



Disadvantaged Business Enterprise (DBE) Plan

Lake~Sumter Metropolitan Planning Organization

*Draft for Advisory Committee & Board Review
January 2018*

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ADOPTION RESOLUTION
FOLLOWING BOARD APPROVAL >

DBE GENERAL REQUIREMENTS

The Lake~Sumter MPO (LSMPO) supports the participation of Disadvantaged Business Enterprise (DBE) identified organizations throughout the transportation planning process. This section describes the general requirements the LSMPO will adhere to while conducting MPO operations.

Policy Statement

It is the policy of the Lake-Sumter MPO that disadvantaged businesses, as defined by 49 Code of Federal Regulations, Part 26, shall have an opportunity to participate in the performance of MPO contracts in a nondiscriminatory environment. The objectives of the Disadvantaged Business Enterprise Program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards, help remove barriers to participation, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility, and ensure narrow tailoring of the program.

The Lake-Sumter MPO, and its consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform the contract work of the Lake-Sumter MPO in a non-discriminatory environment.

The Lake-Sumter MPO shall require its consultants to not discriminate on the basis of race, color, national origin and sex in the award and performance of its contracts. This policy covers in part the applicable federal regulations and the applicable statutory references contained therein for the Disadvantaged Business Enterprise Program Plan, Chapters 337 and 339, Florida Statutes, and Rule Chapter 14-78, Florida Administrative Code.

Lake~Sumter Metropolitan Planning Organization to Adopt FDOT's Disadvantaged Enterprise Goal

For all federally funded projects that are received from FDOT, Lake~Sumter MPO agrees to adopt the DBE Program and DBE goal that has been established by FDOT. The anticipated DBE Participation Statement and the Bid Opportunity List will be completed and forwarded to FDOT for each contract that includes federal funds.

In addition, the Lake~Sumter MPO will ensure that the documentation of actual payments made to all subcontractors or subconsultants will be provided to the FDOT when the contract is complete.

Applicability

The Lake~Sumter MPO is the recipient of federal transit funds authorized by Titles I, III, V, and VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, or by federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; and the Fixing America's Surface Transportation Act (FAST Act), Sec. 1109, Surface Transportation Block Grant Program.

This DBE Program is also applicable to all Lake~Sumter MPO sub-recipients. Lake~Sumter MPO sub-recipients are not anticipated to have any contracting opportunities between fiscal year FY 2018 and FY 2020 using US Department of Transportation (DOT)-assisted funding that would impact this DBE Program or the corresponding Goal proposed for FY2018 through FY 2020. Sub-recipients are required to sign annual certifications and assurances confirming their compliance with Lake~Sumter MPO and federal, state, and local regulations, as appropriate.

Nondiscrimination Requirements

The Lake~Sumter 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 Lake~Sumter 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.

Record Keeping Requirements

Maintaining quality records for the management of the LSMPO DBE plan is a top priority. LSMPO will furnish all necessary documentation and information based on the following procedures.

Uniform Report of DBE Award or Commitment and Payments

The Lake~Sumter MPO will report DBE participation to USDOT using the Uniform Report of DBE Awards or Commitments and Payments.

Bidders List

The Lake~Sumter MPO will create and maintain a bidders list consisting of information about all DBE and non-DBE firms that bid or quote on its contracting opportunities. The bidders list will include the name, address, and DBE/non-DBE status.

The Lake~Sumter MPO will collect this information by requiring prime bidders to report the names, addresses, and possibly other information of DBE subcontractors to the Lake~Sumter MPO prior to the time of bid opening or finalization of a contract agreement. For non-formal bids, such information will be required on the quotation.

Record Keeping

The Lake~Sumter MPO will require prime contractors to maintain records and documents of payments to DBEs for **three (3) years** following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the LSMPO, FDOT, or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

The Lake~Sumter MPO will perform interim audits of contract payments to DBEs. The audit will review payments to DBE sub-contractors to ensure that the actual amount paid to DBE sub-contractors equals or exceeds the dollar amounts stated in the schedule of DBE participation

The Lake~Sumter MPO will keep a running tally of actual payments to DBE firms for work committed to them at the time of the contract award. The Lake~Sumter MPO will perform interim reviews of contract payments to DBEs and will monitor payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting

The Lake~Sumter MPO shall keep and maintain such records as are necessary to determine the MPO's compliance with its DBE Affirmative Action Plan. The Lake~Sumter MPO will design its record keeping system to indicate:

1. The number of DBE subcontractors and suppliers used by the Lake~Sumter MPO, identifying the items of work, materials and services provided;
2. The efforts and progress being made in obtaining DBE subcontractors through local and community sources;
3. Documentation of all contracts, to include correspondence, telephone calls, newspaper advertisements, etc., to obtain DBE participation on all Lake~Sumter MPO projects;
4. The Lake~Sumter MPO shall comply with Florida Department of Transportation's requirements regarding payments to subcontractors including DBEs for each month (estimate period) in which the companies have worked.

Federal Financial Assistance Agreement

The Lake~Sumter MPO has signed the following assurance, applicable to all USDOT-assisted contracts (FHWA or FTA) and their administration. When the Lake~Sumter MPO has sub-recipients, this language will appear in financial assistance agreements with such sub-recipients and will require their signature.

Federal Financial Assistance Agreement Assurance

The following language will appear in financial assistance agreements with sub-recipients:

The Lake~Sumter MPO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR, Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by USDOT, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Lake~Sumter MPO 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.).

Contract Assurance

The Lake~Sumter MPO will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

The contractor 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 USDOT assisted contracts. Failure by the contractor to carryout 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.

ADMINISTRATIVE REQUIREMENTS

LSMPO staff will manage the administrative requirements for the DBE program with optimum performance. To facilitate an efficient and quality program, the following section describes the processes which will be followed throughout the transportation planning process.

DBE Program Updates

The Lake~Sumter MPO will continue to carry out this program until all funds from USDOT financial assistance have been expended. The Lake~Sumter MPO will provide to USDOT updates representing significant changes in the program.

Designation of Liaison Officer

The Lake~Sumter MPO will promote opportunities for disadvantaged businesses as subcontractors and suppliers for all contracts with the Lake~Sumter MPO. The MPO has appointed a DBE Liaison Officer to develop and maintain this Affirmative Action Plan in accordance with the requirements of Rule Chapter 14-78, F.A.C.

The Liaison Officer will have primary responsibility for developing, maintaining and monitoring the MPO's utilization of disadvantaged subcontractors in addition to the following specific duties:

1. The Liaison Officer shall solicit bids from disadvantaged business subcontractors for all Lake~Sumter MPO contracts; and
2. The Liaison Officer will submit all records, reports, and documents required by the Florida Department of Transportation, and shall maintain such records for a period of not less than three years, or as directed by any specific contractual requirements of the FDOT.

The following individual has been designated Liaison Officer with responsibility for implementing the MPO's affirmative action program in accordance with the requirements of the FDOT.

Lake~Sumter Metropolitan Planning Organization – DBE Liaison Officer



Michael F. Woods
Interim Executive Director
(352) 315-0170

Affirmative Action Methods

In order to formulate a realistic Affirmative Action Plan, the Lake~Sumter MPO has identified the following known barriers to participation by disadvantaged subcontractors, before describing its proposed affirmative action methods:

1. Lack of qualified disadvantaged subcontractors in our specific geographical areas of work;
2. Lack of certified disadvantaged subcontractors who seek to perform Lake~Sumter MPO work;
3. Lack of interest in performing on Lake~Sumter MPO contracts;
4. Lack of response when requested to bid; and
5. Limited knowledge of Lake~Sumter MPO plans and specifications to prepare responsible bid.

In view of the barriers to disadvantaged businesses stated above, it shall be the policy of the Lake~Sumter MPO to provide opportunity by utilizing the following affirmative action methods to ensure participation on the contracts with the Lake~Sumter MPO. The Lake~Sumter MPO will:

1. Provide notice to all certified DBE subcontractors in the geographical area where the work is to be subcontracted by the Lake~Sumter MPO;
2. Advertise in minority focused media concerning subcontract opportunities with the Lake~Sumter MPO;
3. Provide adequate information about the plans, specifications, and requirements of the contract, not rejecting subcontractors without sound reasons based on a thorough investigation of their capabilities;
4. Hold pre-bid meetings to apprise disadvantaged subcontractors of opportunities with the MPO; and
5. Follow up on initial solicitations of interest to DBE subcontractors to determine with certainty whether the DBE company is interested in the subcontract opportunity.

The Lake~Sumter MPO understands that this list of affirmative action methods is not exhaustive and will include additional approaches after having established familiarity with the disadvantaged subcontracting community and/or determined the stated approaches to be ineffective.

Implementation

On contracts with specific DBE goals, the Lake~Sumter MPO will make every effort to meet contract goals as stated by utilizing its affirmative action methods. On projects with no specific goals, the MPO will, as an expression of good faith, seek to utilize DBE subcontractors where work is to be subcontracted.

DBE Financial Institutions

It is the policy of the Lake~Sumter MPO 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 USDOT-assisted contracts to make use of these institutions. The Lake~Sumter MPO has reviewed FDOT's website DBE Directory and has determined there are no listings for financial institutions owned and controlled by socially and economically disadvantaged individuals. The Lake~Sumter MPO will reevaluate every twelve (12) months whether DBE financial institutions are available.

Prompt Payment Mechanisms

The LSMPO will utilize reliable financial procedures in order to ensure prompt payment of services. The following describes the process elements for fulfilling financial obligations.

Prompt Payment

The Lake~Sumter MPO will include the following clause in each USDOT-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 Lake~Sumter MPO. The prime contractor agrees further to return any 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 Lake~Sumter MPO. This clause applies to both DBE and non-DBE subcontracts.

Retainage

The Lake~Sumter MPO does not collect retainage payments.

Satisfactory Completion

For purposes of this section, a subcontractor's work is determined to be satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Monitoring and Enforcement

The Lake~Sumter MPO shall require in all USDOT-funded contracts language that allows it to monitor and enforce that prompt payment is, in fact, occurring on any contract that involves subcontracting. Any delay or postponement of payment among the parties may take place only for good cause with prior written approval by the Lake~Sumter MPO.

The following mechanisms are to be used in all DOT-funded contracts to ensure prompt payment:

1. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes; and
2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The Lake~Sumter MPO will bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. The Lake~Sumter MPO will also consider similar action under state legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants' lists, or revocation of DBE certification if applicable, pursuant to Section 337.105; 337.16; and 339.0805, F.S.

DBE Directory

The Lake~Sumter MPO will utilize the DBE Directory published by the Florida Department of Transportation. A list of certified UCP DBEs is maintained by the Department's Equal Opportunity Office at <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory>.

Overconcentration

The Lake~Sumter MPO has not identified that overconcentration exists in the types of work that DBEs perform. The Lake~Sumter MPO will continue to monitor DBE participation and usage and will use appropriate measures designed to assist DBEs if any overconcentration areas are identified.

Business Development Programs

The Lake~Sumter MPO fosters mentoring/business development for DBEs and small businesses through the following activities:

- Regularly presenting and displaying the Transportation Improvement Program (TIP) interactive tool at various outreach events; and

The Lake~Sumter MPO will continue to explore opportunities to partner with DOT's Office of Small Business and/or FDOT on future training opportunities.

Monitoring & Enforcement Mechanisms

The Lake~Sumter MPO will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR, Part 26:

- Bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for

criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109;

- Consider similar action under its own legal authorities, including responsibility determinations in future contracts;
- 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 shall include the following steps:
 - The prime contractor shall provide the Lake~Sumter MPO with an accurate list of all DBEs who are or who are anticipated to be subcontractors working on the project, which list shall include the allocation of contract budget assigned to each DBE. This list shall 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 shall provide this list with a sworn certification that it is true and accurate. The Lake~Sumter MPO may request, and prime contractor shall provide, copies of any subcontracts or other contractual documentation between prime contractor and any subcontractors to confirm the scope of work for each;
 - The prime contractor shall provide to the Lake~Sumter MPO a subcontractor utilization form in its invoice package so that the Lake~Sumter MPO can verify DBE participation in the project; and
 - The prime contractor and its subcontractors shall agree to comply with any further measures that the Lake~Sumter MPO determines to be necessary or appropriate to impose for the purpose of verifying DBE participation in the project.
- 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 Lake~Sumter MPO that they have been paid, as required under the prime contractor's subcontractor agreement.

Fostering Small Business Participation

To facilitate competition by small businesses in projects, funded in part by USDOT, the Lake~Sumter MPO may unbundle projects as appropriate to help eliminate obstacles to small business participation.

Small Business Definition

The Lake~Sumter MPO uses the Small Business Administration's (SBA) definition and size standards (as it may be amended from time to time) to define a small business:

...a small business is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period.

Set Asides

The Lake~Sumter MPO will look to coordinate with Lake and Sumter Counties to assess small business participation in its USDOT-assisted contracting opportunities. This assessment may determine if implementing measures for increasing small business participation, including small business set asides, is necessary.

Mega Project

Projects that are multi-year design build or other large contracts as determined by the Lake~Sumter MPO are considered “mega projects.” Bidders on a prime contract of a mega project will specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform. Lack of small business participation will require the bidder to provide evidence of the good faith efforts that were made. The good faith effort requirement will be the same as identified in Section 26.53— Good Faith Procedures.

Implementation

To support small businesses, the Lake~Sumter MPO collaborates with local and regional partners whose initiatives encourage forming strong partnerships with small businesses. The Lake~Sumter MPO will continue to support its partners offering technical assistance and training to those individuals pursuing entrepreneurialism. The objectives of this collaboration are to:

- Develop stronger workforce development systems;
- Support startup or expansion of new companies;
- Assist entrepreneurs and small businesses with technical assistance and assessments;
- Offer feasibility and technical assistance for small to mid-size companies;
- Increase awareness of transportation-related work opportunities in the Lake~Sumter region;
- Strengthen and develop community college programs to support small business needs; and
- Provide support to disadvantaged workers to access job training.

Additionally, the Lake~Sumter MPO will:

- Encourage prime contractors to subcontract portions of work normally done by their own forces when subcontractors submit a lower quote;
- Connect small businesses with local and regional partner resources; and
- Continue community outreach to foster small business development.

GET THE MOST CURRENT INFORMATION

The most up-to-date information about our meetings is on the Lake~Sumter Metropolitan Planning Organization’s website calendar. You can access it through the following link:

www.lakesumtermpo.com/calendar.aspx

CERTIFICATION STANDARDS AND PROCEDURES

LSMPO is committed to providing an opportunity for DBEs to participation in the transportation planning process. To support this involvement, the LSMPO will follow the following guidance on ensuring DBE identified companies comply with certification requirements.

Unified Certification Program

It is the policy of the Lake~Sumter MPO to accept DBE certifications from agencies that have reviewed and certified the DBE firms in accordance with 49 CFR, Part 26. The Lake~Sumter MPO is not a certifying agency and will use the Florida Unified Certification Program (UCP).

For information about the certification process or to apply for certification, firms should contact FDOT's Equal Opportunity Office at: (850) 414-4747, by e-mail DBECert.Help@dot.state.fl.us, or by visiting: <https://fdotxwp02.dot.state.fl.us/EqualOpportunityOfficeBusinessDirectory/Home.aspx>.

Re-Certification

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

The Lake~Sumter MPO will require all DBEs to inform it in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR, Part 26 or of any material changes in the information provided.

The Lake~Sumter MPO will also require all owners of all DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The affidavit should, at a minimum, include the following language:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR, Part 26. There have been no material changes in the information provided with [name of DBE firm]'s application for certification, except for any changes about which you have provided written notice to the Lake~Sumter MPO under §26.83(j).

The Lake~Sumter MPO requires DBEs to submit with the affidavit documentation of the DBE firm's size and gross receipts.

The Lake~Sumter MPO will notify all currently-certified DBE firms of these obligations in writing. This notification will inform DBE firms that to submit the "no change" affidavit; their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she or the firm fails to meet a Part 26 eligibility requirements (e.g., personal net worth), the obligation to submit a notice of change applies.

De-Certification

The de-certification of firms as DBE's will be based on UCP standards and will be conducted by the certifying agency listed above.

Certification Appeals

Any firm or complainant may appeal the decision in a certification matter to the certifying agency listed above.

Procedures for Certification Decisions

The Lake~Sumter MPO distributes information about FDOT's website, which provides a list of UCP agencies that provide certification services and non-certification services in Florida.

Any firm or complainant may appeal the FDOT's decision in a certification matter to USDOT.

Such appeals may be sent to:



U.S. Department of Transportation - Office of Civil Rights

Certification Appeals Branch
1200 New Jersey Ave
SE West Building , 7th Floor
Washington, DC 20590

The Lake~Sumter MPO will coordinate with FDOT to promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for its USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that our denial of its application was erroneous).

COMPLIANCE AND ENFORCEMENT

Lake~Sumter MPO will support DBE involvement in transportation planning and ensure all federally mandated procedures are adhered to during projects.

Confidentiality

The Lake~Sumter MPO 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, the Lake~Sumter MPO will not release personal financial information submitted in response to the personal net worth requirement to a third party (excluding FDOT and USDOT) without the written consent of the submitter.

Consequences of Non-Compliance

In the event of a contractor's failure or refusal to comply with the terms of this program, as set forth in such contractor's contract with the Lake~Sumter MPO, the Executive Director will issue an order to:

1. Withhold payments to the contractor under the contract until the contractor complies; and/or
2. Cancel, terminate or suspend the contract, in whole or in part.

APPENDIX A: DBE POLICY STATEMENT

Original Available
Upon Request

Disadvantaged Business Enterprise Utilization

It is the policy of the Lake-Sumter MPO that disadvantaged businesses, as defined by 49 Code of Federal Regulations, Part 26, shall have an opportunity to participate in the performance of MPO contracts in a nondiscriminatory environment. The objectives of the Disadvantaged Business Enterprise Program are to ensure non-discrimination in the award and administration of contracts, ensure firms fully meet eligibility standards, help remove barriers to participation, create a level playing field, assist in development of a firm so it can compete successfully outside of the program, provide flexibility, and ensure narrow tailoring of the program.

The Lake-Sumter MPO, and its consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform the contract work of the Lake-Sumter MPO in a non-discriminatory environment.

The Lake-Sumter MPO shall require its consultants to not discriminate on the basis of race, color, national origin and sex in the award and performance of its contracts. This policy covers in part the applicable federal regulations and the applicable statutory references contained therein for the Disadvantaged Business Enterprise Program Plan, Chapters 337 and 339, Florida Statutes, and Rule Chapter 14-78, Florida Administrative Code.

Hon. Pat Kelley, MPO Board Chairman

Date

APPENDIX B: FTA FEDERAL FUNDING CLAUSE

Federal Funding Clause for FTA Grant or Stimulus Program (Goods, Services and Construction) Last Revision Date: September 2014.

Except from Section A, 26: Disadvantaged Business Enterprises (DBE), 49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is __ %. A separate contract goal **[of __ % DBE participation has] [has not]** been established for this procurement.
- b. The contractor 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 this DOT-assisted contract. 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 **{insert agency name}** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. **{If a separate contract goal has been established, use the following}** Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of

this contract is conditioned on submission of the following **[concurrent with and accompanying sealed bid] [concurrent with and accompanying an initial proposal] [prior to award]**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE 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 prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

[Bidders][Offerors] must present the information required above **[as a matter of responsiveness] [with initial proposals] [prior to contract award]** (see 49 CFR 26.53(3)).

{If no separate contract goal has been established, use the following} The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **{insert agency name}**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the {insert agency name} and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

e. The contractor must promptly notify **{insert agency name}**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **{insert agency name}**.

Note: Attachment B.3 contains certifications associated with the DBE Program that must be submitted in conjunction with bidder-proposer responses to the instant solicitation.

Appendix B (Continued):

Excerpt from Section B, Attachment B3: Disadvantaged Business Enterprise (DBE) Program Forms 1 and 2

ATTACHMENT B.3

FORM 1 AND 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No.: _____

By: _____

(Signature)

(Title)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

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

By _____
(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)