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DEPARTMENT OF TRANSPORTATION DISADVANTAGED

BUSINESS ENTERPRISE PROGRAM PLAN

October 1, 2018

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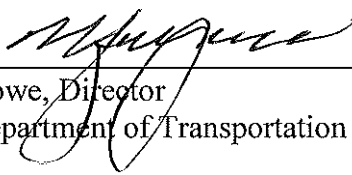
Policy Statement and Objective

The Iowa Department of Transportation (DOT) has prepared its disadvantaged business enterprise (DBE) program to meet Federal DBE regulations set forth in 49 CFR part 26. To continue receiving Federal financial assistance appropriated under FAST Act, the Iowa DOT must comply with these regulations.

Consistent with requirements of 49 CFR part 26, it is the policy of the Iowa DOT to ensure that DBEs have equal opportunities to receive and participate in U.S. DOT-assisted contracts. To accomplish this objective, the Iowa DOT will take the following actions:

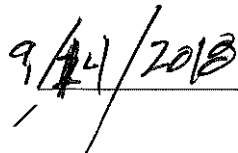
1. Ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts
2. Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts
3. Ensure that the DBE program is narrowly-tailored in accordance with applicable laws
4. Ensure that only firms, fully meeting the eligibility standards of 49 CFR part 26, are permitted to participate as DBEs
5. Help remove barriers to the participation of DBEs in U.S. DOT-assisted contracts
6. Assist in the development of DBE firms, enabling them to successfully compete outside the DBE program

This policy statement has been distributed to all offices of the Iowa DOT, as well as to all DBE and non-DBE businesses that perform work on U.S. DOT-assisted contracts. The statement will also be published in *The Des Moines Register*.



Mark Lowe, Director
Iowa Department of Transportation

Date



9/14/2018

General - 49 CFR Part 26

26.1 What are the objectives of this program?

The purpose of this program is to set forth the objectives and procedures for implementing a Disadvantaged Business Enterprise (DBE) Program for the Iowa Department of Transportation (Iowa DOT). The intent of the DBE program is to provide reasonable opportunities for DBEs to compete for and perform on contracts financed in whole or in part with federal financial assistance, in an effort to achieve the level of DBE participation that would be achieved absent discrimination. The authority for this program is 49 CFR Part 26.

The Department has the goal of achieving the following:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit program
- (b) To create a level playing field on which DBEs can compete fairly for contracts
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law
- (d) To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs
- (e) To help remove barriers to the participation of DBE firms in contracts administered by the Department
- (f) To assist in the development of firms that can compete successfully in the marketplace outside the DBE program
- (g) To establish solicitation, award and contract administration procedures that will ensure that DBEs are provided the fullest opportunities to participate
- (h) To ensure that contractors and other parties to federally assisted contracts and agreements let and/or administered by the Department abide by this program and the contract provisions that relate to the DBE program

26.3 How is this program applied?

The Iowa DOT, as a recipient of Federal funds, administers the DBE program in compliance with all laws, regulations, Executive Orders and guidance.

26.5 Definitions

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) 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
- (ii) A third party or parties control or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) 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.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

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, in which 51 percent of the stock 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.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts mean 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 requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

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.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to banks or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

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.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration. *SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

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 §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
- (ii) “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;
- (iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) “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, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

26.11 Record Retention and Reporting

(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 Iowa DOT maintains a bidders list. 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 bidder's list will include the following information:

- (i) Firm name
- (ii) Firm address
- (iii) Firm's status and DBE or non-DBE
- (iv) Age of the firm
- (v) The annual gross receipts of the firm which will be reported in bracketed format.

(d) Maintain Records of Certified Firms: The Iowa DOT is committed to retaining 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.

26.13 Assurances Made by Recipients and Contractors

Contract Sanctions: The Iowa DOT currently requires the use of a clause that is substantially similar, but not identical to that set out below. The Department will make the necessary Standard Specification changes to require that all its contracts with contractors will include the following language:

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.

26.21 DBE Program Plan and Updates

The Iowa DOT affirms that its DBE Plan will be updated and approved by FHWA whenever significant and/or substantive changes are made to the currently approved Plan. Further, all sub-recipients of FHWA funds through the Iowa DOT are required to comply with the prime recipient's/Iowa DOT's DBE Plan; these sub-recipients may not develop or implement a Plan independent of that of the Iowa DOT.

26.25 DBE Liaison Officer (DBELO)

The DBE Liaison Officer for the Iowa DOT is:

Todd Sadler, Director
Office of Employee Services Iowa DOT
800 Lincoln Way
Ames, Iowa 50010

The DBELO is responsible for implementing all aspects of the DBE program, including but not limited to: review of application audit reports to ensure compliance with 49 CFR Part 26, attending training and supporting training opportunities for staff, input into the development of the annual DBE Workshop and approving the final agenda. An Organization Chart is attached as Attachment A.

26.27 DBE-owned financial institutions

The Iowa DOT encourages utilizing the services of financial institutions owned and controlled by socially and economically disadvantaged individuals in Iowa. Pinnacle Bank of Marshalltown is such an institution. The Iowa DOT encourage their use by Sub-recipients, prime contractors and subcontractors.

PROMPT PAYMENT

26.29 Prompt Payment Mechanisms

(a) **Prompt Payment Clause:** The following language is to be included in each contract: *The Contractor shall promptly pay each subcontractor. Any delay or postponement of payment among the parties may take place only for good cause, with written notification to the subcontractor. A payment, excluding retainage, to a subcontractor for satisfactory performance of the subcontractor's work shall be made by the Contractor no later than one of the following, as applicable:*

- (1) Seven calendar days after the Contractor receives payment for the subcontractor's work.*
- (2) Seven calendar days after the Contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.*

Return of Retainage: Three percent (3%) of each progress estimate will be deducted and held as retainage on the first \$1,000,000 paid on a contract, with no additional retainage withheld on the remainder of the contract payment amount. This retainage is held exclusively for claims filed in accordance with Chapter 573 of the Code of Iowa and shall not be considered as an encumbrance on work performed by a subcontractor.

The Contractor may withhold up to five percent (5%) of each progress estimate on work performed by subcontractors. All retained funds due a subcontractor shall be payable by the Contractor within 30 calendar days after the date of satisfactory completion of the work by the subcontractor. The

subcontractor's work is satisfactorily completed when all requirements called for in the subcontract have been accomplished and required documentation provided by the subcontractor. These payments will be documented and certified by the prime contractor at the completion of the project on form 518002 which shall be submitted with the final voucher. The form will be forwarded to the Office of Employee Services, Civil Rights Team. The Civil Rights Team will track each Prime Contractor's performance. Any non-complying reports without acceptable documentation will be reviewed.

Prime Contractors demonstrating a pattern of noncompliance without proper cause will be required to submit an action plan to correct the deficiencies and may result in price adjustment credits or suspension of bidding qualification in accord with Article 1102.03, A,2. Non-bonded subcontractors may be required to submit proof of payment for all material bills and wages to the Contractor before the Contractor is required to pay the retainage.

The Iowa DOT is implementing a process to post progress payment information on the Internet for projects paid by the Iowa DOT. Contractors and material suppliers will be able to view quantities paid to date and the quantities paid on the most recent progress voucher.

<https://secure.iowadot.gov/ContractorPay/>

Compliance with prompt payment is the responsibility of both the contracting authority and contractor. If the Contractor feels the Contracting Authority has not complied with the prompt payment provisions, the initial attempt to resolve the issue shall be with the Project Engineer.

The attempt to resolve the issue shall include at least one written request to the Project Engineer, stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed and signature of a representative of the Contractor. If a subcontractor feels Contractor has not complied with the prompt payment provisions, the initial attempt to resolve the issue shall occur with the Contractor. The attempt to resolve the issue shall include at least one written request to the Contractor stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed and signature of a representative of the subcontractor.

If the initial attempt to resolve the issue does not result in satisfactory payment for completed work, the Contractor or subcontractor shall submit a written complaint to the Office of Employee Services, Civil Rights Team on Form 650197. The written complaint shall include copies of the correspondence with the Project Engineer or Contractor that provides the details stated above.

The Department will investigate and provide written response to the complainant within 15 business days of receipt of the complaint. 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 must 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.

(b) Iowa DOT uses the following process for quarterly reviews of prompt payment, utilizing the first Project Status Report of each quarter:

- (1) Identify current projects in excess of \$1 million. Filter out projects under 60% complete and over 80% complete.
- (2) Filter out any non-federal aid projects.
- (3) Randomly select two projects from the resulting list. One of the two projects must be a large

- project. A large project is one for which bids exceeded \$12 million.
- (4) Get list of subcontractors on selected project(s) from Field Manager.
 - (5) Provide verification request form to subcontractors.
 - (6) Review information returned

The returns are reviewed and analyzed for trends and potential violations of the prompt payment specification. If an unusual trend or potential violation is discovered, a meeting will be scheduled with the Assistant Contracts Engineer, Assistant Construction & Materials Engineer and the Civil Rights Coordinator, to discuss the findings and whether intervention and/or sanctions are appropriate.

For work extending over a period of more than one month, the Contractor will receive monthly progress estimate payments based on the amount of work completed. For Primary and Secondary projects in which the Contracting Authority is the Department or a county Board of Supervisors, these progress payments will be bi-weekly if requested by the Contractor. For late payment, the Contracting Authority will pay a penalty of 1.0% per month (or part of a month), or a minimum of \$250, whichever is the greater amount, on any work completed but not processed for payment within 14 calendar days after completion of the work. Completion of the work includes physical completion of the work and submittal of all paperwork required by the contract. Should a reasonable doubt arise as to the integrity of any part of the completed work, the payment for that portion will not be allowed until the cause for such doubt has been removed.

The Engineer's estimates of work completed will result in partial payments on the contract sum and the allowance of a progress payment by the Contracting Authority does not constitute final acceptance of the work upon which the payments are based.

26.31 DBE 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.

<https://secure.iowadot.gov/DBE/Home/Index/>

26.33 Overconcentration

In the event that the Iowa DOT 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.

26.35 Business Development Plan

The Iowa DOT developed and implemented a business development plan in cooperation with Iowa State University-InTrans. The program began offering services to participating DBE firms in FY 2017 and continues to offer services as of this update.

26.37 Monitoring Sub-Recipient and Prime Contractor Compliance

Highway construction practices involving DBEs are monitored at all stages, ranging from the initial request for subcontracts to dispute resolution and any necessary action consistent with applicable Federal, State and local laws and regulations.

If the Iowa DOT becomes aware of any false, fraudulent, or dishonest conduct in connection with its DBE program, it will take appropriate action consistent with applicable Federal, State and local laws and regulations. Such action could result in referral to the Department of Justice or the U.S. DOT

Inspector General for possible criminal prosecution, suspension and debarment, a finding of non-responsibility for future contracts and other possible sanctions and penalties.

26.39 Fostering Small Business Participation

The Iowa Department of Transportation recognizes the benefits of having many contractors and suppliers available to perform work on highway construction projects.

Small Business – A firm that meets the requirements of a Small Business as defined Iowa Code 15.102(8). “Small business” means any enterprise which is located in this state, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than four million dollars computed as the average of the three preceding fiscal years.

Developmental Specifications for Small Business Development Contracts

DS-15045 provides a Description of the program, definitions, prequalification and necessary information to assist the Small Business Contractor in working with the Iowa Department of Transportation.

Small Business Certification Form 650064

A certification form must be completed and returned to the Office of Employee Services Civil Rights team by noon the day before the letting and allows the contractor to self-certify that their company meets the requirements as defined by Iowa Code 15.102(8).

Small Business Development Contracts Funding and Size Limits

\$1.2M off the top of MP, 3R and 4R will fund the Small Business Development Contracts and each district will have \$200K to work up into projects.

TSB Bond Waiver

Iowa Code 12.44 requires agencies of state government to waive the requirement of satisfaction, performance, surety, or bid bonds for targeted small businesses which are able to demonstrate the inability of securing such a bond because of a lack of experience, lack of net worth, or lack of capital. This waiver will not apply to businesses with a record of repeated failure of substantial performance or material breach of contract in prior circumstances. The waiver will only be applied to a project or individual transaction amounting to fifty thousand dollars or less, notwithstanding Iowa Code section 573.2. In order to qualify, the TSB shall provide written evidence to the Department of inspections and appeals that the bond would otherwise be denied the business. The granting of the waiver will in no way relieve the business from its contractual obligations and will not preclude the Department from pursuing any remedies under law upon default or breach of contract. The Department of inspections and appeals will certify TSBs for eligibility and participation in this program and will make this information available to other state agencies.

Bidding for Contracts

Only firms designated as approved Certified Small Business Contractors (CSBCs) by the Department will be allowed to bid on proposals designated for Small Business Contractors. Prequalification by the Department is not required, but the Department may require a CSBC to provide references or examples of similar types of work in order to be approved for bidding on individual proposals.

Prior to execution of a contract, the CSBC will be required to provide:

1. A Certificate of Insurance (as required by Article 1103.04 of the Standard Specifications) and
2. Either a Performance Bond (as required by Article 1103.05 of the Standard Specifications) or a

TSB Bond Waiver.

Construction of the Work

Article 1108.01 of the Standard Specifications allows a contractor to subcontract up to 70% of the contract amount.

Payment for the Work

Payment for work will be according to Article 1109.05 of the Standard Specifications.

Subcontract Requests

When making requests to subcontract, prime contractors must submit their "Subcontract Request and Approval" forms (Form 830231) when they return their signed contracts to the Iowa DOT's Office of Contracts. In certain situations, with the approval of the Iowa DOT, the contractor may request an extension of up to 30 days to submit the "Subcontract Request and Approval" forms. Either a new or an amended "Subcontract Request and Approval" form must be submitted if unforeseen field conditions require additional subcontractors or replacement of terminated subcontractors.

The Iowa DOT encourages the use of DBEs on all of its projects, including those with work above and beyond an established contract goal and those with no goal at all.

DBE Work Performance and Payment of DBEs

The work activities and work accomplishments of DBEs on all projects will be monitored and documented by the Iowa DOT to ensure that DBEs are performing work as contracted at the time of its award. Any concerns will be immediately reported to both the project engineer and the prime contractor. Upon a DBE's successful completion of the work, the project engineer will be responsible for comparing the amount actually paid to the DBE with the amount committed to the DBE when the contract was awarded. The amount paid to the DBE is reported on the "Certification of DBE Accomplishment" (Form 102116), which is submitted to the project engineer by the prime contractor when the work is completed. Payments of less than the amount committed will require explanation and documented justification (i.e., item underruns, item deletions, etc.) by the project engineer. The prime contractor can be penalized, dollar for dollar, for any shortage not justified by the project engineer. Repeated shortages can result in suspension of the prime contractor's bidding privileges.

Prime contractors are required to maintain records of payment made to a DBE for a minimum of three (3) year following performance of work on a contract. The records must be made available for inspection upon the request of any authorized representative of the Iowa DOT or the U.S. DOT.

The Iowa DOT will perform interim audits of contract payments to DBE subcontractors during a contractor compliance review. The audit will review payments to these DBEs to ensure that the actual amount they were paid equals or exceeds the dollar amounts stated in the "Disadvantaged Business Enterprise Information Statement of DBE Commitments" (Form 102115).

Assistance Offered to DBEs by Prime Contractors

Prime contractors are allowed to offer construction assistance to DBE subcontractors, but only in areas where DBEs can benefit from prime contractors' expertise or in situations arising from unforeseen emergencies or natural disasters. The assistance must be short-term (one day or less) and involve only equipment, not workers. Before offering the assistance, the prime contractor must notify the project engineer and obtain the approval of the Civil Rights Administrator in the Iowa DOT's

Office of Employee Services.

Other forms of assistance, such as offering technical advice and occasional guidance, are encouraged. Before offering these forms of assistance, however, it is also necessary to notify the project engineer and obtain the approval of the Iowa DOT's Civil Rights Administrator.

Reporting to the U.S. DOT

At the completion of each contract with DBE usage, the Iowa DOT requires prime contractors to submit a "Certification of Actual Dollars Paid to DBE Firms" (Form 102116). This form will include a written certification that the Iowa DOT has reviewed contracting records and monitored work sites in its state to verify the accuracy of subcontract information submitted prior to beginning work on a project.

The Uniform Report of DBE Awards or Commitments and Payments Form/DBE Awards and Commitments and Payment is prepared and provided to FHWA on a semi-annual basis. The report covering the first half of the federal fiscal year is due June 1; the report covering the entire year is due December 1. The first part of this report provides information on actual dollars awarded and committed during the reporting period to DBEs and the second part breaks those dollars down into ethnic groups receiving the dollars. The third and final part shows the total original committed dollars to DBEs on contracts completed over the six-month reporting period. The actual dollars paid to DBEs after the contracts were completed is then entered; the actual dollars paid should meet or exceed the dollars committed.

CONTRACT GOALS

26.45 Overall Goal Submission

The Iowa DOT last submitted its overall goal to FHWA on August 1, 2017. The next submission will be due on August 1, 2020 and every third year thereafter.

26.47 Shortfall Analysis

If the Iowa DOT fails to meet its overall DBE goal at the end of the fiscal year, an analysis of the reasons for the shortfall will be performed and establish specific steps and milestones to correct any problems identified in the analysis that will enable the Iowa DOT to meet its goal in the new fiscal year. The analysis and corrective action(s) will be submitted for review and approval by FHWA within 90 days of the end of the fiscal year.

26.51 Contract Goals

The Iowa DOT meets as much of the overall goal as possible by using race-neutral measures to facilitate DBE participation in the Iowa highway construction industry.

Participation arises from race-neutral measures when DBEs receive prime contracts, because such contracts are awarded to the lowest bidder. Participation is also considered race-neutral when DBEs are awarded subcontracts or portions of subcontracts that do not include or consider DBE goals. A list of contracts and subcontracts awarded on a race-neutral basis includes, but is not limited to, the following:

- (1) DBE prime contracts
- (2) DBE subcontracts on prime contracts that do not carry DBE goals
- (3) DBE subcontract amounts that exceed contract goals
- (4) DBE subcontracts awarded by prime contractors who did not consider firms' DBE status

when making the awards

To facilitate DBE participation through race-neutral measures, the Iowa DOT will offer outreach and technical assistance to DBEs. The Iowa DOT will also provide an annual DBE workshop. Outreach and technical assistance will include assistance and training in areas such as the preparation and use of a business plan, contract administration, bonding assistance, CPA assistance, banking assistance and working with the Iowa DOT.

Race-neutral participation will be monitored by the Iowa DOT to ensure that DBE participation does not fall short of the overall goal. Race-conscious measures will be used to meet any portion of the overall goal that cannot be met through race-neutral measures. The Iowa DOT will separately track each type of measure and report the results to the FHWA. The Iowa DOT will implement race-conscious measures by establishing goals that apply only to DOT-assisted contracts with subcontracting possibilities. For each contract of this type, the size of the goal may vary depending on circumstances such as the type and location of work and the availability of DBEs to perform a given type of work. The contract goal will be expressed as a percentage of the total contract and will be established based upon the criteria set forth below:

- Set only on US DOT-assisted proposals.
- Try to attain the dollar amount of DBE usage represented by the overall goal on all contracts let by the Iowa DOT. The percentage of DBE-projected accomplishments, tracked year to-date from prime contracts awarded to DBE contractors and subcontract request forms, will be used to adjust the total amount of DBE goal set per letting. Contract goals will be set to make up the difference in the amount of DBE usage that can be obtained through race neutral means and the overall goal.
- Balance DBE goals work between industries such as structures, paving, asphalt and grading.
- Balance DBE goals work between county, city and state projects.
- Maintain a balance of DBE goal work across the state so all geographical locations share in the DBE Program.
- Identify individual items that are normally subcontracted. Iowa DOT staff will share the approximate percentage of the overall contract estimate for the Committee to review.
- Consider availability of DBE contractors who are ready, willing and able to quote the work available to subcontract.
- Assure at least three ways to make a DBE goal. This may be three or more items that can be subcontracted to DBE contractors to meet the goal or three or more DBE contractors ready, willing and able to quote on the available subcontract work. A goal should never be set on a proposal so that there is only one way available for bidders to meet that goal.
- Set DBE goals for individual proposals from 1% to 15%, in 1% increments.
- Evaluate Major Change Orders on existing Contracts to determine potential DBE usage.

DBE Goal Setting meetings are held the first Tuesday of every month. Goals are set on contracts to be let by the Office of Contracts the next month. These projects will be advertised the third Tuesday of the month. The DBE Goal Setting meeting is attended by an AGC member, prime contractors, DBE contractors, and other interested parties. Anyone may participate via teleconference. Review files received by Office of Contracts on each project and determine if and what DBE goal should be set; this is recommended and discussed by the attendees at the meeting.

- (a) If less than \$300,000, no goal is set.
- (b) Are there 3 different work types, or 3 different DBE contractors to meet the goal?

- (c) Recommend a goal anywhere from 1% to 10% in 1% increments.
- (d) If a project is re-let from a previous letting the initial goal may be used or a new goal may be decided.

At the DBE Goal Setting meeting:

- (a) Review all bid orders individually with attendees, give your recommended DBE goal, then open for discussion. Often everyone agrees, but sometimes a different goal is recommended. Once the goal has been agreed upon go to the next bid order.
- (b) Continue until all bid orders have no goal or a goal set.
- (c) Open for any questions or further discussion,

26.53 Good Faith Efforts (GFE)

The bid proposal will specify if the proposed contract has an established DBE goal. The established DBE goal will be shown on the proposal as a percent of the total amount bid. The bid will specify the name of the DBE(s) contacted and requested to submit a bid; when the DBE was contacted, the name of the person contacted and what type(s) of work the DBE was requested to bid on. At the time of submission, the bid will detail the names of the DBE contractor(s) to whom the prime has made a commitment, including the, the type of work committed to the DBE and the dollar value of the commitment. All bids are submitted via secure electronic portal. The contractor is notified contemporaneously if the bid does not meet the goal established for the specific project.

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a Commercially Useful Function (CUF) for work that is common industry practice in the Iowa highway construction industry. Subcontractor expenditures, which may be counted toward the DBE commitment, will include DBE trucking, purchase of materials from a DBE Manufacturer or Supplier, or off-site services provided by a certified DBE firm.

For contracts with established project goals, the Bidders will be required to complete the "Statement of DBE Commitments" form which is included in the computer software provided by the Department. The bidder shall list the following information on the Statement of DBE Commitments form that is electronically submitted with their bid:

- Certified DBE firms contacted
- Date that each DBE firm was first contacted concerning quoting on the proposal to be bid
- Whether each DBE firm submitted a quote on the proposal to be bid
- If the DBE firm is being used as part of the bidder's DBE commitment
- If used as part of the bidder's DBE commitment, the work items that the DBE will be used for on the contract
- If used as part of the bidder's DBE commitment, the "Quote Amount" which has been committed to each DBE firm which will be used on the contract
- If the DBE firm is being used as a supplier (in which case, only 60% of the dollars paid to the DBE firm will count toward the DBE commitment)
- The "Net Dollar Commitment" of each DBE firm which will be counted toward the DBE commitment

The percent of DBE participation of each bidder will be calculated by the Office of Contracts by dividing the sum of the commitments to each DBE firm by the total of the contract amount as defined by Article 1102.10. Each bidder's DBE participation commitment will be calculated to the nearest

tenth of a percent. If two or more projects are combined on one proposal, the DBE commitment will be calculated using the sum of DBE commitments and the sum of the project totals. Only DBE firms listed in the Electronic Bidding System (EBS) for the current letting may be used.

If a goal has been established for a contract, the Iowa DOT will award the contract to the lowest bidder making good faith efforts to meet the contract goal. If the low bidder has met or exceeded the proposed contract goal, the contractor will be presumed to have made a good faith effort to utilize DBE firms. If the low bidder is a DBE firm that bid as a prime contractor, the bid will be deemed to have met the goal. If the low bidder has not submitted documentation with the bid, demonstrating how the goal has been met, the contractor will be given an opportunity to show that a Good Faith Effort was made.

Good Faith Effort Reconsideration Process

The Iowa DOT's Good Faith Effort Reconsideration process consists of two separate levels of review. The first level of review is automatic whenever the low bid failed to meet the goal when submitted electronically.

(a) Good Faith Effort Evaluation Committee:

If the low bidder's electronic bid failed to meet the established DBE goal at the time of submission, their good faith efforts to meet the goal are assessed by the Good Faith Effort Evaluation Committee. This Committee meets and reviews the information submitted on the low bidder's electronic DBE Commitment Form. This committee meets the morning after the letting and prior to the award of any contract on the project. The Evaluation Committee's review is automatic and limited to documentation submitted with the bid.

This committee is composed of three members of the Department appointed by the Director and includes a representative of the Office of Contracts, the Office of Construction and Materials and the Civil Rights Coordinator.

In the event the committee determines that the bidder documented a good faith effort on the DBE Commitment Form, the bid will be deemed responsive and will be awarded. In the event the committee determines that the bidder did not perform a good faith effort, the bidder will be denied award. A written decision will be issued.

A bidder denied award by the GFE Evaluation Committee may appeal that decision to the GFE Administrative Review Committee by request to the Contracts Engineer. The bidder will be allowed one business day following the Evaluation Committee's written decision to request an appeal. If an appeal is not requested, the GFE evaluation process starts over with the next lowest bidder. If the next lowest bidder met the DBE goal on submission of its bid, no further review action is undertaken and the contract will be awarded.

(b) Good Faith Effort Administrative Review Committee:

The Department's GFE Administrative Review Committee consists of three members of the Department appointed by the Director. The committee currently consists of: the Director of the Office of Contracts, Director of the Office of Construction, and Director of the Office of Employee Services/DBELO. The members will not have participated on the Evaluation Committee.

The bidder must request appeal from the Contracts Engineer within one business day of being notified of the decision of the GFE Evaluation Committee. The bidder will have the opportunity for a face-to-face meeting with the GFE Administrative Review Committee and to provide written documentation of their efforts. The GFE Administrative Review Committee will meet within one business day of the request and will issue a written decision to the bidder.

Any bidder who has requested Administrative Reconsideration shall not adjust their DBE Commitment or provide any additional documentation of DBE firms contacted that were not listed on the DBE Commitment Form. However, the bidder will be allowed to provide documentation on other Good Faith Efforts they did to utilize DBE firms that are listed on the DBE Commitment Form. Only those efforts prior to the bid deadline will be considered. These efforts may include:

- (1) Efforts to provide interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (2) Written documentation of negotiation with certified DBE firms including the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (3) Written documentation of follow-ups made after the initial solicitations to encourage DBE firms to quote.
- (4) Written documentation that the DBE firm's quote was not reasonable or that the DBE firm was not capable of performing the work for which they quoted. The fact that there may be some additional costs involved in finding and using DBE firms is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.
- (5) Written documentation of efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the specifications.
- (6) Written documentation of efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services needed for the project.
- (7) Other activities of the bidder that by their quality, quantity and intensity demonstrate that the bidder took all necessary and reasonable steps to achieve the contract goal and could reasonably have expected to do so but were unsuccessful.
- (8) The determination made by the Administrative Reconsideration Committee shall be considered final.

In the event the bidder's appeal is denied by the GFE Administrative Review Committee, the GFE evaluation process starts over with the next lowest bidder. The Department may take appropriate steps to validate any GFE information submitted by any bidder. The decision of the Administrative Review Committee is final and may not be administratively appealed to the USDOT.

26.53 Termination or Substitution of DBE

If a DBE committed for a goal on a contract has been terminated or has otherwise failed to complete work on a contract, the contractor must make good faith efforts to replace the DBE with another certified DBE, to the extent needed to meet the committed amount on the contract. The prime contractor must immediately notify the project engineer of the DBE's inability or unwillingness to perform, providing reasonable documentation to support the notice. The project engineer will then notify the External Civil Rights Administrator in the Iowa DOT's Office of Employee Services and

will obtain the administrator's written approval or consent of any substitution that is made prior to the termination for good cause; that may include:

- DBE fails or refuses to execute a written contract;
- DBE fails or refuses to perform the work of its subcontract consistent with normal industry standards. Good cause does not exist where failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime contractor;
- DBE fails to meet reasonable, nondiscriminatory bond requirements;
- DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
- DBE is not a responsible contractor;
- DBE is ineligible to work on projects because of suspension and debarment proceedings;
- DBE voluntarily withdraws from the project and provides written notice;
- DBE is ineligible to receive DBE credit for the type of work required;
- DBE owner dies or becomes disabled and is unable to complete its work; or
- Other documented good cause that compels termination.

Before requesting the recipient's consent for the proposed replacement, the prime contractor must give written notice of the intent to request to replace, including the reason for the request to the DBE, with a copy to the External Civil Rights Administrator. The DBE must be given seven days to respond to the Prime contractor's notice and advise the Iowa DOT and the Prime of the reasons why it objects to the proposed replacement and why the Iowa DOT should not approve the Prime's request. The notice period may be reduced if required by public necessity; e.g. safety.

When requesting approval of a replacement DBE, the Prime contractor must provide the Office of Contracts and the External Civil Rights Administrator with copies of new or amended subcontract requests, along with documentation of good faith efforts to continue meeting the original contract commitment. 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 replaced, to the extent needed to meet the DBE commitment. If the contractor fails or refuses to provide the required information, the contractor will be penalized, dollar for dollar, for any work committed to DBEs but performed by non-DBEs. Repeated violations may result in suspension of the contractor's bidding privileges per Standard Specification 1102.17 G.

The Iowa DOT requires prime contractors to make all DBE subcontracts available upon request.

26.55 DBE Credit

When calculating credit for DBE contract goals, the Iowa DOT will count only the work performed by and paid to the DBE firm. With respect to the amount of work counted for different kinds of DBE firms, the following rules and definitions will apply:

DBE Manufacturer

A DBE manufacturer is a DBE firm that owns and operates the facilities needed to produce a product. The product must be required by a contract and purchased by a contractor. If such products are purchased from a DBE manufacturer, 100% of the amount paid for the products will be counted toward the DBE goal.

DBE Supplier

A DBE supplier is a DBE firm that sells goods to the general public and maintains its inventory at an owned or leased warehouse or store. If goods are purchased from a DBE supplier, 60% of the amount paid for the goods will be counted toward the DBE goal.

DBE Broker

A DBE broker is a DBE firm that does not manufacture products or supply goods on a regular basis. If materials purchased by such a broker are resold by the broker to a contractor and if the materials become permanent parts of a contracted project, 100% of the fee or commission received by the DBE broker will be counted toward the DBE goal.

Trucking

A DBE trucker is a DBE firm that performs trucking with its own employees and with its own trucks, trucks leased on a long-term basis, or trucks leased from another DBE firm, including an owner-operator who is a certified DBE. For a contractor to receive credit for 100% of the amount paid to a DBE trucker, the trucker must own at least one fully licensed, insured and operational truck for work performed on a contract.

A DBE trucker may also lease trucks from a non-DBE firm, including an owner operator. If a contractor purchases transportation from a DBE trucker under these circumstances, the contractor will receive credit only for the fee or commission paid to the non-DBE firm by the DBE trucker. The contractor will not receive credit for the total amount it paid to the DBE trucker because the DBE was a lesser rather than the actual provider of transportation services.

At all times, the DBE trucker must be responsible for managing and supervising the entire trucking operation. A subcontract with the DBE trucker must not be an arrangement contrived to create the appearance of meeting the DBE contract goal.

In order for a DBE trucker to be credited with the delivered price of materials and supplies, the trucker must also be certified as a supplier or manufacturer of these goods. In addition, the trucker must be responsible for selecting the source of the goods, ensuring their quality and negotiating their price.

DBE Contractor

A DBE contractor is a DBE firm that contracts or subcontracts to perform highway construction work. To be considered a DBE contractor, the DBE firm must perform work using its own employees, and it must order and pay for all of the supplies and materials it uses. When a DBE contractor performs a defined and clearly measurable portion of a contract by providing its own labor and materials, the Prime contractor will receive credit for 100% of the amount paid to the DBE contractor.

DBE Regular Dealer

A DBE regular dealer is a firm that owns, operate, 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. Materials or supplies purchased from a regular dealer will received credit for 60% of the cost toward DBE goals.

COMMERCIALLY USEFUL FUNCTION

26.55 Commercially Useful Function (CUF)

To perform CUF, a DBE must actually perform, manage and supervise work involved in a contract. DBE management responsibilities include scheduling work operations, preparing and submitting certified payrolls and hiring and firing employees. All operational and managerial decisions must be

made by the DBE. Supervision of daily operations must also be performed by the DBE personally or by a full-time, knowledgeable and skilled superintendent directly supervised by the DBE.

Employees: Performance of a CUF requires that all work on a contract be performed by the DBE's own workforce. To be considered an independent business, the DBE should maintain a workforce and the DBE shall not "share" employees with another contractor, especially a prime contractor.

Materials, Supplies and Equipment

With respect to the materials, supplies and equipment used to perform a CUF, the DBE must be responsible for negotiating the price of these goods; determining their quality and quantity; arranging for their delivery; and ordering, installing (where applicable) and paying for the goods. The Iowa DOT may review invoices to verify that they were billed to and paid by the DBE. No credit will be given toward a contract's DBE goal when goods used on the contract were paid for by the prime contractor. The cost of materials purchased by the DBE from the prime contractor and the cost of equipment leased from the prime contractor will also not count toward the contract's DBE goal.

Monitoring and Enforcement of CUF

A key requirement of the Federal DBE regulations is that DBEs perform a CUF which means that DBEs must be responsible for executing a distinct portion of the work. To fulfill this responsibility, DBEs must meet certain requirements with regard to their management, employees, and materials, supplies and equipment. Compliance with these requirements will be monitored and enforced by the Iowa DOT by using Form 102166 Certification of DBE Accomplishments.

In addition to the documentation on Form 102116, the performance of a CUF by DBEs is monitored by Iowa DOT field personnel daily. Field personnel observe and document in the field diary at least one aspect of CUF, i.e. who owns the equipment used by DBEs, plus who supervises and pays DBE employees. All DBEs and employees are required to cooperate with personnel conducting the field audits and with staff from the Office of Employee Services, Civil Rights Team. Work performed by a DBE will not be counted toward a contract goal if the DBE did not perform a CUF while doing the work. Failure to perform a CUF could also lead to the Iowa DOT's withholding of payment for the work. If deliberate fraud was involved, such failure could also result in criminal prosecution of both the prime contractor and the DBE.

Any of the following situations may be indicative of a DBE's failure to perform a CUF:

- (1) Employees shared by both the DBE and another contractor
- (2) Supervision of the DBE's crew by another contractor
- (3) DBE's use of the prime contractor's equipment
- (4) DBE's use of other equipment which is neither owned nor leased by the DBE
- (5) Materials for the DBE that were ordered and/or paid for by the prime contractor
- (6) An item of work performed jointly by the DBE and another contractor

If a DBE Firm Ceases to be Certified

Pursuant to the requirements found at 49 CFR 26.55(g), should a DBE firm cease to be certified, the dollar value of the work performed after the firm's certification has been removed will not be counted toward the overall goal. Further, if there was a bid commitment made by a prime contractor to the firm, but no written subcontract was executed, the prime contractor must make a good faith effort to find another DBE firm for all or part of the committed amount.

The Iowa DOT will make every effort to ensure that no DBE credit will be attributed to any goal in the event a firm has not been certified as a DBE at the time of the award of a contract.

The Iowa DOT will make every effort to ensure that no DBE credit will be counted toward goal attainment until such time as payment has been made.

CERTIFICATION

26.61 Burden of Proof

When reviewing an application for certification, the firm seeking certification bears the burden of proving, by a preponderance of the evidence submitted, that it meets the requirements of Subpart D concerning group membership or individual disadvantage, size of the business, ownership of the business and control of the business. We presume that members of the designated groups identified in Section 26.67(a) are socially and economically disadvantaged when their claim to be a group member is supported by a signed, notarized statement. It should be noted that this is a rebuttable presumption. [26.61(a)-(c)]

Applicants who are not members of a presumptively eligible group bear the burden of proving, by a preponderance of the evidence, that they are and have been socially and economically disadvantaged. [26.61(d)]

The determination of whether the applicant has met their burden of demonstrating group membership, ownership of the firm, control and social and economic disadvantage must be and will be based upon a review and consideration of all the facts in the record, viewed as a whole. [26.61(e)]

26.63 Group Membership

If, upon review of a signed, notarized statement regarding membership in a presumptively eligible group, there is a well-founded reason to question the applicant's claim of membership in the group, Iowa DOT will provide the applicant with a written explanation the reasons for raising the question and make a written request for additional evidence supporting the applicant's claim of such membership. Additional evidence may include proof of U.S. citizenship or naturalization, evidence of citizenship or community recognition in a Federal or State recognized Indian Nation or community, and documentation as outlined in Appendix E of 49 CFR Part 26. Care is and will be exercised in ensuring that a disproportionate burden is not being imposed on members of any particular presumptively eligible group. [26.63(a)-(b)]

When reviewing the additional information, we will consider whether the individual has held him/herself out to be a member of the group for an extended period of time prior to application for certification and whether the individual is considered to be a member of the presumptively eligible group by the relevant community. We may ask the applicant, in writing, to provide appropriate documentation of membership in such group. [26.63(b)]

In the event that the applicant fails to provide adequate documentation supporting his/her claim of membership in a presumptively eligible group, then the applicant is advised she/he must demonstrate social and economic disadvantage on an individual basis. [26.63(b)(1)]

The DBE applicant is sent by email and certified U.S. postal mail a Request for Additional Information letter. In this letter, the concerns of Iowa DOT are enumerated. The applicant is given 30

calendar days in which to respond in writing to these concerns and/or provide supporting documentation. If the applicant fails to respond to these concerns within this time period, a Notice of Intent to Deny letter is sent by certified mail. If the applicant responds to the concerns, a member of the certification team again reviews the information to determine if the applicant is eligible for certification approval.

When reviewing the additional information, Iowa DOT will consider whether the individual has held him/herself out to be a member of the group for an extended period of time prior to application for certification and whether the individual is considered to be a member of the presumptively eligible group by the relevant community. Iowa DOT may ask the applicant, in writing, to provide appropriate documentation of membership in such group. [26.63(b)]

In the event that the applicant fails to provide adequate documentation supporting his/her claim of membership in a presumptively eligible group, the individual may still provide evidence demonstrating individual social and economic disadvantage. Such documentation and information will be reviewed as part of the record as a whole. [26.63(b)(1)]

26.65 Business Size

To be eligible for DBE certification, a firm, including any affiliates, must be an existing small business and meet all Small Business Administration (SBA) business size standards. However, when the SBA business size caps exceed those of the DBE program, the size of the business may not exceed the \$23.98 million DBE cap. We will apply these standards [found at 13 CFR Part 121] that are applicable to the type or types of work the firm seeks to perform in DOT-assisted contracts. [26.65(a)]

Firms applying for Airport Concession DBE certification must meet small business standards set in 49 CFR Part 23.33. This means on average over the previous three fiscal years a firm cannot exceed \$56.42 million. If the company is a bank or financial institution, the firm should not have more than \$1 billion in assets. A car rental company's annual gross receipts over the firm's three previous fiscal years should not exceed \$75.23 million. Pay telephone companies and automobile dealers should not exceed 1,500 employees and 350 employees, respectively. [23.33 (b)]

If a DBE applicant owns several businesses, the combined gross receipts of the affiliated operations must be counted. If the owner also participates in a joint venture, for example she/he has 25% ownership interest in a joint venture partnership, 25% of the receipts generated by the joint venture are calculated, assuming that applicant's business generates its proportionate share of gross receipts for the joint venture operation.

The firm will not be eligible as a DBE in any Federal fiscal year in which the firm and its affiliates has had average gross receipts over the previous three years that exceed the then current cap for the DBE program. We review the firm's tax returns and will calculate a three- year average as appropriate. This will be the case even if the firm should continue to meet the SBA standards in other respects. [26.65(b)]

26.67 Social and Economic Disadvantage

Applicants for DBE certification are required to provide a signed, notarized statement with appropriate information to demonstrate that each presumptively eligible owner is, in fact, socially and economically disadvantaged. Each individual owner of the firm, whose ownership and control are being relied upon for DBE certification, is required to certify that his/her personal net worth does not exceed the current DBE personal net worth (PNW) cap. [26.67(a)]

Each individual who is required to provide certification of his/her PNW must do so by providing a signed, notarized statement of such personal net worth and supporting documentation.

[26.67(a)(2)(ii)] To determine an individual's PNW, OES-CRT observes the following requirements: Iowa DOT exclude an individual's ownership interest in the applicant firm and the individual's equity in their primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). OES-CRT includes only the present value assets held in vested pension plans, retirement accounts, 401(k) accounts, or other retirement savings or investment programs. Contingent liabilities, which reduce an individual's net worth, are not calculated. [26.67 (a)(2)(iii)] Applicants seeking DBE certification will be required to certify they do not exceed the personal net worth cap by submitting the signed and notarized Personal Net Worth Statement For DBE/ACDBE Program Eligibility form, provided by the U.S. DOT.

An individual's presumption of economic disadvantage is rebutted in two ways: 1) If the applicant's personal net worth exceeds \$1.32 million, and 2) if a DBE applicant is able to accumulate substantial wealth. If the applicant disagrees that he/she exceeds the personal net worth cap, a proceeding that follows the procedures of §26.87 to rebut the presumption is necessary. [26.67 (b)]

Assets of an individual claiming disadvantaged status that were transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to applying to participation in the DBE program continue to be counted as assets owned by the individual claiming disadvantaged status.

Exceptions to this rule are: (1) assets transferred to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements, and (2) documented transfers made to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support. [26.67 (c)]

26.69 Determining Ownership

When making a determination of whether the socially and economically disadvantaged participants own the firm, Iowa DOT consider all facts in the record viewed as a whole. The firm or limited liability company must be at least 51% owned by a socially and economically disadvantaged individual(s). If a corporation, the socially and economically disadvantaged individual(s) must own at least 51% of each class of outstanding voting stock and 51% or more of all outstanding stock. The examination of other indicia of ownership, for example, securities representing ownership, or assets held in trust, must likewise be shown to inure to the benefit and control of the socially and economically disadvantaged individual(s).

An important factor in determining ownership has to do with capital contributions made to the firm including assets used to acquire ownership interest. Ownership by disadvantaged individuals must be real, substantial and continuing. To determine if ownership is real and substantial, OES-CRT analyzes what documents say about the firm, and also what actually happens in the firm, e.g. how are risks and profits shared, who has decision-making power, etc. In a corporation, the disadvantaged owners must own at least 51% of each class of voting stock and 51% of the aggregate stock. This is determined by reviewing the corporation's articles of incorporation, stock certificates, stock transfer ledger, and any buy-sell agreements between the shareholders. In a partnership, the disadvantaged owner(s) must own at least 51% of each class of partnership interest. This is determined by reviewing the partnership agreement. And finally, in an LLC, the disadvantaged owners must own at least 51% of each class of membership interest. This is determined by reviewing the articles of organization. [26.69 (b)]

Iowa DOT will review all documentation provided in support of the certification application to ascertain that the socially and economically disadvantaged person has acquired his/her ownership interest in the firm through real and substantial contributions, whether financial or via the contribution of expertise. As with our review of the other factors that must be considered when reviewing a certification application, we consider all information in the record as a whole and refer to as well as adhere to the considerations and guidance found in 26.67.

26.71 Determining Control

Iowa regulates the activity of a business or profession. The state of Iowa Professional Licensing Bureau requires a certified public accountant, Architect, Engineer, Land Surveyor, and Real Estate Agent professionals to have a license. In addition, the state of Iowa requires electricians, plumbers, and asbestos abatement specialists to possess a license. The State of Iowa requires that Construction Contractors register with the Iowa Division of Labor and renew registration annually. Corporations, limited liability companies, limited partnerships, nonprofits, trademarks or service marks are required to register with the Iowa Secretary of State. Sole proprietorships need to register with the county recorder.

When reviewing the application for certification the applicant's control over the business will be determined. Factors such as knowledge and ability to control day to day operations; hire and fire employees, determine whether to purchase new equipment and what equipment to purchase, ability to decide what projects to bid on, control over the board of directors. This list contains examples and is not intended to be exhaustive.

North American Industrial Classification System (NAICS) Codes

Firms that apply for DBE certification must inform OES-CRT of the specific types of work for which certification is sought. OES-CRT only approves a firm's DBE certification in defined work types which the socially and economically disadvantaged owners demonstrate an ability to control. To become certified in additional type of work, after DBE certification, OES-CRT verifies a disadvantage owner's control of the DBE firm in the additional type of work.

When companies are approved for DBE certification, OES-CRT will assign the company a narrative description of the work area(s) they can perform for DBE credit. Narratives are described in terms of the most specific available NAICS code for that type of work. OES-CRT determines the narrative work area description based on the work type the applicant requested for certification as listed in the Unified Certification Program application documents. OES-CRT will often contact the applicant to work with them to come up with a more specific narrative description - one that is clearer, more defined, more descriptive, and fully captures the scope of principal goods or services which the firm would provide without departing from the plain meaning of a NAICS code. [26.71 (n)(1)]

In addition to the narrative description, OES-CRT assigns a NAICS code to the company for its certified work area(s). The NAICS code is the standard used by Federal statistical agencies in classifying business establishments. A firm bears the burden of providing detailed company information needed to make an appropriate NAICS code designation. After the OES-CRT determines the narrative description of the company's work area(s), we assign the NAICS code(s) that most accurately matches the narrative description(s) of the company. Vague, general, or confusing descriptions will be refined, in consultation with the disadvantaged owner(s), to ensure a firm's participation can be counted toward DBE goals. [26.71 (n)(2)-(3)]

At the time a DBE firm submits an Annual Affidavit of No-Change, OES-CRT will make sure NAICS codes cited in a certification are up-to-date and continue to accurately reflect work the firm's owners can control. Certification classification or description of a work type can be changed by OES-CRT if the DBE firm requests a change in writing, or if there is a factual basis supported by evidence in the record to warrant a change. [26.71 (n)(2)-(4)]

26.73 Other rules related to certification

In making certification decisions, OES-CRT will consider whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. [26.73 (2)]

The eligibility of an applicant firm for certification will be based upon present circumstances only. A determination of Commercially Useful Function (CUF) Is not a factor in eligibility determination.

26.81 UCP Agreement

The Iowa DOT has established a unified certification program (UCP) for all government entities receiving U.S. DOT funds in the State of Iowa. With respect to participation as a DBE on U.S. DOT-assisted contracts, the Iowa DOT will make all DBE certification decisions through the UCP on behalf of these entities. The purpose of the UCP is to provide "one-stop-shopping" to certification applicants, which means that once they have been certified, their certification will be honored by all other entities in the State that receive U.S. DOT funds. Since all certification applications are reviewed by the Iowa DOT, there is no UCP Agreement.

26.83 Onsite Reviews

After all U.S. DOT-required DBE certification documentation has been received, an on-site visit is scheduled with the DBE applicant at his/her place of business. On-site interviews, are conducted by the DBE certification analyst. Interviews are recorded on an FHWA approved On-Site Review Form and applicants are advised on-site interview are audio recorded.

Depending on information disclosed during the on-site interviews the DBE certification analyst may request additional documentation to assist in making a determination of DBE certification eligibility. The disadvantage owner is emailed a request to provide additional information discussed during the on-site interview and provided 15 calendar days from the date of the on-site interview to submit the new material. If necessary, the DBE certification analyst will interview key personnel of the firm and visit job sites.

26.85 Interstate Certification

As per 49 CFR §26.85 (a)(b) when a firm is currently certified in its home state (State A) and applies with a written request to the Iowa DOT (State B) for DBE certification, the applicant firm must provide a copy of the certification notice (approval letter) from State A.

The Iowa DOT will go to the home state's electronic directory and print the screen shot reflecting the firm's DBE status. After Iowa DOT has verified that the home state's certification is current or in good standing, it must send the firm a written notice within 15 days and place the firm in the Iowa DBE directory.

If the firm fails to provide the certification notice (approval letter) or the home state's electronic directory does not show the firm as certified, Iowa DOT shall send the firm a notice within 15 days from receipt of the information stating Interstate DBE certification will not be accepted (or granted). The applicant must contact the home state to appeal this decision. Iowa has adopted Option B for interstate certification. As such, as long as the interstate applicant provides the necessary

documentation from their home state, they will be certified.

If there are any questions about the firm after receiving the information, the Iowa DOT will contact the applicant directly for clarification of the issues and/or request the firm make application through the certification process per 49 CFR §26.85 (c).

As per 49 CFR §26.85 (f), The Iowa DOT will enter into the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database the following information for all de-certifications or denials of a firm's application.

- (1) The name of the firm;
- (2) The name(s) of the firm's owner(s);
- (3) The type and date of the action; and
- (4) The reason for the action.

26.86 Denial of Initial Request for Certification, Waiting Periods

An applicant who has been denied certification as a DBE or whose certification has been removed, will be provided an opportunity to appeal the decision to the Iowa DOT DBE appeal committee. The committee is comprised of five Iowa DOT employees outside the Department's Office of Employee Services who are appointed by the director of the Iowa DOT's Project Delivery Bureau. The committee will be chaired by the Civil Rights Administrator, although that individual will not vote nor be considered a member of the committee. The Civil Rights Administrator and each of the committee members understand the certification requirements and will review all evidence provided to the Iowa DOT's civil rights compliance officer who made the initial determination.

The applicant will be offered an opportunity to meet face-to-face with the committee to present his or her side of the findings. No new evidence will be reviewed at the informal meeting. Procedures set forth under 49 CFR part 26.87 will be followed by the Iowa DOT if it proposes the removal of a DBE's certification.

If Iowa DOT proposes to remove a DBE's certification based upon its review of all records, materials and other required information, the proposal is forwarded to the DBE appeal committee which makes the decision on whether to remove the certification. To ensure a separation of functions in such a decision, members of the DBE appeal committee will not have participated in any way in proceedings, or the decision to initiate proceedings, leading to the proposal to de-certify. An administrative "firewall" has been established to make certain that the separation of functions is always maintained.

A firm that either has had its eligibility removed or has been denied certification must wait 12 months before reapplying for certification. If an applicant for DBE certification withdraws its application before a decision on the application has been issued, the applicant can resubmit the application at any time. However, the reapplication may be placed in order of receipt and behind other applications that have been made since the firm's previous application was withdrawn. If a firm establishes a pattern of frequently withdrawing applications before a decision is made, a waiting period may be applied. In either action, however, a firm may appeal the Iowa DOT's decision to the U.S. DOT.

Such appeals may be sent to:
Department of Transportation Office of Civil Rights
1200 New Jersey Avenue, SE

Washington, DC 20590

The Iowa DOT will promptly implement any U.S. DOT certification appeal decisions affecting the eligibility of DBEs for U.S. DOT-assisted contracts. Thus, if the U.S. DOT determines that the Iowa DOT erroneously removed a firm's eligibility or denied certification to a firm, the Iowa DOT will promptly certify the firm.

26.87 Removal of Eligibility

If, based upon its review of all records, materials and other required information, the Iowa DOT has reason to believe that a certified DBE firm may be ineligible and proposes to remove the DBE's certification, the DBE will be notified of this proposed action and the reasons, in writing. The notification letter will state the reason(s) and include a summary of the evidence on which the proposed removal is based.

In the alternative, the USDOT may notify Iowa DOT of reasonable cause to find a certified DBE firm to be ineligible. The Iowa DOT must immediately initiate removal procedures. Following notice to the DBE, the procedure below is followed:

(a) Informal Hearing: When a DBE firm receives written notice of intent to remove eligibility, the firm has 15 days to request an informal hearing to refute the allegations. The Iowa DOT must prove by a preponderance of evidence that the firm is ineligible. The Iowa DOT will record the hearing and prepare a transcript. The Iowa DOT Appeal Committee will be responsible for making the decision on the DBE's continued eligibility for certification.

(b) Decision of the Committee: The decision of the Committee is to be based upon a review of the record as a whole to determine whether removal is appropriate. The decision is to be based upon a finding that the circumstances of the firm have changed since certification; that evidence relevant to the initial eligibility determination had not been available at the time of certification; that relevant evidence had been concealed or misrepresented at the time of initial certification; and there had been changes in certification standards or there is evidence of documentation of erroneous facts.

(c) Notice of Decision and Appeal Rights: Following the decision, the Iowa DOT will notify the DBE firm in writing of the decision and any consequences. The firm remains an eligible DBE throughout the investigation and hearing process. The removal of eligibility becomes effective on the date of the decision letter. The firm will be notified that it may appeal the Iowa DOT's decision to the U.S. DOT.

Such appeals must be sent to:
Department of Transportation Office of Civil Rights
1200 New Jersey Avenue, SE Washington, DC 20590

The Iowa DOT will promptly implement any U.S. DOT certification appeal decisions affecting the eligibility of DBEs for U.S. DOT-assisted contracts. Thus, if the U.S. DOT determines that the Iowa DOT erroneously removed a firm's eligibility or denied certification to a firm, the Iowa DOT will promptly certify the firm.

26.109 Information, Cooperation, Confidentiality

Consistent with Federal, State and local law, the Iowa DOT will safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information.

Notwithstanding any contrary provisions of Federal, State, or local law, the Iowa DOT will not release personal financial information, submitted by a DBE applicant, to a third party (other than the U.S. DOT) without the written consent of the applicant. The Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a).

The Iowa DOT will cooperate fully and promptly in any complaint investigation, review process or inquiry.

DBE RELEVANT LINKS

Iowa DOT Uniform Certification Application

<https://forms.iowadot.gov/BrowseForms.aspx?templateid=650194>

Interstate Certification Application <http://www.iowadot.gov/civilrights/DBE/517016.pdf>

Affidavit of No Change <http://www.iowadot.gov/civilrights/DBE/650044.pdf>

Personal Net Worth Statement <http://www.iowadot.gov/civilrights/DBE/650294.pdf>

Iowa DOT DBE Online Directory <https://secure.iowadot.gov/DBE/Home/Index/>

Statement of DBE Commitments – Iowa DOT Let

<http://www.iowadot.gov/civilrights/DBE/102115.pdf>

Certification of DBE Accomplishment – Iowa DOT Let

<http://www.iowadot.gov/civilrights/DBE/102116.pdf>

DBE Commitment Form – Consultant Contracts <http://www.iowadot.gov/civilrights/DBE/517010.pdf>

DBE Payment Information Form – Locally Let <http://www.iowadot.gov/civilrights/DBE/517011.pdf>

Statement of DBE Commitments – Locally Let <http://www.iowadot.gov/civilrights/DBE/517012.pdf>

Certification of DBE Accomplishments – Locally Let

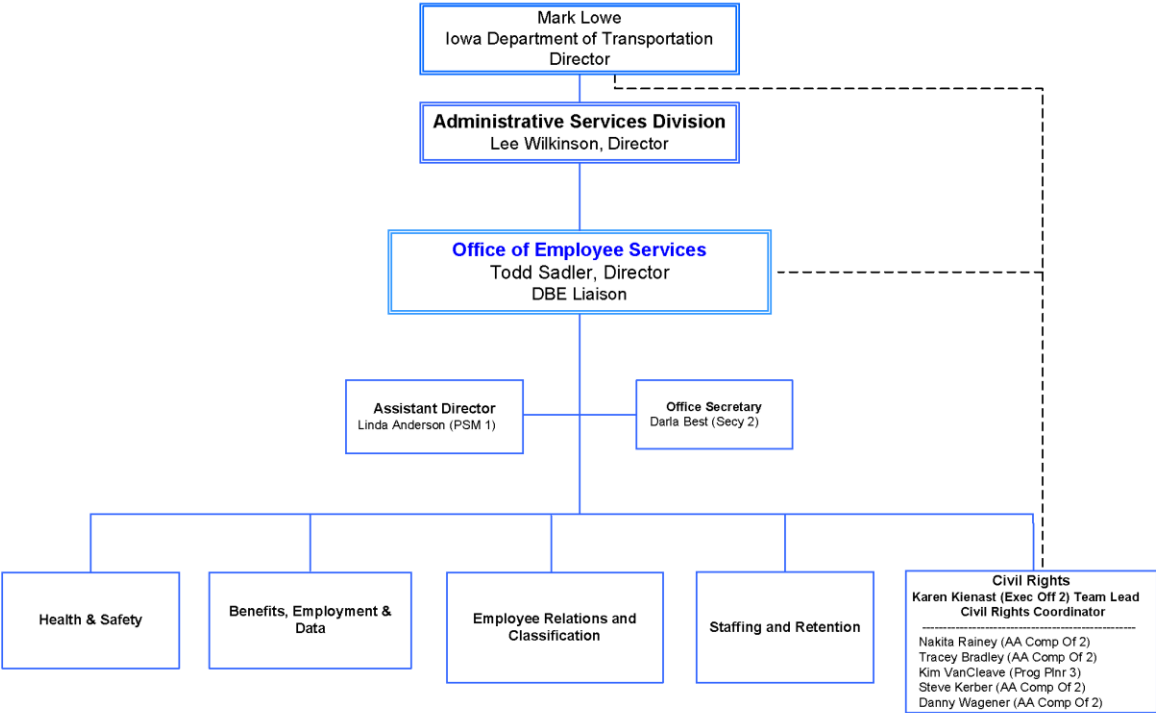
<http://www.iowadot.gov/civilrights/DBE/517013.pdf>

CUF Check-List <http://www.iowadot.gov/civilrights/DBE/517014.pdf>

DBE Truck Roster Form <http://www.iowadot.gov/civilrights/DBE/517015.pdf>

Attachment A

Iowa Department of Transportation



September 2018