

Year 2008 DBE Program under – 49CFR Part 26

DBE Program Updates

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas, Set-asides, and Penalties

We do not use quotas in any way in the administration of this DBE program. Contractors are never penalized for failing to “make a number”. Use of set-asides is restricted to extreme situations when needed to remedy egregious discrimination and when other methods have failed.

DBE Officer

We have designated the following individual as our DBE Liaison Officer: Allen Hammond, 6100 Southport Road, Portage, IN, 46368, (219) 763-6060, ahammond@nirpc.org. In that capacity, Allen Hammond is responsible for implementing all aspects of the DBE program and ensuring that the Northwestern Indiana Regional Planning Commission complies with all provisions of 49 CFR Part 26. Allen Hammond has direct, independent access to the Executive Director concerning DBE program matters. An organization chart displaying the DBE Officers position in the organization is found in Attachment 1 to this program.

Allen Hammond is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Ensures that the bid notices and requests for proposals are available to DBE's in a timely manner.
4. To help remove barriers to the participation of DBE's in DOT assisted contracts; and
5. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
6. Participates in pre-bid meetings, if necessary
7. Advises the CEO/governing body on DBE matters and achievement.
8. Provides DBE's with information and assistance in preparing bids, obtaining bonding and insurance, when requested.
9. Acts as a liaison to the Uniform Certification Process in Indiana.
10. Provides outreach to DBE's and community organizations to advise them of opportunities.

Federal Financial Assistance Agreement Assurance

Northwestern Indiana Regional Planning Commission and its sub-recipients have signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The Northwestern Indiana Regional Planning Commission and its Sub-recipients shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, 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 Northwestern Indiana Regional Planning Commission of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in

appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DBE Financial Institutions

It is the policy of the Northwestern Indiana Regional Planning Commission to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made efforts by way of searching local directories and the State of Indiana Minority Business Directory to identify such institutions. To date we have not identified any of these institutions in the state, let alone Northwest Indiana.

Directory

The Indiana Department of Administration maintains a directory identifying all firms eligible to participate as DBE's. The directory lists the firms' name, address, and phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. We make the Directory available to any individual who requests it. It is also periodically sent to local businesses that are seeking DBE participation.

Business Development Programs

At this time, Northwestern Indiana Regional Planning Commission does not have a business development program or a mentor-protégé program.

Over-concentration

Through analysis of the DBE Reports, it was determined that there was no evidence of over concentration among the categories. At this time, the Northwestern Indiana Regional Planning Commission has not identified any over concentration. NIRPC has not developed any measures to address over concentration. However, if in time the need arises, measures will be developed.

Required Contract Clauses

Contract Assurance

We will ensure that the following clause is placed in every DOT-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 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.

Prompt Payment

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

The (prime) contractor shall not terminate a DBE subcontractor for convenience and then perform that work with its own forces or its affiliate.

Prime contractors must make payment to subcontractors for satisfactory performance of their contracts no later than 30 days from the receipt of each payment made by the Commission to the prime contractor.

If retainage is withheld from the subcontractor, prompt and full payment must be made by the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Commission. When the Commission has made an incremental acceptance of a portion of a prime contract or a progress payment, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any delay or postponement of payment to subcontractors may only take place for good cause. Any such delay or postponement requires the prior written approval of the Commission.

If any of these conditions are not met, the Commission reserves the right to withhold payment until the Commission is satisfied that these conditions are met.

The contractor agrees to place this clause in all subcontracts.

Monitoring and Enforcement Mechanisms

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Attachment 2 lists the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

Overall Goals

Amount of goal

The Northwestern Indiana Regional Planning Commission's and their sub-grantees overall goal for FY 2008 is the following: 11% of the Federal financial assistance we will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.

Given the amount of DOT-assisted contracts The Northwestern Indiana Regional Planning Commission expects to let during this fiscal year/project, which is \$116,946.50 this means that we have set a goal of expending \$12,965.55 with DBE's during this fiscal year/project.

Method

The following is a summary of the method we used to calculate this goal:

A two step process for goal setting has been adopted by the Northwestern Indiana Regional Planning Commission to ensure that the program is narrowly tailored to remedy the effects of discrimination. The process is intended to provide the maximum flexibility while insuring that goals are based on the availability of ready, willing and able DBE's in the Northwestern Indiana market.

Step 1: A baseline figure of 10.8% has been created to represent the availability of ready, willing and able DBE's in the Northwestern Indiana market. The DBE Directory and Census Bureau data was used as a model to determine the baseline figure.

Step 2: An adjustment was made to the baseline figure to reflect past participation. We then determined the historical median of the past three years and averaged it with our baseline figure. There were no anticipated changes in DOT-assisted contracting over the coming year.

- ❖ The method used to calculate the relative availability to DBE's ("base figure") for "Step 1" of the process is 2.5%. A weighted percentage figure calculated by dividing a number representing available DBE's (10) by a number representing all available firms (400).
- ❖ The data sources used to derive the numerator and denominator in the calculation was 10 DBE's in our Directory and 400 total firms in the following NAICS codes for Lake, Porter and La Porte County found in the Census Bureau's database.

Transportation, Manufacturing, Maintenance, and Services for Elderly and Persons with Disabilities.

- ❖ The relative availability percentage is 2.5%
- ❖ Our disparity study showed that availability of DBE's is estimated at about 10.8%
- ❖ While Northwestern Indiana Regional Planning Commission only has 10 registered DBE's, we believe there are disadvantaged firms in the area who are not registered.

Transit Vehicle Manufacturers

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

Process

The Northwestern Indiana Regional Planning Commission submits its overall goals to FTA on August 1 of each year. Before establishing the overall goals each year, the Northwestern Indiana Regional Planning Commission will obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, effects of discrimination on opportunities for DBE's, and the Northwestern Indiana Regional Planning Commission's efforts to establish a level playing field for the participation of DBE's.

We will then publish a notice of proposed overall goals informing the public that the proposed goal and its rationale are available for inspection during normal business hours for 30 days following the date of notice. The notice will also inform the public that the NIRPC and FTA will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 10th of each year. The notice must include addresses to which comments may be sent and addresses (including office and web sites) where the proposal may be reviewed.

Our overall goal submission will include a summary of information and comments received during this public participation process and our responses.

We will begin our overall goal on October 1 of each year, unless we have received other instructions from FTA.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The Northwestern Indiana Regional Planning Commission will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Northwestern Indiana Regional Planning Commission uses the following race-neutral means to increase DBE participation:

We estimate that, in meeting our overall goal of 11%, we will obtain 100% from race-neutral DBE participation. We base this on previous years goals met through 100% race neutral means.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals

The Northwestern Indiana Regional Planning Commission will not use contract goals to meet any portion of the overall goal.

Good Faith Effort

Information to be submitted

The Northwestern Indiana Regional Planning Commission treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidder/offers to submit the following information.

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that 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.

Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal had documented sufficient good faith efforts to be regarded as responsive: Compliance Officer, Allen Hammond.

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

Administrative reconsideration

Within 3 days of being informed by Northwestern Indiana Regional Planning Commission that it is not responsive because it had not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Mary Jane Shkroba, 6100 Southport Road, Portage, IN 46368, 219-763-6060, mshkroba@nirpc.org. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make or document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealing to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply immediately, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation

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

Certification

Unified Certification Program

A unified certification process had been implemented through the Department of Transportation. Northwestern Indiana Regional Planning Commission has acted effectively in directing all applicants to the state and other appropriate agencies for certification and re-certification for DBE.

Certification Appeals

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

Department of Transportation Office of Civil Rights Certification Appeals Branch
400
7th St., SW Room 2104 Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBE's for our DOT-assisted contracting.

Information Collection and Reporting

DBE List

The Northwestern Indiana Regional Planning Commission will create a DBE list, consisting of information about all DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the DBE list approach to calculating overall goals. The DBE list will include the name, address, phone, DBE Region, and NAICS Code.

Monitoring Payments to DBE's

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

We will perform interim audits of contract payments to DBE's. The audit will review 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 to DOT

We will report DBE participation as follows:

We will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBE's on DOT-assisted contracts. We will submit a written narrative, informing DOT of actual expenditures of monies with contractors and with DBE's.

Confidentiality

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