

**Madison County Mass Transit District
Pontoon Beach, Illinois**

Disadvantaged Business Enterprise Program

Revised February 2025

TABLE OF CONTENTS

POLICY STATEMENT	4
SUBPART A – GENERAL REQUIREMENTS	5
Section 26.1 Objectives	5
Section 26.3 Applicability	5
Section 26.5 Definitions of Terms	5
Section 26.7 Non-Discrimination Requirements	6
Section 26.11 Record Keeping Requirements	6
Section 26.13 Federal Financial Assistance Agreement	6
SUBPART B – ADMINISTRATIVE REQUIREMENTS	8
Section 26.23 DBE Program Updates	8
Section 26.23 Policy Statement	8
Section 26.25 DBE Liaison Officer (DBELO)	8
Section 26.27 DBE Financial Institutions	9
Section 26.29 Prompt Payment Mechanisms	10
Section 26.31 DBE Directory	10
Section 26.33 Overconcentration	10
Section 26.35 Business Development Programs	10
Section 26.37 Monitoring and Enforcement Mechanisms	10
Section 26.39 Fostering Small Business Participation	11
SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING	13
Section 26.43 Set-asides or Quotas	13
Section 26.45 Overall Goals	13
26.45(g) Publication of DBE Overall Goal	14
Section 26.49 Transit Vehicle Manufacturers Goals	14

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation	14
Section 26.51(d-g) Contract Goals	14
Section 26.53 Good Faith Efforts Procedures	15
Section 26.55 Counting DBE Participation	16
SUBPART D – CERTIFICATION STANDARDS	19
Section 26.61-26.73 Certification Process	19
SUBPART F – COMPLIANCE AND ENFORCEMENT	20
Section 26.109 Information, Confidentiality, Cooperation	20
ATTACHMENT A	21
SIGNED POLICY STATEMENT	21
ATTACHMENT B	22
ORGANIZATIONAL CHART	22
ATTACHMENT C	23
SAMPLE FORMS	23
ATTACHMENT D	24
REQUIRED CONTRACT CLAUSES	24

Section 26.2 POLICY STATEMENT

The Madison County Mass Transit District (MCT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR §26. It is MCT policy to ensure that DBEs, as defined in 49 CFR §26, have an equal opportunity to receive and participate in Department of Transportation (DOT)-assisted contracts. This policy encompasses the following actions:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts by MCT;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts issued by MCT;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR §26 eligibility standards and certified by the Illinois Unified Certification Program (ILUCP) are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts issued by MCT;
- To assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

Miriam Bell, Grants Coordinator, is the delegated DBE Liaison Officer (DBELO). In this capacity, Ms. Bell, at the direction of the Managing Director, is responsible for implementing all aspects of the DBE Program. In the event the delegated DBELO is unable to fulfill her obligations as DBELO (i.e., due to an extended leave of absence, change in employment status, etc.), the Managing Director is authorized to designate an interim and/or replacement DBELO. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by MCT in its financial assistance agreements with DOT.

This policy statement is distributed to all MCT trustees, directors, managers, supervisors, and procurement personnel, and is conspicuously posted in the workplace for the information of other employees and visitors. MCT also distributes this policy statement to DBE and non-DBE business organizations known to be available to perform work on DOT-assisted contracts, primarily via legal advertisements in publications of community and business organizations representing minority and/or women-owned disadvantaged businesses and through dissemination to Small Business Development Centers.

A copy of the signed and dated policy statement is included as Attachment A.

SUBPART A – General Requirements

Section 26.1 Objectives

The objectives are found in the policy statement on page 4 of this program.

Section 26.3 Applicability

As a Tier 1 recipient of financial assistance from DOT, MCT is required to implement a DBE Program in accordance with 49 CFR §26, which is incorporated herein by reference. The DBE Program applies to all MCT contracts that are funded, in whole or in part, by DOT financial assistance. In the event of any conflicts or inconsistencies between 49 CFR §26 and this DBE Program with respect to DOT-assisted contracts, 49 CFR §26 shall prevail.

Section 26.5 Definitions of Terms

MCT has adopted terms as defined in 49 CFR §26 to describe and carry out its DBE program. Some of the more common terms are defined below for convenience of the reader.

Disadvantaged Business Enterprise (DBE) means a for-profit, small business concern: (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged 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.

Good Faith Efforts means 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.

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.

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 49 CFR §26.

Section 26.7 Non-Discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT [26.11(b)]

MCT will report DBE participating on a semi-annual basis using DOT Form 4630. These reports will reflect payments made to DBEs on DOT-assisted contracts as well as the DBE firm name, work category/trades performed, dollar value of contracts, number of firms listed at commitment but replaced, and number of firms decertified during the reporting period.

Bidders List [26.11(c)]:

MCT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE or non-DBE status, age of firm, and annual gross receipts of firm. MCT employs various practices to collect this information. A clause is included in all DOT-assisted contracts requiring prime contractors to report the name and contact information of all firms quoted in subcontracts to MCT which includes a classification designation. If the DOT- assisted contract has a DBE goal attached, additional information is collected by the contractor and submitted as noted in the procurement documents. When there is no DBE goal associated to the contract MCT requests that DBE firms quoting on subcontracts report business background information directly to MCT.

Section 26.13 Federal Financial Assistance Agreement

Assurance [26.13(a)]

MCT 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 §26. MCT will take all necessary and reasonable steps under 49 CFR §26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. MCT's DBE Program, as required by 49CFR§ part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementations 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 MCT of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR §26 and may, in appropriate cases, refer the matter for

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

Contract Assurance [26.13(b)]

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR §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 MCT deems appropriate, which may include, but is not limited to: Withholding monthly progress payments; Assessing sanctions; Liquidating damages; and/or Disqualifying the contractor from future bidding as non-responsible..

SUBPART B – Administrative Requirements

Section 26.21 DBE Program Updates

Since MCT is a Tier 1 FTA recipient receiving planning, capital, and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year, MCT will continue to carry out this program until all funds from DOT have been expended. MCT will provide updates to DOT if any significant changes are made to the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the fourth page of this program. The DBELO distributes copies of the DBE Policy Statement signed and dated by the Managing Director to MCT trustees, directors, managers, supervisors, and procurement personnel, and is conspicuously posted in the workplace for the information of other employees and visitors. Additionally, the signed DBE Policy Statement is distributed throughout the business community, including DBEs and non-DBEs that perform work on DOT- assisted contracts for MCT. The Policy Statement is posted on the MCT website (www.mct.org) and is available in print and alternative formats upon request by interested members of the public and business community. Additionally, MCT makes reference to the policy in contract specifications and advertisements of all DOT-assisted contracts.

Section 26.25 DBE Liaison Officer (DBELO)

MCT has no direct employees, but instead contracts with the Agency for Community Transit, Inc. (ACT), a not-for-profit entity, to carry out all day-to-day administrative functions, including the procurement of goods and services applicable to the DBE program. The Managing Director of MCT also serves as the Executive Director of ACT. For purposes of this section, references to MCT and ACT are synonymous. Miriam Bell, Grants Coordinator, is designated by the Managing Director to serve as the DBE Liaison Officer (DBELO). In the event the delegated DBELO is unable to fulfill her obligations as DBELO (i.e., due to an extended leave of absence, change in employment status, etc.), the Managing Director is authorized to designate an interim and/or replacement DBELO. The DBELO may be contacted at the following address, telephone, and e-mail address:

Miriam Bell
Grants Coordinator
Madison County Mass Transit District
1 Transit Way
Pontoon Beach, Illinois 62040
Telephone: (618) 797-4600
e-mail: DBE@mct.org

The DBELO is responsible for implementing all aspects of the DBE program and for ensuring that MCT complies with all provisions of 49 CFR §26. The DBELO has direct, independent access to the Managing Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization appears in Attachment B.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with MCT management staff as appropriate. The DBELO has adequate staff to assist in the administration of the program. The duties and responsibilities of the DBELO include:

- Gather and report statistical data and other information as required by DOT.
- Work with MCT department heads and the Managing Director to establish overall annual DBE goals.
- Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identify upcoming procurement and contracting activities and ensure that appropriate DBE goals are included in solicitations (both race neutral methods and contract specific goals attainment and identifies ways to improve process).
- Participate in pre-bid Meetings,
- Participate in DBE training seminars.
- Provide information concerning MCT DBE policy, goals, and contracting opportunities to businesses and other organizations that represent disadvantaged business community members.
- Notify known DBEs of upcoming contracting and subcontracting opportunities through legal advertisements in minority-oriented publications, Small Business Development Centers, and correspondence with representative business associations. Ensure that bid notices and requests for proposals are made available to DBEs in a timely manner.
- Participate on internal bid/proposal evaluation committees established by MCT to assist in the selection of bids and proposals.
- Review third party contracts and purchase requisitions for compliance with the DBE program.
- Monitor the compliance of MCT contractors and subcontractors with DBE commitments.
- Analyze MCT's progress toward DBE goal attainment and identify ways to improve progress.
- Advise the Managing Director regarding DBE matters and achievement.
- Act as liaison to Illinois Department of Transportation (IDOT) in matters pertaining to the Illinois Unified Certification Program (ILUCP).

The DBELO is afforded unrestricted access to MCT staff and consultants as necessary to carry out DBE-related activities. All personnel, whether employed by MCT, ACT, or retained by contract, are ultimately responsible to the Managing Director. To the extent that DBE functions are part of the assigned work of employees or consultants, their achievements in this area are considered in staff performance evaluations and consultant contract reviews.

Section 26.27 DBE Financial Institutions

It is the policy of MCT to investigate the full extent of services offered by financial institutions owned and controlled by social 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 the institutions.

MCT is not aware of any bank in Southwestern Illinois currently qualified as a DBE.

The primary source for MCT information concerning this issue is the Federal Reserve Board website. MCT will consider using such institutions as opportunities materialize. It is also MCT policy to maintain its bank accounts within the defined service area boundaries of the Transit District to the extent possible.

Section 26.29 Prompt Payment Mechanisms

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

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

Section 26.31 DBE Directory

MCT monitors the Illinois Unified Certification Program (ILUCP), which is administered by the Illinois Department of Transportation (IDOT). The ILUCP maintains a statewide DBE directory which lists the firm's name, address, phone number, date of most recent certification, and type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. This list can be found on the IDOT website at: <https://idot.illinois.gov/doing-business/certifications/dbe/il-ucp/illinois-ucp-directory.html>.

MCT will furnish a copy of the ILUCP DBE Directory to any prospective bidders and proposers unable to access the IDOT website or otherwise obtain a copy of the Directory on its own. It is the responsibility of the prime contractor to confirm a DBE's certification according to the type of work/services called for in the scope of work. Only those firms certified and listed in the ILUCP at the time of required document submittal may be utilized in meeting a DBE contract goal.

Section 26.33 Overconcentration

MCT has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

MCT has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

MCT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR §26:

MCT will notify DOT-FTA of 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 the

Federal regulations. MCT will also consider similar action under its legal authority, including responsibility determinations in future contracts.

MCT has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, breach of contract action pursuant to the terms of the contract. Additionally, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE violations, including, but not limited to, suspension or debarment proceedings pursuant to 49 CFR §26; Enforcement action pursuant to 49 CFR §31; or Prosecution pursuant to 18 USC 1001.

MCT has monitoring and enforcement mechanisms to verify that work committed to DBEs serves a commercially useful function. This will be accomplished for race-neutral and contract goal DBE participation with the following actions:

1. The DBELO monitors actual DBE participation by tracking contractor and subcontractor reports of payments. The DBELO may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. DBE participation is counted toward contract goals and the annual overall goal in accordance with the 49 CFR §26. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.
2. The DBELO shall maintain a running tally of actual payments to DBE firms for work committed to them at the time of contract award. MCT will conduct random reviews of contract payments to ensure the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. MCT will randomly contact subcontractors to confirm the subcontractor performed the work reported as such by the prime contractor.
3. MCT will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records must be made available for inspection upon request by any authorized representative of MCT or DOT. This reporting requirement also extends to any certified DBE subcontractor.
4. MCT will complete and document periodic commercially useful function reviews of every federally assisted contract with a participating DBE.

Examples of forms utilized for monitoring and enforcement purposes are included as Attachment C.

Section 26.39 Fostering Small Business Participation

As MCT strives towards realizing the maximum level of DBE participation utilizing race-neutral efforts, a natural result is fostering small business participation.

MCT uses the definition of small business concerns set out in 49 CFR §26. This will ensure that all small businesses allowed to participate in the program are subject to the same size standards and consequently, compete with similarly sized businesses. A small business will be considered qualified if it is listed with the SBA and/or the ILUCP.

MCT's has developed the following measures to offer contracting requirements which facilitate competition by small business concerns and take reasonable steps to eliminate obstacles to their participation:

- Schedule pre-bid and pre-proposal conferences at times that qualified small businesses would be better able to attend.
- Provide informational conferences as appropriate to explain procedures and forms, presentation of bids, quantities, and specifications as well as required documentation of specific efforts to involve subcontractors and joint venture partners.
- Encourage prime contractors to subcontract portions of work they might otherwise perform with their personnel to qualified small businesses, including DBEs by including language in solicitation documents.
- Unbundle large procurements, such as construction and other multiple phase projects, into smaller contracts whenever feasible to encourage bids and proposals from qualified small businesses.
- Encourage prime contractors to develop or increase opportunities for small businesses to participate in varied types of work in addition to assuming increasingly significant projects by including language in solicitation documents.
- Ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform by working with procurement staff and engineers as projects are developed.
- Make available, at no charge, to prospective small businesses relevant procurement materials that might assist such parties in formulating their bid or proposal, except where MCT is legally restricted from making such information available.
- Provide notice of advertisements to Small Business Development Centers within the MCT regional area.
- Require prompt payment clauses in contracts.

SUBPART C – Goals, Good Faith Efforts, and Counting

Section 26.43 Set-asides or Quotas

MCT does not use quotas or set asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with section 26.45(f), MCT will submit its overall goal to DOT by the date of submission determined by FTA administration. MCT establishes an overall three-year DBE goal for DOT-assisted projects pursuant to the guidelines of 49 CFR §26. The goal calculation is a percentage of all FTA funds, excluding federal funds used to purchase transit vehicles, which MCT will expend in FTA- assisted contracts in the three forthcoming federal fiscal years. Following is a summary of the steps used to develop the goal.

1. Step One-Determination of Base Figure

MCT's Geographic Market Area

MCT's geographic market area comprises of the following counties in Illinois: Bond, Calhoun, Clinton, Greene, Jersey, Madison, Marion, Monroe, Randolph, St. Clair, and Washington. These same eleven counties also comprise the Illinois Department of Transportation (IDOT) District 8 region.

Base Figure Methodology

The first step of the DBE goal setting process is to calculate the relative availability of DBE firms among all firms (DBEs and non-DBEs), based off MCT's defined market area, that are ready, able, and willing to perform based off applicable work categories, as classified by North American Industry Classification System (NAICS) codes, that MCT anticipates awarding during the goal-setting period. The base figure is expressed as a percentage and is calculated by dividing the total number of DBEs ready, able, and willing to compete for FTA-assisted contracts by the total number of all firms (DBEs and non-DBEs) ready, able, and willing to perform the types of work that MCT anticipates awarding during the three year goal period.

To determine the numerator, MCT tallied the number of DBEs listed under the relevant NAICS codes for MCT's defined market area utilizing IDOT's Unified Certification Program Directory (<https://webapps.dot.illinois.gov/UCP/ExternalSearch>). IDOT is the certifying DBE agent for MCT. To determine the denominator, MCT sourced the most current County Business Pattern data for each NAICS code from the U.S. Census Bureau website (<https://data.census.gov>) and utilized the same NAICS codes to tally the number of all firms in MCT's defined market area.

2. Step Two-Adjustment of the Base Figure for the Overall Goal

To determine the numerator, MCT tallied the number of DBEs listed under the relevant NAICS codes for MCT's defined market area utilizing IDOT's Unified Certification Program Directory (<https://webapps.dot.illinois.gov/UCP/ExternalSearch>). IDOT is the certifying DBE agent for MCT. To determine the denominator, MCT sourced the most

current County Business Pattern data for each NAICS code from the U.S. Census Bureau website (<https://data.census.gov>) and utilized the same NAICS codes to tally the number of all firms in MCT's defined market area.

26.45(g) Publication of DBE Overall Goal

Pursuant to 49 CFR §26, MCT will publish a notice announcing its proposed overall goal before submission to FTA on August 1. The notice will be posted on MCT's website and may be posted in any other sources (e.g., including but not limited to the Edwardsville Intelligencer and Alton Telegraph, which are local general circulation newspapers, and in the St. Louis American, which is a minority-focused newspaper). If the proposed goal changes following review by FTA, the revised goal will be posted on MCT's website.

At its discretion, MCT may also choose to inform the public that the proposed overall goal and rationale are available for inspection during normal business hours at its principal office and for a 30-day comment period. Notice of the comment period shall include address to which comments may be sent.

Upon conclusion of the public comment period, the DBELO will prepare a summary report analyzing the comments and recommending modifications to the annual overall DBE goal or methodology as appropriate. Recommendations will be submitted to the Managing Director for consideration. If no comments are received that would significantly change the goals analysis, the results of the public comment period will be presented as an informational matter to the Board of Trustees with no further action required. If changes are recommended by the Managing Director, the Board of Trustees will review the public comments and make a final determination as to the annual DBE participation goal.

Section 26.49 Transit Vehicle Manufacturers Goals

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

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

Though MCT would prefer to meet its entire DBE goal through race/gender neutral methods, it should be noted that MCT's past DBE participation has been realized through a combination of race/gender neutral and race/gender conscious methods. MCT sets the overall goal and establishes the breakout of race-neutral and race-conscious participation through evaluation of trends over the prior goal period.

Section 26.51(d-g) Contract Goals

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

of race-neutral means.

MCT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. MCT need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract.

MCT will express the contract goals as a percentage of the project cost of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

The obligation of the bidder is to make good faith efforts. The bidder 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 49 CFR §26.

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

The obligation of the bidder is to make good faith efforts. The bidder 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 49 CFR §26. The DBELO is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

MCT will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before MCT commits to the performance of the contract by the bidder.

Information to be submitted [26.53(b)]

MCT treats bidders compliance with good faith efforts' requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders to submit the following information:

- The names and addresses of the DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed confirmation of commitment to use the DBE subcontractor whose participation it submits to meet the contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and;
- If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration [26.53(d)]

Within five (5) days of being informed by MCT that it has failed to meet requirements of sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. In such case, the bidder/offeror should make this request in writing to:

MCT Managing Director
1 Transit Way
Pontoon Beach, IL 62040

618.797.4600
managingdirector@mct.org

The Managing Director will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the Managing Director to discuss the issue of whether it met the goal or made adequate good faith efforts attempting to do so. MCT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith efforts when a DBE is replaced on a contract [26.53(f)]

The prime contractor will be required to give notice in writing to the DBE subcontractor, with a copy to MCT, of its intent to request to terminate and/or substitute, and the reason for the request. Additionally, the prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise MCT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why MCT should not approve the prime contractor's action.

MCT will require that a prime contractor not terminate, remove or reduce the amount of work committed to a DBE, or substitute a DBE subcontractor/ supplier without MCT's prior written consent. This is applicable to both post-award terminations, as well as to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If a termination of a DBE's subcontract is approved, or a DBE subcontractor fails to complete its work on the contract for any reason, MCT will require the prime contractor to make good faith efforts to find another DBE subcontractor/supplier to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

MCT does not anticipate soliciting or awarding design-build contracts in the foreseeable future. If a design-build contract becomes necessary, MCT will adhere to all applicable DBE requirements as outlined in 26.53(e).

Section 26.55 Counting DBE Participation

When a DBE participates in a contract, MCT counts only the value of the work actually performed by the DBE toward DBE goals. In addition, a DBE must perform a commercially useful function on the contract to be counted. A commercially useful function is generally performed when the DBE is responsible for the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. MCT is governed by the provisions of 49 CFR §26 on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR §26, the provisions of which govern over the summary contained

herein.

- DBE as the contractor: 100 percent goal credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontracts to a non-DBE does not count toward the DBE goals.
- DBE as a joint venture contractor: 100 percent goal credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.
- DBE as a subcontractor: 100 percent goal credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE does not count toward the DBE goal.
- DBE as trucker: 100 percent goal credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed, and insured by the DBE must be used on the contract. Credit will be given for the following:
 - The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- DBE as a manufacturer:
 - 100 percent goal credit is to be assigned for a DBE manufacturer defined as a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- DBE as a regular dealer:
 - 60 percent goal credit for the cost of the materials or supplies purchased from a DBE regular dealer.
 - 100 percent goal credit for the cost of materials or supplies obtained from a DBE manufacturer. 100 percent credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a

regular dealer or manufacturer.

- DBE as a distributor: Distributors are permitted to drop-ship from manufacturers if the firm has a distributorship agreement or assumes all responsibility for the materials after point of origin, allowing 40 percent credit for cost of materials.

DBE achievement will not be counted toward the overall goal until the DBE has been paid. The DBELO will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Any portion of a DBE's participation that is achieved after the decertification of a participating DBE during the performance of a contract will not be counted.

SUBPART D – Certification Standards

Section 26.61-26.73 Certification Process

The Illinois Unified Certification Program (ILUCP) is administered by the Illinois Department of Transportation (IDOT). The ILUCP meets all relevant requirements of 49 CFR §26. Five entities in the State of Illinois currently certify DBEs on behalf of the ILUCP. In addition to IDOT, these include the City of Chicago, Chicago Transit Authority (CTA), PACE and Metra.

The ILUCP is based on the concept of statewide reciprocity among participating agencies. MCT honors a DBE certification issued by any of the aforementioned entities and defers goal DBE certification and recertification activities to the ILUCP. For information about the certification process or to apply for certification, firms are directed to the IDOT website.

SUBPART F – Compliance and Enforcement

Section 26.109 Information, Confidentiality, Cooperation

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

MCT is not authorized to certify DBEs and as such, does not collect or retain personal net worth documents.

MCT will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records must be made available for inspection upon request by any authorized representative of MCT or DOT. This reporting requirement also extends to any certified DBE subcontracts.

Attachment A

SIGNED POLICY STATEMENT

Attachment B

ORGANIZATIONAL CHART

Attachment C

SAMPLE FORMS

Attachment D

REQUIRED CONTRACT CLAUSES

Required Contract Clauses

MCT will include the following paragraphs in all applicable DOT-assisted contracts and subcontracts with contractors/suppliers. Additionally, MCT requires the contractor to include these requirements in each subcontract, modified only if necessary, to identify the affected parties:

Policy

It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR §26 shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR §26 apply to this agreement.

Non-Discrimination

MCT 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 §26. MCT shall take all necessary and reasonable steps under 49 CFR §26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. MCT's DBE Program, as required by 49 CFR §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.

Small Business and DBE Obligation

MCT and its contractors agree to ensure that small businesses (including disadvantaged business enterprises) as defined in 49 CFR §26 have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, MCT and its sub-recipients, contractors, and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR §26 to ensure that small businesses (including disadvantaged business enterprises) have an equal opportunity to compete on and perform contracts.

Contract Assurance

The contractor or subcontractor/suppliers 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 §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 remedy as MCT deems appropriate, which may include, but is not limited to: Withholding monthly progress payments; Assessing sanctions; Liquidating damages; and/or Disqualifying the contractor from future bidding as non-responsible.

Prompt Payment

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

DBE and Small Business Financial Institutions

MCT encourages prime contractors to make use of DBE and small business financial institutions in their home communities as is practical.