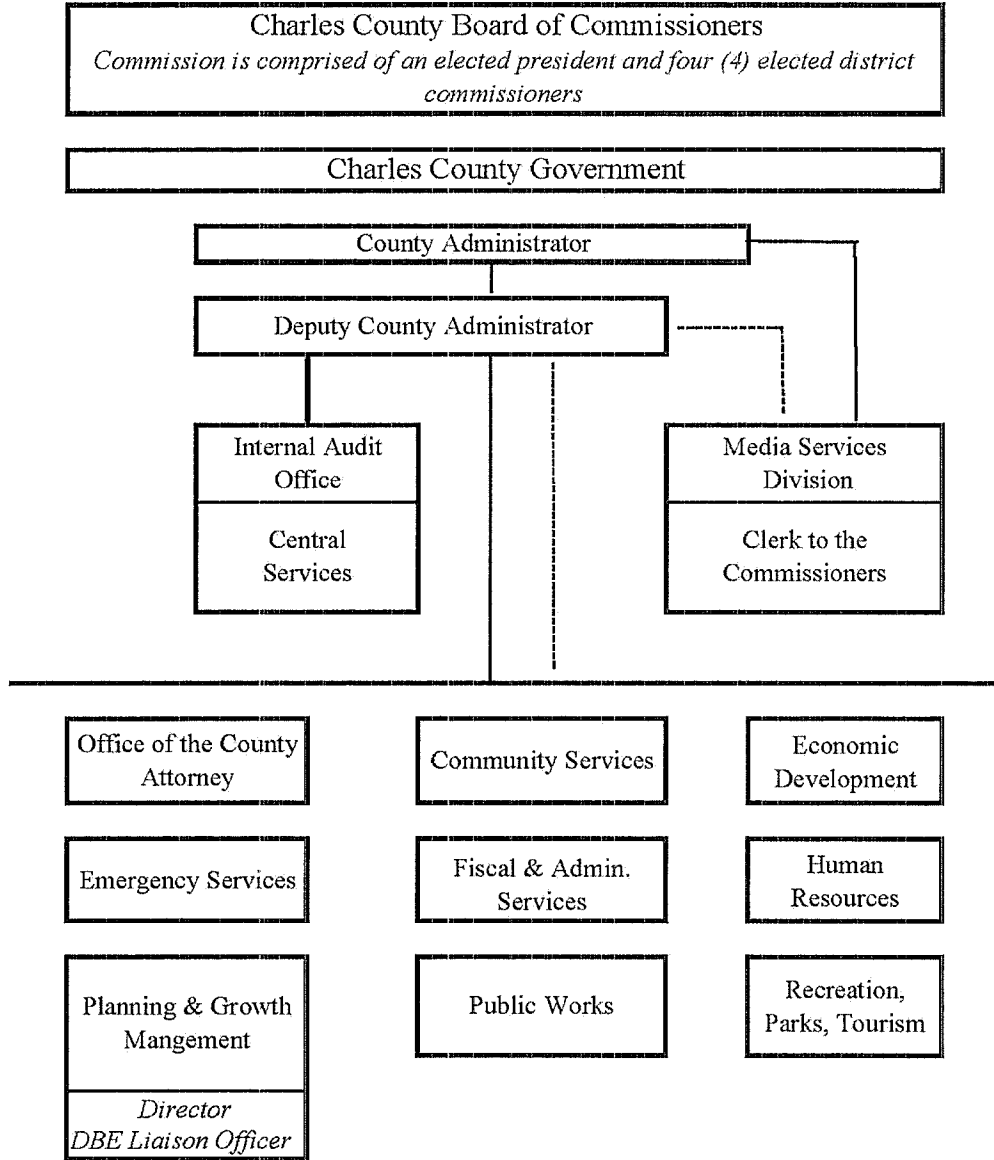
Charles County will submit monthly DBE activity reports to the MDOT MTA Office of Local Transit Support Regional Planner with copies to [bwalanga@mdot.maryland.gov](mailto:bwalanga@mdot.maryland.gov) and [jfazio@mdot.maryland.gov](mailto:jfazio@mdot.maryland.gov).

## **ATTACHMENTS**

- Attachment 1 Organizational Chart
- Attachment 2 Overall Goal Calculation
- Attachment 3 Sample Goal Calculation
- Attachment 4 MDOT DBE Contract Forms
- Attachment 5 Regulations: 49 CFR part 26

# Attachment 1

## Organizational Chart with DBELO



## Attachment 2

### Overall Goal Calculation

#### **Methodology for Determining DBE Goals in Charles County Transit Procurements**

- The total project cost is estimated prior to releasing an RFP or ITB and contractor discretionary spending potential is identified. Discretionary spending is defined as subcontracting or spending opportunities after expenses such as rent, salaries, insurance etc. are factored out.
- Each expense line item for which the contractor has discretionary spending is presented in the first column of a spreadsheet.
- For each line item, a search of the MDOT DBE directory is conducted to determine if there were firms located within a reasonable radius that could provide the products or services required
- If there are any DBE firms meeting the above criteria, an assumption is made that the contractor could utilize that firm and award 100% of the costs associated with that line item to one or more DBE firm
- The total of the amount determined to be expendable on DBE firms is divided by the total amount of the anticipated contract. This ratio is presented as a percentage of the total contract that is the DBE goal.

### Attachment 3

Sample DBE Calculation for Transit Operations Contract

FY-2018 Transit Management Contract  
Disadvantaged Business Enterprise Subcontracting Analysis

Product/Service	Total \$ Value	% of Total	NAICS Code	Total DBE Firms	Qualified DBE Firms	\$ Goal
Fuel	\$555,000	8.29%	44710/44711	0	0	\$0
Oil & Lubricants	\$20,000	0.30%	424720	11	9	\$20,000
Tires & Tubes	\$42,000	0.63%	42113	2	2	\$42,000
Auto Parts	\$100,000	1.49%	423120	3	3	\$100,000
Subcontracted Maintenance	\$35,000	0.52%	81111	0	0	\$0
Cleaning Contract	\$36,000	0.54%	561720/811192	7	7	\$36,000
Cleaning Supplies	\$7,000	0.10%	425120	9	8	\$7,000
Uniforms	\$15,000	0.22%	424330/448190	2	2	\$15,000
Office Supplies	\$15,000	0.22%	423420/424120	7	7	\$15,000
<b>Totals</b>	<b>\$825,000</b>	<b>12.32%</b>				<b>\$235,000</b>

Note: Total budgeted transit contract is \$6,695,492

**Overall Goal                      3.5%**



## **Attachment 4**

Forms Included in Solicitations

### **MDOT DBE Contract Forms**

MDOT DBE Forms for Federally-Funded Contracts include the attached:

- MDOT DBE Form A – Certified DBE Utilization and Fair Solicitation Affidavit
- MDOT DBE Form B – DBE Participation Schedule
- MDOT DBE Form C – Outreach Efforts Compliance Statement
- MDOT DBE Form D – DBE Subcontractor Project Participation Affidavit
- MDOT DBE Form E – Good Faith Efforts Guidance and Documentation

## Attachment 5

### Regulations: 49 CFR Part 26

The following link will take users to the most recent Code of Federal Regulations (CFR):

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

1. Choose the fiscal year and select Go.
2. Scroll down and select Title 49 – Transportation.
3. Select Subtitle A – Office of the Secretary of Transportation (Parts 1-99)
4. Select PDF next to Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program to download the regulation.