

**COUNTY OF NASSAU
OFFICE OF MINORITY AFFAIRS
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

POLICY

The County of Nassau Office of Minority Affairs (OMA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (USDOT) under the Code of Federal Regulations, 49 CFR Part 26. The County of Nassau (County) has received federal-financial assistance from USDOT and as a 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 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT- assisted contracts. It is also our policy—

- To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
- To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in USDOT assisted contract;
- To assist the development of firms so that they can compete successfully in the market place outside the DBE Program; and
- To provide appropriate flexibility in establishing and providing opportunities for DBEs.

The County shall not discriminate on the basis of race, color, sex, national origin, religion or disability in the award, administration and performance of any contract or in the administration of its Disadvantaged Business Enterprise Program. The County shall take all necessary and reasonable steps to ensure nondiscrimination.

The County has disseminated this policy statement to the County Executive, Members of the Nassau County Legislature and all affected components of the County's organization and it has published this statement in general circulation, minority-focused and trade association publications. The DBE Program will be made available through the Nassau County website at: <http://www.nassaucountyny.gov>.

DEAN BENNETT, COUNTY OF NASSAU DBE LIAISON OFFICER

THOMAS R. SUOZZI
COUNTY EXECUTIVE

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I. Overview

Sec. 1.01 DBE Program Objectives

The County of Nassau Office of Minority Affairs (OMA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (USDOT) under the Code of Federal Regulations (CFR), 49 CFR Part 26, attached hereto as *Appendix A*. The County of Nassau (County) has received federal financial assistance from USDOT and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26. The County's DBE program reflects a determination that there is a strong basis in evidence linking it to disparities between the proportion of minorities and/or women hired for projects or contracts and the proportion of minorities and/or women willing and able to do the work. This program is designed to accomplish the following goals:

- (1) To ensure nondiscrimination in the award and administration of federally-assisted contracts in Federal highway financial assistance programs;
- (2) To create a level playing field on which DBEs can compete fairly for federally-assisted contracts;
- (3) To ensure that the County's DBE program is narrowly tailored in accordance with applicable federal law;
- (4) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (5) To help remove barriers to the participation of DBEs in federally-assisted contracts;
- (6) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (7) To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Sec. 1.02 Definitions.

49 CFR §26.5 contains definitions of the terms used in the DBE regulation. The definitions of the designated groups included in the definition of "Socially and Economically Disadvantaged Individual" are derived from the United States Small Business Administration's (SBA) new small disadvantaged business program regulation (13 CFR § 124.3).

(a) Whenever used in this Program, the following terms shall have the meaning provided in 49 CFR § 26, reproduced, in part, below for convenience:

- (1) *Disadvantaged Business Enterprise* or *DBE* means a for-profit small business concern: (1) 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, 51 percent of the

stock of which is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

- (2) *Small Business Concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, 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 49 CFR §26.65(b). The cap is currently set at \$19.9 million in average annual gross receipts over the firm's previous three fiscal years. ¹ This amount is adjusted for inflation by the Secretary of DOT from time to time. It should be noted that a not-for-profit firm may not be certified as a DBE. However, a firm owned by an Indian tribe or Alaska Native Corporation as an entity may be certified as a DBE.
- (3) *Race-Conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program, but set-asides and price credits for DBEs would also be considered race-conscious measures.
- (4) *Race-Neutral* measure or program is one that is, or can be, used to assist all small businesses. While benefiting DBEs, such programs are not solely focused on DBE firms. Examples of race-neutral measures would include outreach programs, technical assistance programs, and prompt payment clauses, all of which can assist a wide variety of small businesses, not just DBEs. As used in this regulation, race-neutral includes gender neutrality.
- (5) *Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
- (6) *Personal Net Worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
- (7) *Socially and Economically Disadvantaged* individuals means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –
 - i. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - ii. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

¹ As of April 1, 1999.

1. *Black Americans*, which includes persons having origins in any of the Black racial groups of Africa;
 2. *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;
 3. *Native Americans*, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 4. *Asian-Pacific Americans*, 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, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 5. *Subcontinent Asian Americans*, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 6. Women; and/or
 7. Any individual groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (8) *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. For purposes of this part, a lease is considered to be a contract.
- (9) *Contractor* means one who participates, through a contract or subcontract (at any tier), in a federally funded contract.
- (10) *Affiliation* has the same meaning as provided in 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
- i. One concern controls or has the power to control the other; or
 1. A third party or parties controls or has the power to control both; or
 2. An identity of interest between or among parties exists such that affiliation may be found.
 - ii. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a

concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

- (11) *Federally-funded Contract* means any contract between the County and a contractor (at any tier) funded in whole or in part with federal financial assistance from the USDOT, including leases, letters of credit or loan guarantees, except a contract solely for the purchase of land; DOT assisted contracts.
- (12) *Good Faith Efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program goal.
- (13) *Joint Venture* means an association of a DBE firm and one or more other 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.
- (14) *Operating Administration* or *OA* refers to the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and/or the Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
- (15) *Primary Industry Classification* means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).
- (16) *Principal Place of Business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, OMA will determine the principal place of business for DBE program purposes.

(b) Unless a phrase or word is defined by the CFR or another statute or regulation cited by this Program, the phrase's or word's meaning is according to its context, the rules of grammar, and common usage.

Sec. 1.03 Scope of DBE Program

49 CFR§ 26.3 defines the applicability of the DBE regulations in terms of the types of funds being expended by the recipient. The types of federal funding to which the DBE regulations apply are defined as those authorized by:

- a) Titles I, III, V and VI of ISTEA, Pub. L. 102-240, or
- b) Federal transit laws in Title 49, U.S. Code, or
- c) Federal transit laws in Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178.

In sum, any third party contract which is awarded by the County and which is funded in whole or in part with USDOT funds, is subject to the requirements of 49 CFR§ 26. It does not matter whether the federal funds are for planning, capital or operating assistance, the DBE rules apply. Thus, the provisions of this program shall apply to all federally-funded procurement and contracting, including construction and the acquisition of all commodities, equipment, goods, and services (including professional services), however, titled and irrespective of the modality or manner procured.

Notwithstanding the above, a contract that is funded entirely with local funds – without any federal funds – is not subject to the DBE requirements under this rule. The foregoing also does not require the County to review every procurement or contract let by for DBE participation. Overall goals and contract goals established to meet those goals are addressed subsequently in Section V. The County recognizes that certain types of procurements may not have subcontracting opportunities or be appropriate for DBE goal setting. Thus, the County will comply with the requirements of the regulation by using a combination of race-neutral and race-conscious means.

Sec. 1.04 OMA's Assurances

OMA, as the recipient, shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federally-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. OMA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of federally-assisted contracts. OMA's DBE program, as required by 49 CFR part 26, and as approved by the United States Department of Transportation, is incorporated by reference in this program. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of the County's agreement with the USDOT. Upon notification to the County of its failure to carry out its approved program, the USDOT 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.*)

II. Roles and Responsibilities

Sec. 2.01 Overview

The County acknowledges that the successful implementation of its DBE program requires the commitment of its leadership from the highest levels of government, internal coordination of effort and an adequate staff to carry out program requirements. This section addresses the role and responsibilities of the Office of Minority Affairs

DBE Liaison Officer, staff structures, communication issues and the involvement of key County stakeholders.

Sec. 2.02 Functions of the DBE liaison officer

Pursuant to 49 CFR §26.25, the County is required to have a DBE Liaison Officer who has direct, independent access to the Chief Executive Officer concerning DBE program matters. The Chief Executive Officer in Nassau County is the County Executive. The DBE Liaison Officer will be responsible for implementing, developing, and monitoring all aspects of the County's DBE program. The regulation also requires the County to designate adequate staff to administer the DBE program.

One area of the Liaison Officer's responsibility will include acting as an advocate for DBE contractors, subcontractors and suppliers of any tier on the County's contracts. The DBE Liaison Officer will also be available to any DBE who is experiencing difficulties in the payment process or in any other aspect of the contract work. The Liaison Officer shall be available to investigate complaints, mediate disputes and recommend remedies to the appropriate County management officials. Other duties and responsibilities of the DBE Liaison Officer shall include but are not limited to the following:

1. Coordinating developmental, managerial and technical assistance activities for DBEs.
2. Gathering and reports statistical data and other information as required.
3. Reviewing third party contracts and purchase requisitions for compliance with this program.
4. Working with all departments to set overall annual goals.
5. Disseminating information on available contracting opportunities to ensure nondiscrimination in the award and administration of USDOT assisted contracts.
6. Identifying contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
7. Analyzing the County's progress toward goal attainment and identifies ways to improve progress.
8. Participating in pre-bid meetings.
9. Advising the County Executive on DBE matters and achievement.
10. Chairing the DBE Advisory Committee, which is made up of procurement, legal, public works, contracting and other County personnel responsible for making management-level decisions on procurement and contracting.
11. Participating with legal counsel and project directors to determine contractor compliance with good faith efforts.
12. Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
13. Planning and participating in DBE training seminars.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.

Sec. 2.03 Designation of the DBE Liaison Officer

The County has designated the following individual as the DBE Liaison Officer: **Dean Bennett, Office of Minority Affairs, 1 West Street, Suite 323, Mineola, NY 11501, (516) 571-6174, dbennett@nassaucountyny.gov**. In that capacity, Dean Bennett is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provisions of 49 CFR Part 26. Dean Bennett has direct, independent access to the County Executive, Thomas Suozzi, concerning DBE

program matters. An organization chart displaying the DBE Liaison Officer's position in the organization is found in *Attachment A* to this program.

The DBE Liaison Officer has two professional staff employees and two support personnel who devote a portion of their time to the program.

Sec. 2.04 Responsibilities of the County Executive

The County Executive is responsible for:

1. Establishing a DBE program and policy that is supported by County deputies, directors, managers and staff throughout the organization.
2. Requiring all deputies, directors and managers to coordinate resources for effective integration of the DBE program.
3. Allowing the DBE Liaison Officer direct and independent access concerning DBE matters.
4. Assuring adequate staffing to minimize potential conflicts among departments.

Sec. 2.05 Responsibilities of County Departments in Implementing the DBE Program

Knowledge of pertinent regulations and coordination of efforts between departments, especially, procurement, comptroller, legal, information and technology (IT), public works, and the press office will assist the County in realizing its goals and avoiding potential conflicts. All departments should give input to overall annual goals. County departments will be required to participate by providing the following:

1. Procurement – send all bid notices and requests for information and/or proposals to the DBE Liaison Officer early in the process to assess DBE goal.
2. Comptroller – prepare reports to assist DBE Liaison Officer in monitoring payments against contract DBE goals and overall annual goals.
3. Legal – review contracts to be sure USDOT required clauses are updated and included.
4. Public Works – monitor work and timely payments of DBEs on projects.
5. Press Office – assist DBE Liaison Officer with interfacing with the media, sending out the County's DBE goals and soliciting notices.
6. IT – assist in developing efficient systems for collection of data for reporting and monitoring.

III. Administrative Requirements for DBE Programs

Sec. 3.01 Overview

The County acknowledges that the successful implementation of our DBE program requires the commitment of our leadership from the highest levels of government, internal coordination of effort and an adequate staff to carry out program requirements. This section addresses the role and responsibilities of the DBE Liaison Officer, staff structures, communication issues and the involvement of key County stakeholders.

Sec. 3.02 Required Efforts on Behalf of DBE Financial Institutions

49 CFR §26.27 requires the County to thoroughly investigate the full extent of services offered by DBE financial institutions in the community, and to make reasonable efforts to use these institutions. The County acknowledges that it must also encourage prime contractors to use such institutions.

The County currently maintains deposits in one DBE institution and intends to continue to do so. The County strongly encourages prime contractors to use the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities. Each Contracting Agency makes available to prime contractors a list of DBE financial institutions. The list of DBE financial institutions that is distributed to prime contractors was obtained from the following site: <http://www.federalreserve.gov/releases/mob/>. The list has been reproduced and attached hereto as *Attachment B*. This is the most current listing which was last updated March 2006.

Sec. 3.03 DBE Directory

49 CFR §26.31 requires the County to compile and update, at least annually, a directory or source list of all firms eligible to participate as DBEs in County programs. The listing for each firm must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. This directory is maintained by the New York State Unified Certification Program (NYSUCP) and is made available to interested persons, including contractors and the public on request.

The NYSUCP maintains the directory of DBE firms that have been certified to do work as DBEs. The information required for the Directory includes the name, address, phone number, and the types of work the firm has been certified to perform as DBE. The primary purpose of the Directory is to show the results of the certification process. Certification of these firms is conducted by one of the four certifying agencies in New York that is listed in *Attachment C*. The NYSUCP Directory is located at the following website address: <http://www.dot.state.ny.us/crb/registry.txt>.

Sec. 3.04 Bidders List

49 CFR §26.11 requires the County to create and maintain a bidders list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on federally-funded projects. For every firm, the following information must be included:

- (1) Firm name,
- (2) Firm address,
- (3) Firm's status as a DBE or non-DBE,
- (4) The age of the firm, and
- (5) The annual gross receipts of the firm.

The bidders list is intended to be a count of all firms that are participating, or attempting to participate, on federally-funded contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on federally-funded projects, including both DBEs and non-DBEs. The County intends to use the bidders lists to determine the availability of DBE and non-DBE firms. Creating and maintaining a bidders list will give the County another valuable way to measure the relative availability of ready, willing and able DBEs when setting their overall goals. (See Section 5 – Establishing Overall Goals.) The County has recently implemented its newly revamped e-procurement system, whereby all vendors participating in or seeking to participate in bids or other procurement opportunities are electronically registered with the County. This system allows the County to collect, store and sort data more efficiently. Vendors must register with the County by logging onto the County website and entering required information. Once all

vendor entries have been completed, the system will allow the County to produce more accurate reports of DBE availability.

Sec. 3.05 Over-concentration

49 CFR §26 requires the County to make a determination relating to the over-concentration of DBE firms in certain types of work. The County has determined that there is no over-concentration of DBEs; that is that there is no such abundance of DBEs in a certain type of work so as to unduly burden the opportunity of non-DBE firms to participate in a specific type of work.

IV. Certification

Sec. 4.01 Overview

49 CFR §26 requires that the program be narrowly tailored so that small businesses in general are encouraged to participate in federally-funded contracts. To ensure that the program has been narrowly tailored, only those businesses, which qualify as DBEs may participate in federally-funded contracts as DBEs and only those certified as DBEs may be counted as such for the purpose of calculating annual goals. 49 CFR §26, Subparts D and E, prescribe standards to be applied and procedures to be followed when certifying businesses as DBEs. This section addresses the certification standards and procedures, the New York Unified Certification Program and the County's role in the certification process.

Sec. 4.02 New York State Unified Certification Program

The New York Unified Certification Program (NYSUCP) provides for "one-stop shopping" for DBE firms applying for certification in New York State. The New York State Unified Certification Program Proposal and Memorandum of Understanding, which establishes the NYSUCP, are attached as *Appendix B*. An applicant may fill out one form, go through one application process and, if certified, become able to work as a DBE for any NYS recipient that is federally-funded. The Uniform Certification Application is attached as *Appendix C*. The NYSUCP has consolidated all DBE firms certified by the four NYSUCP Certifying Entities into one centralized DBE Directory for USDOT funded contracts for Airport, Highways, and Public Transit.

The County is a Non-Certifying NYSUCP Partner and it can neither issue nor revoke DBE Certification. Thus the County relies on the four Certifying Entities to complete the certification process for potential DBEs wishing to do business in the County as a DBE.

Those firms wishing to apply for certification in New York State are encouraged to apply to one of the four NYSUCP Certifying Entities located closest to their headquarters or principal place of business. Please refer to *Attachment C*. If there are specific questions that an applicant has about the certification process, that applicant should contact their certification entity referred to in *Attachment C*.

Sec. 4.03 Denials of Initial Request for Certification

When a NYSUCP Certifying Entity denies a request by a firm, which is not currently certified with the NYSUCP, to be certified as a DBE, the firm will be provided with a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial by the NYSUCP Certifying Entity that denied certification. All documents and other information on which the

denial is based must be made available to the applicant, on request. When a firm is denied certification, it must wait twelve (12) months before it may reapply to the NYSUCP for certification.

When a NYSUCP Certifying Entity makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the United States Department of Transportation. (See Sec. 4.04).

Sec. 4.04 Certification Appeals

If a firm is denied certification or whose eligibility is removed by a NYSUCP Certifying Entity, it may make an administrative appeal to the USDOT.

If you are a complainant in an ineligibility complaint to your NYSUCP Certifying Entity [including the concerned operating administration in the circumstances provided in Sec. 5.03(c)], you may appeal to the USDOT if the NYSUCP Certifying Entity does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible. Send appeals to the following address:

United States Department of Transportation
Office of Civil Rights
400 7th Street, SW
Room 2401
Washington, DC 20590.

V. Goal for Transit Vehicle Manufacturers

In accordance with 49 CFR §26.49, the County will require each transit vehicle manufacturer ("TVM"), as a condition of being authorized to bid or to propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR §26.49. Alternatively, the County, at its discretion and with FTA approval, may establish project-specific goals for DBE participation in the procurement of transit vehicles, in lieu of TVMs complying with this element of the Program.

VI. Procurement Process and Contract Requirements

Sec. 6.01 Set-asides, Quotas or Preferences

The County will not use quotas for DBEs on federally-funded contracts. A quota is a simple numerical requirement that a contractor must meet, without consideration of other factors. The County will not refuse showings of good faith efforts or arbitrarily disregard them, thereby using a quota. Bidders are required to make good faith efforts to meet contract goals where such goals are stated, but the County will not deny a contract to a bidder solely on the basis that it did not obtain enough DBE participation to meet the goal. The County will consider bidders' documentation of good faith efforts. If bidders make good faith efforts to meet contract goals, they will be considered to have complied with the intent of the DBE regulations, even if their good faith efforts fail to meet the actual contract goal.

The County's DBE program does not set aside a certain percentage of contracts or dollars for a specific set of contractors. The DBE program is a goals program, which encourages participation without imposing rigid requirements of any type.

Sec. 6.02 Good Faith Efforts

When the County determines that the established overall aspirational goal is not being achieved, it will require contract goals by identifying DBE goals for certain contracts in bid documents. The County treats bidders'/offerors'/consultants' ("bidder") compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal is meeting all the requirements of the advertisement and solicitation. In determining whether a bidder has made good faith efforts, the County may take into account the performance of other bidders in meeting the contract goal. 49 CFR §26.53 requires the County to award a contract with a DBE goal to a bidder who has made good faith efforts to meet the goal. A *good faith effort* is defined as one where the bidder:

- (1) Documents that it has obtained enough DBE participation to meet the goal; **OR**
- (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The County has identified actions that will be considered when making determinations on whether there have been adequate good faith efforts by referencing Appendix A to Part 26 – *Guidance Concerning Good Faith Efforts*. The following consists of but is not limited to those identified actions:

- (1) Adequate solicitation of DBEs (through all reasonable and available means), with sufficient time for DBEs to respond to the solicitation;
- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved;
- (3) Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner;
- (4) Negotiating in good faith with interested DBEs. 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 goal, as long as the costs are reasonable. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable;
- (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the grantee or contractor; and/or
- (7) Effectively using the services of available minority/women community organizations and other organizations to provide assistance in the recruitment and placement of DBEs.

Each solicitation for which a contract goal has been established will require the bidders to submit the following information to the County of Nassau, Disadvantaged Business Enterprise Office, 1 West Street, Rm. 323, no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening:

1. The names and addresses of known 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 participation
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 contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

The following personnel are responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: DBELO Designee. The County will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before a commitment to the performance of the contract by the bidder is made. Should the submission be found lacking in effort, the bidder's designated official will be advised as soon as possible after bid opening. The low bidder will be afforded the opportunity to demonstrate why a good faith effort finding is warranted.

The low bidder must request a review, in writing, by close of business on the same day in which bid opening occurred. A formal review will occur within twenty four (24) hours of receipt of the written request for reconsideration. Requests must include representation of facts. Only matters outlined in this request will be considered. The DBELO Designee **will** make the determination of findings known not later than five (5) business days from the date the review by the designee occurred. All determinations by the Office are final and cannot be appealed to US DOT.

Sec. 6.03 Administrative Reconsideration

If the DBELO Designee determines that an apparent successful bidder is not responsive because it has not documented sufficient good faith efforts or that the apparent successful bidder has failed to meet the requirements of this section, it will, before the award of the contract, contact the bidder by certified mail and provide the bidder with an opportunity to request an administrative reconsideration. **ANY REQUESTS FOR ADMINISTRATIVE RECONSIDERATION MUST BE RECEIVED WITHIN TEN (10) BUSINESS DAYS OF THE REVIEW LETTER and must be sent to the DBE Reconsideration Officer, Traci Wheelwright, One West Street, Room 323, Mineola, New York 11501.**

- (1) As part of this reconsideration, the bidder 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.
- (2) The designee's decision on reconsideration will be made by an official or officials who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder will have the opportunity to meet in person with the DBE Reconsideration Officer to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

- (4) The evidence presented during the administrative reconsideration hearing will be reviewed de novo. The DBE Reconsideration Officer may consider newly admitted evidence when determining whether the bidder met the requirements of this section.
- (5) The DBE Reconsideration Officer will send the bidder 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.
- (6) The result of the reconsideration process is final and is not administratively appealable to the United States Department of Transportation.

Sec. 6.04 Post Award Good Faith Efforts

When a Contractor believes a DBE is unable/unwilling to meet the contract terms the Contractor must document steps taken to advise the DBE of its intentions relative to continuing/terminating the subcontract. When a Contractor, in conjunction with the Office believes non good faith effort is evident, the Contractor may take necessary steps to correct the deficiency up to and including termination of the subcontract. No Contractor will be penalized for shortfalls arising from a DBE's unwillingness/inability to honor subcontract arrangements provided the Contractor can demonstrate to the DBELO that it acted diligently to communicate (in writing) their concerns, conducted itself in a customarily acceptable business manner and has not arbitrarily acted to remove and DBE without cause, documented efforts to assist the DBE in fulfilling the terms of the subcontract or working arrangement, acted reasonably to integrate the sub into the project team, documented efforts (if adequate work time as determined by the Project manager) remains to replace the DBE with another DBE, and reported the DBE problems to the DBE Liaison Officer.

Under no circumstance is a Prime obligated to continue the subcontract of a DBE not meeting terms of the subcontract (as defined in the subcontract). When the Office considers an item as incidental and no specific subcontract is required, The Office will accept as documentation the agreed upon work provided it is spelled, including terms on a purchase order or letter of agreement.

When a Prime can substitute another DBE to fulfill the subcontract, it shall do so without added cost to the County. In any case, Primes shall furnish Project Management and DBE Liaison Officer with written documentation substantiating allegations of impropriety/derelection prior to removing any DBE. Nothing in the above prohibits a Prime from immediate removal of a DBE when Federal/State criminal/civil violations have been found. Any changes to a subcontract must be coordinated with Project Management and documented through process of change orders.

In cases where a DBE firm believes it is being discriminated against, it's work is not being integrated/considered, or is being treated adversely by the Contractor/Consultant, the DBE should document its concerns/issues in writing - citing date, time, personnel involved and specific matter and submit said documentation to the Contractor/Consultant's management/CEO or in the case, of civil rights violation directly to the Company's EEO Officer. Copies may be provided to the DBELO; however, first course of action is directly with the Contractor. While The Office is not a party to subcontractor /consultant agreements, the DBE Liaison may interview parties in an attempt to resolve issues or may refer the matter to appropriate Federal/State agency with jurisdiction in the matter. A Prime as determined by the designee, or the appropriate modal Director or designee, as not having acted in good faith to satisfy DBE

participation efforts will be required to justify why The Office should not take sanctions it deems appropriate under the contract.

Sec. 6.05 Counting DBE participation toward goals

49 CFR § 26.55 sets forth the criteria and defines the methodology for counting DBE participation toward contract goals. The County will obtain as much as possible of the DBE participation needed to meet their overall goals through race-neutral measures. Race-neutral measures will include such activities as training, technical assistance, bonding assistance, business development or mentor-protégé programs, breaking contracts up into pieces that small businesses can readily perform, and awards of prime contracts to DBEs through the regular competitive process. The basic principles of counting DBE participation are summarized as follows:

1. Actual Performance. When a DBE participates in a contract, the County will count only the value of the work actually performed by the DBE toward DBE goals.
 - i. For construction contracts, the County will count the entire amount of that portion of the contract that is performed by the DBE's own forces, including the cost of supplies purchased and equipment leased by the DBE for the work (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - ii. For professional, technical, consultant or managerial services contracts, the County will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, or for providing bonds or insurance specifically required for the performance of a federally-funded contract, provided the County determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - iii. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
2. Joint Ventures. When a DBE performs as a participant in a joint venture, the County will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces toward DBE goals.
3. Commercially Useful Function. The County will count expenditures to a DBE contractor only if the DBE is performing a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

- i. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
- ii. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the County will presume that it is not performing a commercially useful function.
- iii. When a DBE is presumed not to be performing a commercially useful function as provided for in this section, the DBE may present evidence to the DBELO to rebut this presumption.
- iv. The DBELO's decisions on commercially useful function matters are subject to review by the concerned operating administration.
- v. The following factors will be used in determining whether a DBE trucking company is performing a commercially useful function:
 - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. The DBE will receive credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - f. For purposes of this paragraph (v), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of

the leased truck. Leased trucks must display the name and identification number of the DBE.

4. Suppliers. For expenditures with DBEs who supply materials or supplies, this section establishes rules for counting DBE participation based upon whether the DBE is a manufacturer or a regular dealer. For expenditures with DBE manufacturers, the County will count one hundred percent (100%) of the cost of the materials or supplies. For expenditures with DBEs who are regular dealers, the County will count sixty percent (60%) of the cost of the materials or supplies.
 - i. For purposes of this section, a regular dealer is 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 and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - ii. 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.
 - iii. 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 operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - iv. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
5. Brokers. The County will not count any portion of the cost of the materials and supplies toward DBE goals for purchases of materials and supplies from a DBE, which is neither a manufacturer nor a regular dealer; however, the County may count toward DBE goals, fees or commissions charged by a DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site provided that the fees are reasonable and not excessive as compared with industry practices.
6. Effective Count and Exclusions. The following details when DBE participation may be counted and what participation is excluded:
 - i. If a firm is not currently certified as a DBE at the time of the execution of the contract, the County will not count the firm's participation toward any DBE goals.
 - ii. The County will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE, evidenced by a copy of the canceled check or receipt given to the DBELO by registered and/or certified mail.

- iii. If the contract amount overruns, the contractor will not be required to increase the dollar amount of DBE participation. If the contract amount under runs, the contractor will not be allowed to decrease the dollar amount of DBE participation except when the DBE subcontracted items themselves under run.

Sec. 6.06 Termination of DBE Contractor

- (1) A prime contractor is prohibited from terminating for convenience a DBE subcontractor or an approved substitute DBE firm and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the DBELO's prior written consent.
- (2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, a prime contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal the County establishes for the procurement.
- (3) Failure to comply with the requirements of this section will result in administrative remedies, as needed.

Sec. 6.06 Required Contract Clauses

49 CFR §26 requires the County to provide for contract clauses which require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than a specific number of days from receipt of each payment that the grantee makes to the prime contractor. Retainage payments withheld by the prime contractor from the subcontractor are also required to be returned within a specific number of days after the subcontractor's work is satisfactorily completed. Additionally, each contract the County signs with a prime contractor, signed by the prime contractor with the County, and each subcontract the prime contractor signs with a subcontractor must contain assurance regarding discrimination. This section details required language that must be included in every federally-funded contract.

Prompt Payment Mechanisms

Under part 26.29, the County is required to include a provision in their federally-funded contracts requiring prime contractors to make prompt payments to their subcontractors, DBE and non-DBE alike. Payment is required only for satisfactory completion of the subcontractor's work. The following language shall be included in every federally-funded contract:

Contractor agrees as follows:

- (a) **Subcontractors shall be paid for satisfactory performance of their contracts no later than fifteen (15) calendar days from receipt of each payment made to the Contractor.**
- (b) **Failure to comply with the terms and conditions of this provision shall constitute a breach of contract and further payments for any work performed may be withheld until such time as corrective action is taken. The Contractor shall be responsible for any corrective work shown at the time of final inspection. If the Contractor fails to take corrective action, the County reserves the right to terminate the contract.**

- (c) Any delay or postponement of payment among the parties may take place only for good cause, with prior written approval from the County.
- (d) All subcontract agreements between the Contractor and subcontractor shall be in writing and shall contain all of the federal requirements and pertinent provisions of the prime contract.

Retainage

The County requires prime contractors to return retainage within a given number of days from the time the subcontractor's work had been satisfactorily completed, even if the prime contractor's work had not yet been completed. The following language shall be included in every federally-funded contract:

The prime contractor agrees further to release retainage payments to each subcontractor within thirty calendar (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 County. This clause applies to both DBE and non-DBE subcontractors.

Contract Assurance

Central to the County's implementation of the foregoing policy are the signed "assurances" required of prime contractor on federally-funded contracts. Each contract the County signs with a prime contractor, signed by the prime contractor with the County, and each subcontract the prime contractor signs with a subcontractor shall include the following assurance:

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 federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate.

VII. Record keeping, Monitoring and Reporting

Sec. 7.01 Overview

49 CFR §26.37 requires the County to establish a monitoring and enforcement mechanism to verify that the work committed to DBEs at the contract awarding stage is actually performed by the DBEs. The County has defined a strong and effective set of monitoring and compliance provisions in its DBE program. The County will measure payments actually made to DBEs, not just promises at the award stage. The County will keep a running tally of the extent to which, on each contract, performance matches promises. Prime contractors whose performance falls short of original commitments will be subject to the compliance mechanisms discussed below. This section details those mechanisms and lays out remedies.

Sec. 7.02 Contractors Records

For every prime contractor and subcontractor bidding, quoting or providing services on a federally-assisted contract, the prime contractor will provide the County with the following information on a quarterly basis:

- (1) Firm name;
- (2) Firm address;
- (3) Firm's status as a DBE or non-DBE;
- (4) The age of the firm; and
- (5) The annual gross receipts of the firm.

The County will require as a condition of prequalification, the collection of the above referenced information. Please see *Appendix D*, Forms.

Sec. 7.03 Confidentiality of Information, Cooperation, and Complaints

Availability of records. In responding to requests for information concerning any aspect of the DBE program, the County complies with provisions of the New York Local Government Records Law. The County may make available to the public any information concerning the DBE program, release of which is not prohibited by New York or Federal law.

Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

- (1) Cooperation. All participants in the County's DBE program (including, but not limited to, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by the County or DOT. Failure to do so shall be a ground for appropriate action against the party involved.
- (2) Intimidation and retaliation. No contractor or any other participant in the program is allowed to intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

Complaint Procedure. Individuals who have cause to think that they have been subjected to intimidation or retaliation shall follow the procedures below in processing and resolving a complaint.

- (1) The complainant shall present the complaint in writing to the DBELO.
- (2) The DBELO will contact the complainant to acknowledge receipt of the complaint and advise the complainant of his/her right to bring the alleged incident to the

attention of the DOT, United States Department of Justice, or other federal authority, as applicable.

- (3) The DBELO will contact the party alleged to have caused the intimidation or retaliation of the complaint and advise the party of the proceedings.
- (4) The DBELO will immediately notify the Deputy County Executive (DCE) of the agency and DOT of the complaint, and will conduct an investigation within thirty (30) working days.
- (5) Within fifteen (15) days of completing the investigation, the DBELO shall submit a written report to the DCE, with copies to the complainant, the party alleged to have caused the intimidation or retaliation, and the DOT. All documentation relating to the complaint shall be maintained in the Office of the DBELO for a period of three (3) years.

Sec. 7.04 Monitoring Contractors' Performance and Violations

The DBELO or his designee shall review all federally funded contracts for compliance with the DBE Program. This review shall include, but not be limited to, whether the proposed DBE participation (both in dollar amounts and percentages) and committed goal level upon which the federally-funded contract was awarded are maintained over the duration of the contract.

All contractors shall promptly render payment to all subcontractors in accordance with the provisions described herein for each federally funded contract. Each contractor shall provide proof of payment to subcontractors in a form and with content approved by the County project manager, evidencing that the subcontractor has been duly paid for the completion of satisfactory services, unless a bona fide dispute, documented in writing exists between the contractor and the unpaid subcontractor. In the event of a bona fide dispute, the contractor shall provide written documentation of such dispute to the County project manager responsible for the contract. The County may withhold all payments under a federally-funded contract until all documentation required by this section has been provided in a form satisfactory to the County.

Sec. 7.05 Enforcement actions under the DBE program.

If a firm that does not meet the eligibility criteria of certification as provided for in *Appendix A* attempts to participate in a federally-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the County may initiate suspension or debarment proceedings against the DBE firm in accordance with federal and state law.

If a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of certification as provided for in *Appendix A*, the County may initiate suspension or debarment proceedings against the DBE firm in accordance with federal and state law.

The County may refer to Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, or to the State Attorney General for prosecution under New York State Law, any person who makes a false or fraudulent statement to a State agency in connection with participation of a DBE in any federally-assisted program or otherwise violates applicable Federal or State statutes.

Enforcement Mechanisms

Under part 26.107, the County may include provisions in their federally-funded contracts requiring prime contractors to be subject to enforcement penalties if they commit violations against the Nassau County DBE Program. The following language shall be included in every federally-funded contract:

During the performance of this Contract, the Contractor or Consultant, for itself, its assignees and successor in interest (“Contractor”) agrees as follows:

- (a) Contractor, shall comply with all the requirements of the Disadvantaged Business Enterprise Program as it now exists or as it may be amended in the future (the “DBE Program”), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the DBE Program are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provision of the DBE Program is a material breach of Contractor's obligations under this Agreement and shall entitle the County, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the DBE Program or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive.**
- (b) If Contractor willfully fails to comply with any of the provisions of the DBE Program, the rules and regulations implementing the DBE Program, or the provisions of this Agreement pertaining to DBE participation, Contractor shall be liable for liquidated damages in an amount equal to 1% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Disadvantaged Business Enterprise Liaison Officer or any other public official authorized to enforce the DBE Program (separately and collectively, the “DBELO”) may also impose other sanctions against Contractor authorized in the DBE Program, including declaring the Contractor to be irresponsible and ineligible to contract with the County for a period of up to three (3) years or revocation of the Contractor's DBE certification. The DBELO will determine the sanctions to be imposed, including the amount of liquidated damages after an investigation. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the DBELO shall be payable to County upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with the County.**
- (c) Contractor agrees to maintain records necessary for monitoring its compliance with the DBE Program for a period of six (6) years following**

termination or expiration of this Agreement, and shall make such records available for audit and inspection by the DBELO or the Comptroller upon request.

Sec. 7.06 Fraud Detection and Prevention

The County has established a Fraud Prevention and Detection Policy to facilitate the development of controls which will aid in the prevention and detection of unlawful or wasteful acts (commonly called Fraud and Abuse) against the County and its enterprises. To facilitate the detection of fraud, several mechanisms have been established to assist anyone who wants to contact the County when they believe fraud has been committed in its DBE Program.

The DBELO will retain a staff member that has received specialized training in fraud prevention and detection and has obtained certification as a Certified Fraud Examiner designation. All investigations will be supervised by those specially trained to do so.

VIII. Business Support Programs

Sec. 8.01 Business Development Program

The DBE Officer, in cooperation with County agencies, Community Based Organizations and other government entities, is authorized to develop programs and activities to provide outreach to developing DBEs and to assist the business development of such enterprises. These activities may include, but are not limited to:

1. Communicating information about the DBE Program through a newsletter, the internet, workshops, training activities, and other outreach activities conducted by the County or other public or private entities in collaboration with the County.
2. Development of a resource directory to be provided to the DBE community in the Nassau County area with information as to assistance, bonding, financial management and/or accounting, continuing education, professional organization and other resources that improve small business market access or capacity.
3. Such other programs or activities as the DBELO may from time to time implement.

Sec. 8.02 Mentor – Protégée

The County maintains the Nassau County Mentor Protégé Program which is created to foster a more competitive environment for County projects by increasing DBE participation. The immediate objective is to strengthen the long term stability of DBE firms by focusing resources on those critical business skills that contractors need to compete successfully in the open market. The County is committed to strengthening its program of encouraging DBEs to participate in federally-funded contracts. The Mentor/Protégé program is designed to become the delivery system for the promotion and expansion of disadvantage businesses in Nassau. It is intended to increase the countywide capacity and availability of DBEs, and help to eliminate the difficulty the prime contractor will face in obtaining their participation on DOT assisted projects. The Mentor/Protégé program is one method that can be utilized to assist the contractor in meeting DBE goals on a project.

IX. DBE Program Updates

Pursuant to §26.21, the County will continue to carry out this program until significant changes to this DBE Program are adopted. If material changes of the DBE Program do occur, the County will provide to the DOT a proposed overall goal and goal setting methodology and other program updates not later than June 1 of every year.

Appendices

Appendix A – Final Rule of DBE regulations

Attachment B – Minority Owned Banks

Attachment C – Four Certifying Agencies

Attachment D – Organizational Chart