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# **BATTLE CREEK TRANSIT**

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## **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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Effective Date: December 6, 2022

Adopted by: Battle Creek City Commission

Date Adopted: 12/6/2022

## TABLE OF CONTENTS

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1. Policy Statement .....	3
2. General Requirements .....	4
3. Administrative Requirements .....	5
4. Goals, Good Faith Efforts, and Counting .....	8
5. Certification Standards .....	12
6. Compliance and Enforcement.....	12
Attachment 1: Organizational Chart .....	14
Attachment 2: Overall Goal Calculation.....	15

## I Policy Statement

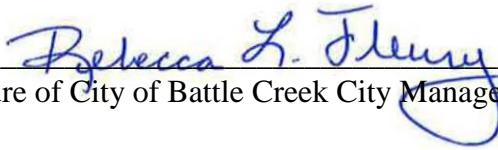
Battle Creek Transit (BCT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 26. BCT has received federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, BCT has signed an assurance that it will comply with 49 CFR Part 26.

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

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

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

BCT has disseminated this policy statement available to the City of Battle Creek Commission. We have published the plan on BCTs website ([www.battlecreekmi.gov/transit](http://www.battlecreekmi.gov/transit)); include reference to this plan in all solicitations; and have made the plan available through our office.



Signature of City of Battle Creek City Manager Rebecca L. Fleury

12/6/2022

Date

## 2 General Requirements

### Section 26.1 Objectives

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

### Section 26.3 Applicability

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

### Section 26.5 Definitions

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

### Section 26.7 Nondiscrimination Requirements

BCT 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, BCT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### Section 26.11 Record Keeping Requirements

#### Reporting to DOT: 26.11(b)

BCT will report DBE participation to FTA by preparing the Uniform Report on DBE Awards, Commitments, and Payments, and submitting this report in TrAMS ([www.transit.dot.gov/ntd](http://www.transit.dot.gov/ntd)) twice per fiscal year, for the respective periods of October 1 - March 31 (due June 1), and April 1 - September 30 (due December 1). These reports will reflect payments actually made to DBE's on DOT - assisted contracts - both completed and ongoing. Additionally, all dollar amounts will reflect only the Federal share of such contracts, and will be rounded to the nearest dollar.

#### Bidders List: 26.11(c)

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

We will collect this information in the follow way: Contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.

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

BCT has signed the following assurances, applicable to all DOT-assisted contracts and their administration.

### Assurance: 26.13(a)

BCT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. BCT will take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. BCT's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated 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 BCT of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

### Contract Assurance: 26.13(b)

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

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

## **3 Administrative Requirements**

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

Any FTA recipient receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year must have a DBE program. BCT will provide to DOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on page three of this program.

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

BCT has designated the following individual as our DBE Liaison Officer (DBELO):

Donna Hutchison, Grants Administrator  
339 West Michigan Avenue  
Battle Creek, MI 49037  
Telephone 269.966.3477 dmhutchison@battlecreekmi.gov

In that capacity, the DEBLO is responsible for implementing all aspects of the DBE program and ensuring that BCT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager 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 does not report directly to the City Manager but does have the ability to directly contact them should the need arise without going through the chain of command.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. BCT is a small urban and only has one person to administer the program. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions as they pertain to BCT for compliances with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
5. Analyzes BCT's progress toward attainment and identifies ways to improve progress.
6. Participates in all BCT pre-bid meetings.
7. Advises Transit Director on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars as needed.
10. BCT utilizes the MUCP website.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

It is the policy of BCT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. To date we have not identified such institutions.

## **Section 26.29 Prompt Payment Mechanisms**

BCT will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from BCT. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of BCT. This clause applies to both DBE and non-DBE subcontracts.

Additionally, the prime contractor is required to maintain records and documents of payment to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record requirements for BCT's financial assistance agreement, whichever is longer.

These records will be made available for inspection upon request by BCT or DOT. This clause applies to both DBE and non-DBE subcontracts. Failure of the contractor to comply with this requirement is cause for breach of contract, resulting in the subcontractor being paid directly and the amount deducted from the retainage owed to the prime contractor.

## **Section 26.31 Directory**

BCT does not maintain a directory identifying all firms eligible to participate as DBEs, but instead utilizes the MUCP DBE Directory at [MDOT MUCP Public Application \(state.mi.us\)](http://MDOT MUCP Public Application (state.mi.us)).

The MUCP 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.

## **Section 26.33 Overconcentration**

BCT has not identified that overconcentration exists in the type of work that DBEs perform.

## **Section 26.35 Business Development Programs**

BCT currently has no business development program for DBEs.

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

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

1. BCT will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. BCT will also consider similar action under its own legal authorities, including but not limited to responsible determinations in future contracts and breach of contract actions.

3. BCT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by visits to the project site to verify DBE work, a review/filing of associated contract records, and a final, written contract summary certifying DBE work.
4. BCT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

## 4 Goals, Good Faith Efforts, and Counting

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

BCT has adopted strategies to ensure a reasonable number of prime contracts are made available to small businesses – including DBEs – and has included an element to structure contracting requirements to help facilitate race-neutral competition by small business concerns, having taken all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

BCT also acknowledges that Small Business Enterprise (SBE) participation cannot be counted toward DBE credit, and will facilitate its small business participation without a social-disadvantaged element.

One or more of the following strategies will be used in fostering the small business, and DBE, participation effort:

1. In multi-year design-build contracts or other larger contracts, BCT will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
2. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
3. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small business, including DBEs, to compete for and perform prime contracts.
4. To meet the portion of our overall goal projected to be met through race-neutral measures ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs can reasonably perform.
5. At initial contract formation or during re-evaluation of an open-bid contract renewal, due consideration will be given with an emphasis of breaking down a single contract into

smaller, separate contracts to enable DBEs and small businesses the opportunity to bid and more reasonably perform.

BCT's Management Committee (DBELO, Transit Director, Operations Supervisor, and Maintenance Supervisor) is charged with fostering small business participation. During the committee's regular meeting cycle, upcoming contracting opportunities and projects will be reviewed, and one or more small business provisions identified above enacted prior to public release for bids.

For purposes of verifying and identifying size standards in determining actual Small Business Enterprise designation, a copy of *U.S. Small Business Administration / Table of Small Business Size Standards Matched to North American Industry Classification System Codes (November 5, 2010)* will be used and maintained on file, and reviewed annually for updated versions at the website: [www.sba.gov](http://www.sba.gov).

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

BCT does not use quotas in any way in the administration of this DBE Program

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

BCT has not established a business development program.

A description of the methodology to calculate the over goal and the goal calculations can be found in Attachment 2 to this program. This section of the program will be updated annually. In accordance with Section 26.45(f) BCT will submit its overall goal to DOT on the date determined by the operating administration.

BCT will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rational 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 we and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will appear in the Battle Creek Shopper and on our website at [www.battlecreekmi.gov/transit](http://www.battlecreekmi.gov/transit). This notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

BCT's overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

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

#### **Section 26.49 Transit Vehicle Manufacturers (TVM) Goals**

BCT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, BCT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with the element of the program.

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

BCT will use contract goals to meet any portion of the over goal BCT does not project being able to meet using race-neutral means. Contract goals are established so that over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

BCT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. BCT need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

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

The obligation of 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 DBELO 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.

BCT 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))***

BCT treats bidder/offerors' 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 7 days of being informed by BCT 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: Mallory Avis, Public Transit Director, Battle Creek Transit, 339 W. Michigan Avenue, Battle Creek, MI 49037 [mrvavis@battlecreekmi.gov](mailto:mrvavis@battlecreekmi.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 BCT's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. BCT 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))

BCT 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 Battle Creek Transit 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 .04 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

### **Section 26.55 Counting DBE Participation**

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

## **5 Certification Standards**

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

BCT defers to the MUCP certifying agencies to follow the DBE certification determinations and to maintain the DBE Directory. MUCP is a federally required program designed to ensure that firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient through participation in federally funded BCT contracts. MUCP certification will be recognized by all public transit systems in the State of Michigan.

Becoming certified is free and facilitated by the State of Michigan and firms are encouraged to contact MUCP to learn more and apply.

## **6 Compliance and Enforcement**

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

BCT 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, BCT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

BCT 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 make available for

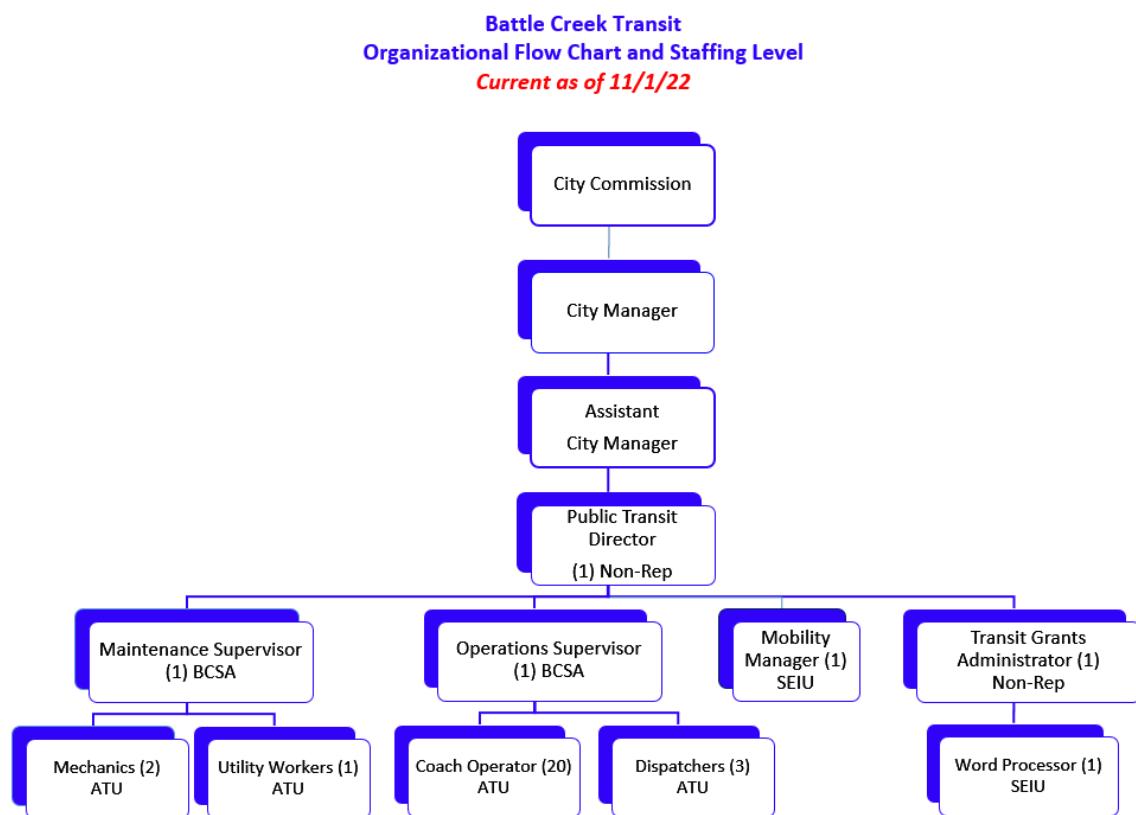
inspection upon request by any authorized representative of the BCT or DOT. This reporting requirement also extends to any certified DBE subcontractor. BCT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

## Attachments

Attachment 1 Organizational Chart

Attachment 2 Overall Goal Calculation

# Attachment 1: Organizational Chart



## Attachment 2: Section 26.45: Overall Goal Calculation

### Amount of Goal

BCT's has set its overall goal for FY 2022-2023 as .04% of the Federal financial assistance BCT will expend in DOT-assisted contracts. [Exclusive of FTA funds to be used for the purchase of transit vehicles.]

### Methodology used to Calculate Overall Goal

#### Step 1: 26.45(c)

BCT determined the number of ready, willing, and able DBE's in its marketplace (Calhoun County) from examination of the Michigan Unified Certification Process (MUCP) directory and found only one (1) firm physically located in Calhoun County. The total firms in the market area was provided by the 2020 US Census Report.

$$\text{Base Figure} = \frac{\text{DBE's in market area}}{\text{Total firms in market area}} = \frac{1}{2,409} = .04\%$$

BCT will attempt to meet its DBE goal by using race-neutral means of facilitating DBE participation (i.e. outreach and technical assistance to DBE's when requested or required). The attainment of BCT's goals for DBE purchases is dependent upon increasing the number of certified DBE vendors within BCT's market area that can provide the products and services that BCT requires. There are a number of factors that affect BCT's ability to meet its DBE goal including reluctance among smaller businesses to complete the certification process as they feel it is too onerous or intrusive.

BCT continues to use the vast majority of its DOT funding to help cover its operating budget which do not allow for offering contracting opportunities to DBEs. The majority of BCT's operating budget goes toward non-contractible expenses such as wages, fringe benefits, utilities, health care, etc. These are areas where the opportunity for DBE purchasing is nonexistent or (in the case of vehicles) is passed through to bus manufacturers.

Within BCT's market area, BCT was only able to identify one (1) certified DBE physically located in Calhoun County on the MUCP directory.

### Public Participation

BCT published a notice of its proposed overall DBE goal in our local free newspaper as well as our local Hispanic printed publication and it is also available on our website.

BCT has also sent this public notice to minority and community organizations, churches and others who are expected to have information on the availability of disadvantaged businesses. This contact

included an explanation of the US DOT Disadvantaged Business Enterprise program. All potential DBEs are encouraged to contact the agencies throughout Michigan that have been designated to certify businesses under the Michigan Unified Certification Program for DBEs.

This notice informs the public that the proposed goal and its rationale are available for inspection during normal business hours at our office for 30 days following the date of the notice as well as on our website and that should anyone request a public hearing be held, one will be schedule. BCT will forward a summary of information and comments received during the public participation period should there be any, along with our responses, to FTA within 30 days following the closing date for the submission of comments.