

Disadvantaged Business Enterprises Program

Des Moines Area Metropolitan Planning Organization

Contents:

POLICY STATEMENT

SUBPART A – GENERAL REQUIREMENTS

SUBPART B - ADMINISTRATIVE REQUIREMENTS

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

SUBPART D - CERTIFICATION STANDARDS

SUBPART E - CERTIFICATION PROCEDURES

SUBPART F - COMPLIANCE AND ENFORCEMENT

POLICY STATEMENT

Section 26.1, 26.23 Objectives / Policy Statement

The Des Moines Area Metropolitan Planning Organization (hereafter referred to as “MPO”) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The MPO has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the MPO has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the MPO 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; and,
6. To assist the development of firms that can compete successfully in the market-place outside the DBE Program.

Zach Young, Planning Manager, has been delegated as the DBE Liaison Officer. In that capacity, the Planning Manager, is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the MPO in its financial assistance agreements with the Department of Transportation.

The MPO has disseminated this policy statement to the Policy Board and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts.

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The MPO, as a recipient of Federal funds, administers the DBE program in compliance with all laws, regulations, Executive Orders, and guidance. This program is applicable only to federal grants when the MPO is a direct recipient. This program doesn't apply to Surface Transportation Block Grant funds that they MPO awards to projects as a subrecipient of the Iowa Department of Transportation.

Section 26.5 Definitions

The MPO will adopt the definitions contained in 49 CFR, §26.5 for this program

Section 26.7 Non-discrimination Requirements

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

In administering its DBE program, the MPO 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

(a) Uniform Report: The Iowa Department of Transportation is committed to transmitting the Uniform Report of DBE Awards or Commitments and Payments report during both the first half of the federal fiscal year and the second half of the federal fiscal year, on or before the established due dates. Further, the Iowa DOT is committed to using the format specified and included at 49 CFR Part 26, Appendix B.

(b) The Iowa DOT will report DBE participation on a semiannual basis, in accordance with instruction provided by the Federal Highway Administration. These reports will be submitted on or before June 1 and December 1 of each year and will utilize the Uniform Report of DBE Commitments/Awards and Payments form.

(c) Bidders List: The MPO will utilize the bidders list maintained by the Iowa DOT. The purpose of this list is to provide the Department with the most accurate data possible related to the universe of DBE and non-DBE contractors and subcontractors for use in helping the Department set overall goals. The list will be updated periodically by obtaining information in all DBE and non-DBE firms that bid or quote on DOT assisted contracts. The updated bidders list is maintained electronically.

The Iowa DOT bidder's list includes the following information:

- (i) Firm name
- (ii) Firm address

(iii) Firm's status and DBE or non-DBE

(iv) Age of the firm; and,

(v) The annual gross receipts of the firm which will be reported in bracketed format.

(d) Maintain Records of Certified Firms: The Iowa DOT maintains application packages for each DBE certified by Iowa including affidavits of no change, changes submitted by the certified firm and onsite reports indefinitely. Records related to the DBE program, and not set forth above, will be retained for a minimum of three (3) years. These records are maintained in the Iowa DOT's Electronic Records Management System. Access to confidential information is strictly limited to only those persons responsible for administration of the DBE program.

(e) UCP Information to OST: The Iowa DOT is committed to providing the Departmental Office of Civil Rights with DBE UCP information as requested and pursuant to the FAST Act or the authorizing legislation in effect at the time. This information will be provided by January 1 of each year.

Section 26.13 Assurances Made by Recipients and Contractors

Contract Sanctions: The MPO currently requires the use of the clause set out below:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Zach Young
Planning Manager
420 Watson Powell, Suite 200
Des Moines, Iowa 50309
515.334.0075
zyoung@dmampo.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the MPO complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director/CEO of the MPO concerning DBE program matters.

Section 26.27 DBE Financial Institutions

It is the policy of the MPO to encourage the utilization 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 contract to make use of these institutions.

Section 26.29 Prompt Payment Mechanisms

The MPO 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 contractor receives from The Des Moines Area MPO. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Des Moines Area MPO. This clause applies to both DBE and non-DBE subcontracts

Section 26.31 Directory

The Iowa DOT Civil Rights team is the only entity authorized and empowered to certify DBEs in the state of Iowa. There is only one DBE Directory, and it includes all DBEs certified in Iowa. This directory is updated on a continuous basis to ensure that each DBE is added to the directory immediately upon certification. The directory is available online.

The MPO utilized the directory maintained by the Iowa Department of transportation identifying all firms eligible to participate as DBEs. The Directory may be found on the [Iowa DOT website](#) (click to access).

Section 26.33 Overconcentration

If the MPO receives allegations of overconcentration, or should a determination be made that overconcentration may exist, the matter shall be forwarded to the Federal Highway Administration–Iowa Division office for consultation.

Section 26.35 Business Development Programs

MPO has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. Bring to the attention of the Federal agency administer the funds any false, fraudulent, or dishonest conduct in connection with the program, so that agency can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the agency’s Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109.
2. Consider similar action under its own legal authorities, including responsibility determinations in future contracts.
3. Provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs; this compliance monitoring will include the following steps:
 - a. The prime contractor will provide the MPO with an accurate list of all DBEs who are or who are anticipated to be subcontractors working on the project, which list will include the allocation of contract budget assigned to each DBE (see Attachment 2). This list will be updated any time there is a change in the DBEs working on the project or a change in the allocation of work between or among DBEs. The prime contractor will provide this list with a sworn certification that it is true and accurate. The MPO may request, and prime contractor will provide, copies of any subcontracts or other contractual documentation between prime contractor and any subcontractors to confirm the scope of work for each.
 - b. The prime contractor will provide to the MPO a subcontractor utilization form (see Attachment 2) in its invoice package so that the MPO can verify DBE participation in the project.

- c. The prime contractor and its subcontractors will agree to comply with any further measures that the MPO determines to be necessary or appropriate to impose for the purpose of verifying DBE participation in the project.
- 4. Require the prime contractor to keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award, verified at the time of any payment to the prime contractor for the project, and verified at the time DBE firms certify to the MPO that they have been paid, as required under the prime contractor's subcontractor agreement.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The MPO is not required under 49 CFR, Part 26 to set goals for the DBE program. The MPO is considered a subrecipient of Federal funds therefore it is the Iowa DOT that sets overall DBE goals for the state. The MPO does provide the Iowa DOT with semi-annual DBE reports to report and DBE participation in MPO contracts.

The MPO strongly encourages prime contractors utilizing federal funds when the MPO is the grantee of those funds to make a good faith effort in hiring DBE subcontractors as part of their projects. The MPO will set goals on a project-by-project bases when receiving federal grant for those specific projects.

Section 26.49 Transit Vehicle Manufacturers Goals

MPO doesn't purchase transit vehicles and therefor sets no goals related to transit vehicle purchases.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The MPO does not develop a breakout of estimate Race-Neutral and Race-Conscious participation.

Section 26.51(d-g) Contract Goals

The MPO will use contract goals to meet any portion of the overall goal. We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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.) We will express our contract goals as a percentage of Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The DBELO and the project manager 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.

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

Information to be submitted (26.53(b))

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 contractor's commitment; and,
6. If the contract goal is not met, evidence of good faith efforts.

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

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

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

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

The Iowa DOT Civil Rights team is the only entity authorized and empowered to certify DBEs in the state of Iowa. There is only one DBE Directory, and it includes all DBEs certified in Iowa. This directory is updated on a continuous basis to ensure that each DBE is added to the directory immediately upon certification.

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

Civil Rights
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010

Phone: 515-239-1427

Fax: 515-239-1175

Civil.Rights@iowadot.us

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

It is the policy of the MPO to accept DBE certifications from agencies that have reviewed and certified the DBE firms in accordance with 49 CFR, Part 26. The MPO is not a certifying agency and will use the UCP or information provided by Iowa DOT Civil Rights Department, which is a certifying member of the UCP. For information about the certification process or to apply for certification, firms should contact Iowa DOT's Civil Rights Office at <https://iowadot.gov/civilrights/>

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

The re-certifications of firms as DBEs will be based on UCP standards and will be conducted by the certifying agency listed above.

Section 26.85 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until [select number of months up to 12] have passed from our action.

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696
Fax: (202) 366-5575

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

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

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