



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

November 24, 2009

Mr. Norman R. Stoner, P.E.
Division Administrator
Federal Highway Administration
3250 Executive Park Drive
Springfield, IL 62703

Re: 2010 DBE Program Document

Dear Mr. Stoner:

Pursuant to direction from your office and in accordance with 49 CFR part 26, the Illinois Department of Transportation (Department) hereby submits its FFY 2010 DBE Program Document (Document). This Document reflects DBE program regulation and Department policy changes since the Department's submittal of its FFY 2004 Document.

If you have further questions, please contact Carol Anderson of my staff at (217) 785-7527.

Sincerely,

Handwritten signature of Carol D. Lyle in black ink.

Carol D. Lyle
Deputy Director
Office of Business & Workforce Diversity

Handwritten signature of Ellen Schanzle-Haskins in black ink.

Ellen Schanzle-Haskins
Chief Counsel

Enc.

cc: Ms. Traci Baker

ILLINOIS DEPARTMENT OF TRANSPORTATION

FFY 2010

DBE PROGRAM DOCUMENT



Illinois Department of Transportation

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Nondiscrimination

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

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

Federal Financial Assistance Agreement Assurance

The Department has signed the following assurance, applicable to all USDOT-assisted contracts and their administration:

"The Department shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Department shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The Department's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Department of its failure to carry out its approved program, USDOT 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.)."

This language will appear in financial assistance agreements with subrecipients.

Quotas

The Department will not use quotas in the administration of this DBE program.

DBE Liaison Officer

The Director of the Office of Business and Workforce Diversity (OBWD) has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Director is responsible for developing and implementing all aspects of the DBE program and ensuring that the Department complies with all provisions of 49 CFR part 26, in coordination with other appropriate officials. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Department in its financial assistance agreements with USDOT.

The DBELO can be reached at:

Illinois Department of Transportation
Harry R. Hanley Building
2300 South Dirksen Parkway, Room 300
Springfield, IL 62764
Phone: (217) 785-5394
Fax: (217) 782-8417

The DBELO has direct, independent access to the Secretary of the Illinois Department of Transportation concerning DBE program matters. The DBELO has a full-time staff of eighteen (18) professional and one (1) support personnel who devote their time to the DBE program.

Duties and Responsibilities of the DBELO:

- Oversees the implementation of the DBE, Equal Employment Opportunity (EEO), On-The-Job Training (OJT) and labor programs
- Directs development of policies and procedures governing the certification of firms, contract compliance, utilization of minorities and women, and the prevailing wage rates
- Promotes the utilization of minorities and women to meet federal and state DBE/EEO/OJT goals
- Resolves internal and external conflicts and ensures the fullest possible participation by minorities and women in the performance of Department contracts

Duties and Responsibilities of OBWD's Bureau of Small Business Enterprises:

Contract Compliance / Policy and Supportive Services Section

- Reviews and approves construction DBE utilization plans for various Department offices/modes
- Makes recommendations on pre and post-award goal modifications
- Monitors other modifications and sanctions
- Conducts labor, OJT and EEO contract compliance field reviews
- Tracks final payments and approves final goal modifications
- Approves modifications to approved DBE Utilization Plans
- Creates and maintains necessary program status procedures and reports (including other Department offices/modes, local agencies, modifications, etc.)

- Develops and implements the EEO (workforce) contract provisions of the Civil Rights Act of 1964 and related federal and state laws and regulations
- Provides guidance to ensure contractors are in compliance with state and federal labor laws governing prevailing wages
- Compiles external EEO statistical data for submittal to federal and state authorities
- Performs compliance monitoring for OJT training activities
- Develops and communicates compliance initiatives
- Performs research/analysis of DBE program issues
- Develops/communicates policies and procedures relating to the administration of the DBE program to Department offices/modes
- Performs contract information analysis
- Analyzes race-neutral program initiatives
- Prepares DBE program goal and achievement reports
- Responds to proposed federal and state legislation affecting the Department's DBE program
- Reviews Department DBE program accomplishments and modifies its priorities, policies and procedures as appropriate
- Manages the DBE/OJT/EEO supportive service programs
- Manages and evaluates the supportive service consultants
- Provides workshops and training seminars to develop technical, management and financial skills of DBEs
- Coordinates internal supportive services' efforts
- Provides DBE program information through educational and training workshops/seminars, newsletters, brochures and handbooks
- Develops and conducts training seminars and workshops
- Prepares required status reports for federal and state authorities

Certification Section

- Performs audits on applications for DBE certification
- Conducts on-site interviews
- Coordinates "denial of certification" appeals process
- Conducts DBE certification workshops and outreach activities
- Maintains the database of certified firms
- Contributes to the Illinois Unified Certification Program Disadvantaged Business Enterprise Directory of certified firms for posting on the Department's web site

DBE Financial Institutions

It is the policy of the Department to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. As of October 14, 2009, the Department has identified the following such institutions:

1. All American Bank..... Des Plaines
2. American Metro Bank..... Chicago
3. Citizens Bank & Trust Company of Chicago Chicago
4. Covenant Bank..... Chicago
5. The Foster Bank..... Chicago
6. Highland Community Bank..... Chicago
7. Illinois Services Federal Savings and Loan Association Chicago
8. International Bank of Chicago Chicago
9. National Republic Bank of Chicago..... Chicago
10. Pacific Global Bank..... Chicago
11. Seaway National Bank of Chicago..... Chicago

Information on the availability of such institutions can be obtained from the Department's Bureau of Small Business Enterprises' Policy and Supportive Services Section Manager.

Illinois Unified Certification DBE Directory

The Illinois Unified Certification Program's five certifying agencies [Illinois Department of Transportation, City of Chicago, Chicago Transit Authority, Metra and Pace] are responsible for maintaining a Disadvantaged Business Enterprises Directory (Directory) of certified disadvantaged business enterprises (DBEs) to provide a reference source to assist bidders/proposers in meeting DBE contract goals.

The Directory lists the DBE firms by name, address (physical location/ mailing), phone, fax, e-mail, in alphabetical order, by the industry categories/list and the Department's nine district(s) in which the firms have indicated they are available. It is the responsibility of the prime contractor/consultant to make his/her own determination regarding the capability of a DBE firm. Only those firms certified as of the letting date/bid opening may be utilized in meeting a DBE contract goal.

The Directory is provided on the Department's web site (<http://www.dot.il.gov/ucp/ucp.html>) and printed copies are available upon request by calling (217) 782-5490.

Overconcentration

The Department has not identified overconcentration in any types of work at this time.

Business Development Programs

The Department reserves the option to establish a business development program in the future.

Required Contract Clauses

Contract Assurance

The Department will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to 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."

Monitoring and Enforcement Mechanisms

The following lists the regulations, provisions and contract remedies available to the Department in the event of non-compliance with the DBE regulations by all program participants.

Legal Remedies

To report bid rigging, bidder collusion or other fraudulent activities, the Department provides USDOT's Hotline Complaint Center address and phone number in the Department's Transportation Bulletin. The Department will also bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to Department of Justice) for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.107.

The Department will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Also, pursuant to 720 ILCS, Article 33C, Section 5/33C-1 through 5/33C-5, "Deception Relating to Certification of Disadvantaged Business Enterprises," the discovery of an individual(s)/firm who, in the course of business, obtains or retains DBE program certification and contracts based on fraudulent act(s) shall be resolved by administrative action and/or referred to the Department's Office of the Chief Counsel for appropriate legal action/remedy.

Contract Remedies

In the event a bid is rendered nonresponsive due to failure to submit a Disadvantaged Business Utilization Plan or failure to comply with the bidding procedures set forth, the Department may

take one or more of the following actions: 1) cause a forfeiture of the penal sum of the bidder's proposal guaranty to the Department, 2) declare the bidder ineligible to rebid the project on any future letting if readvertised, or 3) suspend the bidder for one letting.

Unless the goal of the Special Provision is modified or waived for good cause upon a showing of a good faith effort, failure of the contractor to have at least the designated goal of this contract performed by the Disadvantaged Businesses as indicated in the approved Utilization Plan will result in a reduction in contract payments, as liquidated damages, determined by multiplying the awarded contract dollar value by the contract per centum goal and subtracting the dollar value of the work actually performed by approved DBE businesses. The Department reserves the right to withhold payment to the contractor to enforce the provisions of the Special Provision. Final payment shall not be made on the contract until such time as the contractor submits sufficient documentation demonstrating achievement of the goal or until such time as the goal is modified or waived by the Department in accordance with the Special Provision or after liquidated damages have been determined and collected.

Field and Contract Monitoring

The Office of Business and Workforce Diversity's Bureau of Small Business Enterprises (Bureau) monitors DBE performance for commercially useful function and reviews and approves DBE substitutions and final modifications. The Bureau provides assistance and guidance to DBEs, prime contractors, and field personnel on issues regarding the DBE program.

The Bureau reviews and responds to complaints and conducts investigations as appropriate. The Bureau is assisted in these efforts by the Department's nine district offices. Each district has an EEO officer who reports to the district engineer, and is responsible for matters relating to the DBE program. The Department's representative on each project is the resident engineer. Each resident engineer is responsible for monitoring and reporting any irregularities, problems or concerns to the district office and/or to the Bureau.

The Bureau monitors the overall DBE commitments, by district and letting, and monitors payments to DBE firms to ensure that project goals are being met. Each district will be notified after each letting of the awards and commitments. If a district's commitment varies from its goal by more than two percent, the district will be notified and an explanation will be requested.

Goal Submittal / Publication Process

The Department submits its overall goals to FHWA, FAA and FTA, for submittal to USDOT on August 1 of each year. Before establishing the overall goals each year, the Department meets with small businesses and highway construction industry associations, Department officials, and other interested persons/groups to receive input concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Department's efforts to establish a level playing field for the participation of DBEs.

Following these meetings and the submittal of the goals on August 1, the Department publishes a notice of the overall goals in the state newspaper, informing the public that the goals and their rationale are available for inspection during normal business hours at the Department's Harry R. Hanley Building and in each district office for 30 days following the date of the notice.

The public is also informed the Department and USDOT will accept written comments on the goals for 45 days from the date of the notice. The notice includes the addresses to which

comments may be sent and where the goal documents may be reviewed. The goal documents are also posted on the Department's web site at http://www.dot.il.gov/sbe/dbe_goals.htm.

The Department will begin using the overall goals on October 1 of each year unless otherwise instructed by USDOT.

Good Faith Efforts

The Department treats a bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness. Please see the Department's DBE Special Provision and forms SBE 2025 and 2026 attached to this document for details.

Each solicitation for which a contract goal has been established will require bidders/offerors to submit the following minimum information concurrent with the bid:

1. The names and addresses of the DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

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 has documented sufficient good faith efforts to be regarded as responsive:

- Director, Office of Business & Workforce Diversity
- Deputy Director, Office of Business & Workforce Diversity
- Bureau Chief, Small Business Enterprises
- DBE/EEO/Labor Contract Compliance Section Manager

Compliance staff will ensure that all information is complete and accurate and adequately documents the bidder/offerors' good faith efforts before committing to the performance of the contract by the bidder/offeror.

Administrative Reconsideration

Within five (5) working days of being informed by the Department that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request

administrative reconsideration consistent with the requirements set forth in 49 CFR 26.53(d). The reconsideration official will determine the result of the reconsideration: Director, Office of Communications, 2300 South Dirksen Parkway, Springfield, Illinois, (217) 785-5139. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make sufficient good faith efforts.

Compliance

If the contractor fails or refuses to comply in the time specified, the Department 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. Otherwise, contractual liquidated damages provisions may be applied.

Counting DBE Participation

The Department will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The principle that DBE participation should be counted only for work performed with a DBE firm's own forces is an important one the DBE program follows consistently.

The counting provision for trucking services prior to the July 16, 2003 federal regulations [49 CFR 26.55(d)] was explicitly designed to be consistent with this principle. Allowing credit for unlimited use of non-DBE leased trucks could lead to program abuses and reduce DBE contracting opportunities for DBEs in other types of work.

The revised federal regulations of July 16, 2003 permit, but do not require, recipients to count for DBE goal credit the dollar volume attributable to no more than twice the number of trucks on a contract owned by a DBE firm or leased from another DBE firm. They also provide that a recipient can choose to continue the counting provisions its DBE program adopted to comply with the 1999 final rule.

The Department has chosen to continue the counting provisions that were adopted in 1999, which are:

- a DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- the DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- 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 an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

Prompt Payment

Effective with the September 19, 2003 Letting, the Department will include the following Special Provision, Payments to Subcontractors, in each USDOT-assisted prime contract:

"Federal regulations found at 49 CFR §26.29 mandate the Department to establish a contract clause to require Contractors to pay subcontractors for satisfactory performance of their subcontracts no later than 30 days from the receipt of each payment made to the Contractor.

State law addresses the timing of payments to be made to subcontractors. Section 7 of the Prompt Payment Act, 30 ILCS 540/7, generally requires that when a Contractor receives any payment from the Department, the Contractor is required to make corresponding, proportional payments to each subcontractor performing work within 15 calendar days after receipt of the state payment. Section 7 of the State Prompt Payment Act further provides that interest in the amount of 2% per month, in addition to the payment due, shall be paid to any subcontractor by the Contractor if the payment required by the Act is withheld or delayed without reasonable cause. The Act also provides that the time for payment required and the calculation of any interest due applies to transactions between subcontractors and lower-tier subcontractors throughout the contracting chain.

This Special Provision establishes the required federal contract clause, and adopts the 15 calendar day requirement of the Act for purposes of compliance with the federal regulation regarding payments to subcontractors. This contract is subject to the following payment obligations.

As progress payments are made to the Contractor in accordance with Article 109.07 of the Standard Specifications for Road and Bridge Construction, the Contractor shall make a corresponding partial payment within 15 calendar days to each subcontractor in proportion to the work satisfactorily completed by each subcontractor. The proportionate amount of partial payment due to each subcontractor shall be determined by the quantities measured or otherwise determined as eligible for payment by the Department and included in the progress payment to the Contractor. Subcontractors shall be paid in full within 15 calendar days after the subcontractor's work has been satisfactorily completed. The Contractor shall hold no retainage from the subcontractors.

This Special Provision does not create any rights in favor of any subcontractor against the State of Illinois or authorize any cause of action against the State of Illinois on account of any payment, nonpayment, delayed payment or interest claimed by application of the State Prompt Payment Act. The Department will neither determine the reasonableness of any cause for delay of payment nor enforce any claim to payment, including interest. Moreover, the Department will not approve any delay or postponement of the 15 day requirement. State law creates remedies available to any subcontractor or material supplier, regardless of tier, who has not been paid for work properly performed or material furnished. These remedies are a lien against public funds set forth in Section 23(c) of the Mechanics Lien Act, 770 ILCS 60/23(c), and a recovery on the Contractor's

payment bond in accordance with the Public Construction Bond Act, 30 ILCS 550."

Retainage

Pursuant to the revised DBE program regulations which became effective July 16, 2003, the Department will no longer withhold retainage.

The Department previously withheld two percent of the cost of the prime contractor's completed work as retainage until after completion of the entire work. The prime contractor was not permitted to withhold retainage from subcontractors after the subcontractor's work was completed.

The revised regulations provide three options: 1) eliminate retainage entirely; 2) do not retain funds from the prime contractors, but give prime contractors discretion to hold retainage from subcontractors; or 3) hold retainage, but make incremental inspections and approvals.

The Department chose option 1, to eliminate retainage entirely. This was considered the best option for all parties involved; the Department, prime contractors and subcontractors.

Certification

Subpart D - Certification Standards

49 CFR 26.61- 26.73 Certification Process

The Department will use the certification standards of Subpart D of 49 CFR part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Department will make its certification decisions based on the facts as a whole.

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

Illinois Department of Transportation
Bureau of Small Business Enterprises
Certification Section
Harry R. Hanley Building
2300 South Dirksen Parkway, Room 319
Springfield, Illinois 62764
(217) 752-5490

Effective September 1, 2003, the Department will use the Uniform Certification Application form that became effective nationwide July 16, 2003. A copy of the application form and documentation requirements may be obtained from the Department's web site at <http://www.dot.il.gov/sbe/sbepw.html> under Doing Business, Small Business Enterprises, IL UCP DBE Certification Application. Printed copies may be obtained from the Bureau of Small Business Enterprises at (217) 782-5490.

Subpart E - Certification Procedures

49 CFR 26.81- Unified Certification Program

The Department is a member of the Illinois Unified Certification Program (IL UCP), and the Department is the administrator of the IL UCP. The IL UCP meets all of the requirements of this section. IL UCP's submittal to USDOT was approved December 2, 2002, and the implementation date for Phase One (the implementation of the IL UCP Directory) was September 1, 2003.

The state agencies that make up the IL UCP are the Department, City of Chicago, CTA, Metra and PACE.

The IL UCP provides a uniform process for the establishment and administration of the certification component of the DBE program for recipients of federal transportation funds in the state of Illinois which include FTA, FHWA and FTA, based on the philosophy of reciprocity with each agency operating under its own resources. Each of the certifying agencies commits to provide support for the IL UCP through human, technological and funding resources as necessary. Adequate resources to accomplish current needs have been committed by each participant and will be continued to support the IL UCP. Each agency retains the function of certification with a DBE liaison officer (DBELO) representing its interests.

49 CFR 26.83 - Procedures for Certification Decisions

The Department will review a firm's eligibility every five (5) years from the firm's certification anniversary date. These reviews will include the following components: 1) within 90 working days from a firm's certification expiration, the Department will send the firm a certification application. 2) the DBE firm will submit the completed application with appropriate supporting documentation. 3) Department certification staff will analyze and review the submitted documentation and conduct an on-site interview. 4) an eligibility decision will be made by the Administrative Review Panel (ARP). 5) The firm will be notified in writing of the eligibility determination.

49 CFR 26.83(j) - "No Change" Affidavit and "Notice of Change" Affidavit

All Department-certified DBE firms are required to submit, on the anniversary date of their certification, a "No Change" affidavit meeting the requirements of 49 CFR 26.83(j). Partial text of this affidavit is as follows:

Upon penalty of perjury, the undersigned certifies that he/she is the _____ (Title in Firm) of _____ (Firm Name) and that he/she is authorized by the firm to execute this affidavit in its behalf and attests to the accuracy and truthfulness of the information on the affidavit and its supporting documentation. Affiant(s) also understands that information provided herein may be audited, shared or verified by other means with other city, state or federal agencies as provided by law.

The affiant(s) also affirms that the disadvantaged, minority or women interests in the business constitutes 51% majority control over business operations and further affirms that there have been no changes in the circumstances of

_____ (Firm Name) affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR, part 26. There have been no material changes in the information provided with the original application for certification, except for any changes in which you have provided written notice under 49 CFR 26.83(1). The applicant and its affiliates continue to meet the Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (pursuant to SBA, NAICS size limits), in addition to ensuring the firm's previous three fiscal years, does not exceed the USDOT, **\$22.41 million size limit**. The undersigned also agrees to inform in writing of any circumstances affecting its ability to meet size, disadvantaged status, ownership or control requirements of this part or any material change in the information provided in your application form. Change notices must take the form of a notarized affidavit, sworn to by the applicant, executed under penalty of perjury of the laws of the United States. **Applicant must provide written notification within 30 days of the occurrence of the change.** Failure to make timely notification of such changes will deem the firm to have failed to cooperate under section 26.109(c).

The DBE firms are required to submit documentation of the firm's size and gross receipts with this affidavit.

All currently certified DBE firms will be notified of these obligations when they are notified of their certification status. This notification will inform DBEs that they must submit the "No Change" affidavit, and their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth.

Likewise, during the time a firm is certified, if a firm's owner knows that he or she, or the firm, fails to meet a part 26 eligibility requirement, the obligation to submit a notice of change applies. DBE firms must inform the Department in writing of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership or control requirements or any material change in the information provided in the firm's application or submitted documentation. The notice must take the form of an affidavit sworn to by the firm. The written notification must be provided within 30 days of the occurrence of the change. If the firm fails to make timely notification of such a change, the firm will be deemed to have failed to cooperate under 49 CFR 26.109(c).

49 CFR 26.85 - Denials of Initial Requests for Certification

In the event the Department denies DBE certification to an initial applicant, the firm may not reapply for certification within twelve (12) months from receipt of the Department's decision. The firm may appeal the denial of DBE certification to USDOT within ninety (90) days of the date of the Department's decision.

49 CFR 26.87 - Removal of a DBE's Eligibility

In the event the Department proposes to remove a DBE's certification, it will follow procedures consistent with 49 CFR 26.87.

If it is determined there is reasonable cause to believe that a currently certified firm is ineligible (based on changes in the circumstances of a firm's eligibility or other information that comes to

the Department's attention), the Department will provide written notice to the firm informing it of the reasons for the proposed determination of ineligibility. The Department will review the records concerning the firm, any material provided by the firm (or a complainant), and other available information. The Department may request additional information from the firm or may conduct any other investigation that it deems necessary. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Third Party Complaint

The Department is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in 49 CFR 26.109(b).

If the Department determines that such reasonable cause does not exist, the complainant (and the firm if applicable) will be notified in writing of this determination and the reasons for it.

Administrative Review Panel

When there is reasonable cause to remove a firm's eligibility, the firm is given an opportunity for a meeting with the Department's Bureau of Small Business Enterprises' Administrative Review Panel (ARP), at which time the firm may provide additional information or clarification of the issues cited in the letter of proposed decertification.

Grounds for Decision

A decision to remove eligibility must not be based on a reinterpretation or changed opinion of information available to the Department at the time of its certification of the firm. A decision may only be based on one or more of the following:

- Changes in the firm's circumstances since the certification of the firm that render the firm unable to meet the eligibility standards of this part;
- Information or evidence not available at the time the firm was certified;
- Information that was concealed or misrepresented by the firm in previous certification actions;
- A change in USDOT's certification standards or requirements since the firm was certified; or
- A documented finding that the Department's determination to certify the firm was factually erroneous.

Status of Firm During Proceedings

A firm remains an eligible DBE during the pendency of proceedings to remove its eligibility. The firm does not become ineligible until the issuance of the notice removing its certification.

Notice of Decision

Following the ARP's decision, the firm is provided a written notice of the decision. If the decision is to deny, the written notice must provide the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the decision and of the availability of an appeal to USDOT under 49 CFR 26.89.

Informal Hearing

If the firm is not satisfied with the ARP's decision, the firm may request an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. This request for a hearing shall be made, in writing, within twenty (20) working days of receipt of the ARP's decision. In such a proceeding, the Department bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards.

The firm may elect to present information and arguments in writing without going to a hearing. In such a situation, the Department bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as it would during a hearing.

Hearing Officer

The Department must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposed removal of the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The method of implementing this requirement must be made part of the DBE program. The decision maker must be an individual who is knowledgeable about the certification requirements of the DBE program and 49 CFR 26.87.

The Department official who has been designated as the hearing officer is the Director of the Office of Communications, 2300 South Dirksen Parkway, Springfield, Illinois, (217) 785-5139. The hearing officer will not have played any role in the original determination of ineligibility.

Hearing Transcript

The Department must maintain a complete record of the hearing by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to USDOT under 49 CFR 26.89, the Department must provide a transcript of the hearing to USDOT and, on request, to the firm. The original record of the hearing must be maintained. The firm may be charged only for the cost of copying the record.

Appeal of Department's Decision

After the Department makes its administratively final decision to remove a firm's eligibility, the firm may immediately appeal the removal to USDOT under 49 CFR 26.89. The firm must send a letter to USDOT within ninety (90) days of the date of the decision, attaching information and arguments concerning why the decision should be reversed. Pending USDOT's decision, the

Department's decision remains in effect. The Department will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for the Department's USDOT-assisted contracting.

USDOT Appeal Submittal Address

Director of Civil Rights
U.S. Dept. of Transportation
Room W-78 – 338
1200 New Jersey Ave., SE
Washington, D.C. 20590

USDOT-Initiated Proceedings

If the concerned operating administration determines that information in certification records, or other available information, provides reasonable cause to believe that a certified firm does not meet the eligibility criteria of this part, the concerned operating administration may direct the Department to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide the Department and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. The Department must immediately commence and prosecute a proceeding to remove eligibility.

Effects of Removal of Eligibility

When a firm's eligibility is removed, the following action must be taken:

- When a prime contractor has made a commitment to use the ineligible firm, or the Department has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before the decertification notice is issued, the ineligible firm does not count toward the contract goal or overall goal. The prime contractor must be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- If a prime contractor has executed a subcontract with the firm before the firm was notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where a prime contract was let to a DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility was issued shall not count toward the Department's overall goal, but may count toward the contract goal.

Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, its participation may continue to be counted on that contract toward overall and contract goals.

Personal Net Worth

49 CFR 26.67 requires each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are

relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

Each individual who makes this certification must support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation.

Effective July 16, 2003, the federal regulations (of June 16, 2003) mandate the use of the SBA personal net worth form.

Information Collection and Reporting

Bidders' List

The Department has a **Subcontractor Registration** list, and all subcontractors who are interested in bidding or quoting on Department projects are required to register. Prequalified prime contractors are automatically included in the list and are not required to register. The registration form is available on the Department's web site (<http://www.dot.il.gov/const/subreg.html>) and by mail. Material suppliers and trucking companies are not included in the definition of subcontractor and are therefore not required to register. Each subcontractor that registers is issued a number which serves as the firm's identification number. Registration is valid for one year.

The purpose of this registration requirement is to allow use of the Bidders' List approach to calculating overall goals. The subcontractor registration list includes the contractor's name, address, (business) age, and annual gross receipts.

The Department requires the information in the following way:

Language was added to the Department's Supplemental Specification for Section 108. Prosecution and Progress that reads as follows:

108.01 Subletting of Contract. No subcontractor shall be submitted for approval unless the proposed subcontractor, regardless of tier, shall have first registered its status as a subcontractor and shall have provided all required registration information to the Department's Bureau of Construction, Prequalification Section, 2300 South Dirksen Parkway, Room 322, Springfield, IL 62764. Forms for registration may be obtained by contacting the Prequalification Section directly at (217) 782-6667 or by visiting the Department's web site at <http://www.dot.il.gov/const/subreg.html>. Contractors prequalified by the Department are not required to register.

Monitoring Payments to DBEs

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

The Department will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Prime contractors are required to submit DBE Payment Agreements at the completion of a DBE's work. The DBE Payment Agreement indicates actual

payments to the DBE firm. The Department maintains records of original commitments and total payments to DBE firms.

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

Reporting to USDOT

Effective July 16, 2003, the Department was required to use a uniform, nationwide (standard) reporting form. Recipients of funds from the FHWA and FTA are required to report semi-annually; FAA recipients will continue to report annually. The reporting form must be submitted to the operating administration from which the recipient receives federal funds. Reports are due to a recipient's operating administration on June 1 and December 1 each year. The June 1 report includes information from October 1 through March 31. The December 1 report includes information from April 1 through September 30. Recipients are required to retain information relating to basic program data for three (3) years.

Confidentiality

Pursuant to the June 16, 2003 Federal Register, Vol.68, No. 115, the Department will not release confidential business information under any circumstance without the submitter's written consent. While it may be necessary for confidential information to be shared among several UCP participants in the certification process, no one may release confidential information to an outside party without the submitter's consent. 49 CFR part 26 specifically intends to preempt disclosure under state or local law.

For information that is not considered or deemed confidential business information, the Department must comply with Illinois Freedom of Information Act or open records laws.

Attachments

Attachment A – Policy Statement

Attachment B – Special Provision, Disadvantaged Business Enterprise Participation

Attachment C – DBE Participation Statement, form SBE 2025

Attachment D – DBE Utilization Plan, form SBE 2026

Attachment A

Policy Statement

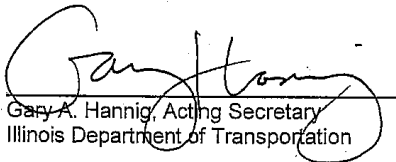
The Illinois Department of Transportation (IDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (DOT), 49 CFR part 26. IDOT has received federal financial assistance from DOT and, as a condition of receiving this assistance, IDOT has signed an assurance that it will comply with 49 CFR part 26.

It is the policy of IDOT to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy -

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

IDOT has disseminated this policy statement and program document to the Federal Highway Administration and to all the components of IDOT. IDOT has also provided copies of this statement and program document to the Federal Aviation Administration and the Federal Transit Administration. IDOT has mailed this statement to DBE and non-DBE businesses that perform work for IDOT on DOT-assisted contracts. IDOT will continue to carry out this program until all funds from DOT financial assistance have been expended. Updates will be provided to DOT representing significant changes in the program.

Signed this 6th day of MAY, 2009 in the City of Springfield, Illinois.


Gary A. Hannig, Acting Secretary
Illinois Department of Transportation

Attachment B

Disadvantaged Business Enterprise Participation (BDE)

Effective: **September 1, 2000**

Revised: **January 1, 2010**

FEDERAL OBLIGATION. The Department of Transportation, as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 CFR part 26 apply to this contract concerning the utilization of disadvantaged business enterprises. For the purposes of this Special Provision, a disadvantaged business enterprise (DBE) means a business certified by the Department in accordance with the requirements of 49 CFR part 26 and listed in the Illinois Unified Certification Program (IL UCP) DBE Directory.

STATE OBLIGATION. This Special Provision will also be used by the Department to satisfy the requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575. When this Special Provision is used to satisfy state law requirements on 100 percent state-funded contracts, the federal government has no involvement in such contracts (not a federal-aid contract) and no responsibility to oversee the implementation of this Special Provision by the Department on those contracts. DBE participation on 100 percent state-funded contracts will not be credited toward fulfilling the Department's annual overall DBE goal required by the US Department of Transportation to comply with the federal DBE program requirements.

CONTRACTOR ASSURANCE. The Contractor makes the following assurance and agrees to include the assurance in each subcontract that the Contractor signs with a subcontractor:

The Contractor, subrecipient, 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 contracts funded in whole or in part with federal or state funds. 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.

OVERALL GOAL SET FOR THE DEPARTMENT. As a requirement of compliance with 49 CFR part 26, the Department has set an overall goal for DBE participation in its federally assisted contracts. That goal applies to all federal-aid funds the Department will expend in its federally assisted contracts for the subject reporting fiscal year. The Department is required to make a good faith effort to achieve the overall goal. The dollar amount paid to all approved DBE companies performing work called for in this contract is eligible to be credited toward fulfillment of the Department's overall goal.

CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR. This contract includes a specific DBE utilization goal established by the Department. The goal has been included because the Department has determined that the work of this contract has subcontracting opportunities that may be suitable for performance by DBE companies. This determination is based on an assessment of the type of work, the location of the work, and the availability of

DBE companies to do a part of the work. The assessment indicates that, in the absence of unlawful discrimination, and in an arena of fair and open competition, DBE companies can be expected to perform _____% of the work. This percentage is set as the DBE participation goal for this contract. Consequently, in addition to the other award criteria established for this contract, the Department will only award this contract to a bidder who makes a good faith effort to meet this goal of DBE participation in the performance of the work. A bidder makes a good faith effort for award consideration if either of the following is done in accordance with the procedures set forth in this Special Provision:

- (a) The bidder documents that enough DBE participation has been obtained to meet the goal; or
- (b) The bidder documents that a good faith effort has been made to meet the goal, even though the effort did not succeed in obtaining enough DBE participation to meet the goal.

DBE LOCATOR REFERENCES. Bidders may consult the IL UCP DBE Directory as a reference source for DBE-certified companies. In addition, the Department maintains a letting and item specific DBE locator information system whereby DBE companies can register their interest in providing quotes on particular bid items advertised for letting. Information concerning DBE companies willing to quote work for particular contracts may be obtained by contacting the Department's Bureau of Small Business Enterprises at telephone number (217)785-4611, or by visiting the Department's web site at www.dot.il.gov.

BIDDING PROCEDURES. Compliance with this Special Provision is a material bidding requirement. The failure of the bidder to comply will render the bid not responsive.

- (a) The bidder shall submit a Disadvantaged Business Utilization Plan on Department forms SBE 2025 and 2026 with the bid.
- (b) The Utilization Plan shall indicate that the bidder either has obtained sufficient DBE participation commitments to meet the contract goal or has not obtained enough DBE participation commitments in spite of a good faith effort to meet the goal. The Utilization Plan shall further provide the name, telephone number, and telefax number of a responsible official of the bidder designated for purposes of notification of plan approval or disapproval under the procedures of this Special Provision.
- (c) The Utilization Plan shall include a DBE Participation Commitment Statement, Department form SBE 2025, for each DBE proposed for the performance of work to achieve the contract goal. For bidding purposes, submission of the completed SBE 2025 forms, signed by the DBEs and faxed to the bidder will be acceptable as long as the original is available and provided upon request. All elements of information indicated on the said form shall be provided, including but not limited to the following:
 - (1) The names and addresses of DBE firms that will participate in the contract;
 - (2) A description, including pay item numbers, of the work each DBE will perform;
 - (3) The dollar amount of the participation of each DBE firm participating. The dollar amount of participation for identified work shall specifically state the quantity, unit price, and total subcontract price for the work to be completed by the DBE. If partial

pay items are to be performed by the DBE, indicate the portion of each item, a unit price where appropriate and the subcontract price amount;

- (4) DBE Participation Commitment Statements, form SBE 2025, signed by the bidder and each participating DBE firm documenting the commitment to use the DBE subcontractors whose participation is submitted to meet the contract goal;
- (5) If the bidder is a joint venture comprised of DBE companies and non-DBE companies, the plan must also include a clear identification of the portion of the work to be performed by the DBE partner(s); and,
- (6) If the contract goal is not met, evidence of good faith efforts.

GOOD FAITH EFFORT PROCEDURES. The contract will not be awarded until the Utilization Plan submitted by the apparent successful bidder is approved. All information submitted by the bidder must be complete, accurate and adequately document the good faith efforts of the bidder before the Department will commit to the performance of the contract by the bidder. The Utilization Plan will be approved by the Department if the Utilization Plan commits sufficient commercially useful DBE work performance to meet the contract goal or the bidder submits sufficient documentation of a good faith effort to meet the contract goal pursuant to 49 CFR part 26, Appendix A. The Utilization Plan will not be approved by the Department if the Utilization Plan does not commit sufficient DBE participation to meet the contract goal unless the apparent successful bidder documented in the Utilization Plan that it made a good faith effort to meet the goal. This means that the bidder must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful. The Department will consider the quality, quantity, and intensity of the kinds of efforts that the bidder has made. Mere *pro forma* efforts, in other words, efforts done as a matter of form, are not good faith efforts; rather, the bidder is expected to have taken genuine efforts that would be reasonably expected of a bidder actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

- (a) The following is a list of types of action that the Department will consider as part of the evaluation of the bidder's good faith efforts to obtain participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Department may be relevant in appropriate cases, and will be considered by the Department.
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBE companies that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBE companies to respond to the solicitation. The bidder must determine with certainty if the DBE companies are interested by taking appropriate steps to follow up initial solicitations.
 - (2) Selecting portions of the work to be performed by DBE companies in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.

- (3) Providing interested DBE companies with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - (4) a. Negotiating in good faith with interested DBE companies. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE companies 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 DBE companies to perform the work.
 - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE companies 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. Bidders are not, however, required to accept higher quotes from DBE companies if the price difference is excessive or unreasonable.
 - (5) Not rejecting DBE companies as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
 - (6) Making efforts to assist interested DBE companies in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
 - (7) Making efforts to assist interested DBE companies in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE companies.
- (b) If the Department determines that the apparent successful bidder has made a good faith effort to secure the work commitment of DBE companies to meet the contract goal, the Department will award the contract provided that it is otherwise eligible for award. If the Department determines that the bidder has failed to meet the requirements of this Special Provision and that a good faith effort has not been made, the Department will notify the responsible company official designated in the Utilization Plan that the bid is not responsive. The notification shall include a statement of reasons why good faith efforts have not been found.

- (c) The bidder may request administrative reconsideration of a determination adverse to the bidder within the five working days after receipt of the notification of the determination by delivering the request to the Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764 (Telefax: (217)785-1524). Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The determination shall become final if a request is not made and delivered. A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal. The request will be forwarded to the Department's Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet in person in order to consider all issues of whether the bidder made a good faith effort to meet the goal. After the review by the Reconsideration Officer, the bidder will be sent a written decision within ten working days after receipt of the request for reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Reconsideration Officer that a good faith effort was made shall approve the Utilization Plan submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid not responsive.

CALCULATING DBE PARTICIPATION. The Utilization Plan values represent work anticipated to be performed and paid for upon satisfactory completion. The Department is only able to count toward the achievement of the overall goal and the contract goal the value of payments made for the work actually performed by DBE companies. 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. The Department and Contractor are governed by the provisions of 49 CFR part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR part 26.55, the provisions of which govern over the summary contained herein.

- (a) 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.
- (b) 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.
- (c) 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.
- (d) DBE as a 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:

- (1) 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.
- (2) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.

(e) DBE as a material supplier:

- (1) 60 percent goal credit for the cost of the materials or supplies purchased from a DBE regular dealer.
- (2) 100 percent goal credit for the cost of materials or supplies obtained from a DBE manufacturer.
- (3) 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.

CONTRACT COMPLIANCE. Compliance with this Special Provision is an essential part of the contract. The Department is prohibited by federal regulations from crediting the participation of a DBE included in the Utilization Plan toward either the contract goal or the Department's overall goal until the amount to be applied toward the goals has been paid to the DBE. The following administrative procedures and remedies govern the compliance by the Contractor with the contractual obligations established by the Utilization Plan. After approval of the Utilization Plan and award of the contract, the Utilization Plan and individual DBE Participation Statements become part of the contract. If the Contractor did not succeed in obtaining enough DBE participation to achieve the advertised contract goal, and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of DBE work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the amended contract goal.

- (a) No amendment to the Utilization Plan may be made without prior written approval from the Department's Bureau of Small Business Enterprises. All requests for amendment to the Utilization Plan shall be submitted to the Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764. Telephone number (217) 785-4611. Telefax number (217) 785-1524.
- (b) The Contractor must notify and obtain written approval from the Department's Bureau of Small Business Enterprises prior to replacing a DBE or making any change in the participation of a DBE. Approval for replacement will be granted only if it is demonstrated that the DBE is unable or unwilling to perform. The Contractor must make every good faith effort to find another certified DBE subcontractor to substitute for the original DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the original DBE, to the extent needed to meet the contract goal.
- (c) Any deviation from the DBE condition-of-award or contract specifications must be approved, in writing, by the Department. The Contractor shall notify affected DBEs in

writing of any changes in the scope of work which result in a reduction in the dollar amount condition-of-award to the contract.

- (d) In addition to the above requirements for reductions in the condition of award, additional requirements apply to the two cases of Contractor-initiated work substitution proposals. Where the contract allows alternate work methods which serve to delete or create underruns in condition of award DBE work, and the Contractor selects that alternate method or, where the Contractor proposes a substitute work method or material that serves to diminish or delete work committed to a DBE and replace it with other work, then the Contractor must demonstrate one of the following:
- (1) That the replacement work will be performed by the same DBE (as long as the DBE is certified in the respective item of work) in a modification of the condition of award;
or
 - (2) That the DBE is aware that its work will be deleted or will experience underruns and has agreed in writing to the change. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so; or
 - (3) That the DBE is not capable of performing the replacement work or has declined to perform the work at a reasonably competitive price. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so.
- (e) Where the revision includes work committed to a new DBE subcontractor, not previously involved in the project, then a Request for Approval of Subcontractor, Department form BC 260A, must be signed and submitted.
- (f) If the commitment of work is in the form of additional tasks assigned to an existing subcontract, then a new Request for Approval of Subcontractor shall not be required. However, the Contractor must document efforts to assure that the existing DBE subcontractor is capable of performing the additional work and has agreed in writing to the change.
- (g) All work indicated for performance by an approved DBE shall be performed, managed, and supervised by the DBE executing the Participation Statement. The Contractor shall not terminate for convenience a DBE listed in the Utilization Plan and then perform the work of the terminated DBE with its own forces, those of an affiliate or those of another subcontractor, whether DBE or not, without first obtaining the written consent of the Bureau of Small Business Enterprises to amend the Utilization Plan. The Contractor shall notify the Bureau of Small Business Enterprises of any termination for reasons other than convenience, and shall obtain approval for inclusion of the substitute DBE in the Utilization Plan. If good faith efforts following a termination of a DBE for cause are not successful, the Contractor shall contact the Bureau of Small Business Enterprises and provide a full accounting of the efforts undertaken to obtain substitute DBE participation. The Bureau of Small Business Enterprises will evaluate the good faith efforts in light of all circumstances surrounding the performance status of the contract, and determine whether the contract goal should be amended.

- (h) The Contractor shall maintain a record of payments for work performed to the DBE participants. The records shall be made available to the Department for inspection upon request. After the performance of the final item of work or delivery of material by a DBE and final payment therefore to the DBE by the Contractor, but not later than thirty calendar days after payment has been made by the Department to the Contractor for such work or material, the Contractor shall submit a DBE Payment Agreement on Department form SBE 2115 to the Regional Engineer. If full and final payment has not been made to the DBE, the DBE Payment Agreement shall indicate whether a disagreement as to the payment required exists between the Contractor and the DBE or if the Contractor believes that the work has not been satisfactorily completed. If the Contractor does not have the full amount of work indicated in the Utilization Plan performed by the DBE companies indicated in the Utilization Plan and after good faith efforts are reviewed, the Department may deduct from contract payments to the Contractor the amount of the goal not achieved as liquidated and ascertained damages. The Contractor may request an administrative reconsideration of any amount deducted as damages pursuant to subsection (j) of this part.
- (i) The Department reserves the right to withhold payment to the Contractor to enforce the provisions of this Special Provision. Final payment shall not be made on the contract until such time as the Contractor submits sufficient documentation demonstrating achievement of the goal in accordance with this Special Provision or after liquidated damages have been determined and collected.
- (j) Notwithstanding any other provision of the contract, including but not limited to Article 109.09 of the Standard Specifications, the Contractor may request administrative reconsideration of a decision to deduct the amount of the goal not achieved as liquidated damages. A request to reconsider shall be delivered to the Contract Compliance Section and shall be handled and considered in the same manner as set forth in paragraph (c) of "Good Faith Effort Procedures" of this Special Provision, except a final decision that a good faith effort was not made during contract performance to achieve the goal agreed to in the Utilization Plan shall be the final administrative decision of the Department.

Attachment C



Subcontractor Registration Number _____

DBE Participation Statement

Letting _____

Participation Statement

Item No. _____

(1) Instructions

Contract No. _____

This form must be completed for each disadvantaged business participating in the Utilization Plan. This form shall be submitted in accordance with the special provision and will be attached to the Utilization Plan form.. If additional space is needed complete an additional form for the firm.

(2) Work

Pay Item No.	Description	Quantity	Unit Price	Total
Total				

(3) Partial Payment Items

For any of the above items which are partial pay items, specifically describe the work and subcontract dollar amount:

(4) Commitment

The undersigned certify that the information included herein is true and correct, and that the DBE firm listed below has agreed to perform a commercially useful function in the work of the contract item(s) listed above and to execute a contract with the prime contractor. The undersigned further understand that no changes to this statement may be made without prior approval from the Department's Bureau of Small Business Enterprises and that complete and accurate information regarding actual work performed on this project and the payment therefore must be provided to the Department.

Signature for Prime Contractor

Title _____

Date _____

Contact Person _____

Phone _____

Firm Name _____

Address _____

City/State/Zip _____

Signature for DBE Firm

Title _____

Date _____

Contact Person _____

Phone _____

Firm Name _____

Address _____

City/State/Zip _____

E _____

WC _____

The Department of Transportation is requesting disclosure of information that is necessary to accomplish the statutory purpose as outlined under the state and federal law. Disclosure of this information is REQUIRED. Failure to provide any information will result in the contract not being awarded. This form has been approved by the State Forms Management Center.

Attachment D



DBE Utilization Plan

(1) Policy

It is public policy that disadvantageded businesses as defined in 49 CFR Part 26 and the Special Provision shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal or State funds. Consequently the requirements of 49 CFR Part 26 apply to this contract.

(2) Obligation

The contractor agrees to ensure that disadvantageded businesses as defined in 49 CFR Part 26 and the Special Provision have the maximum opportunity to participate in the performance of contracts or subcontracts financed in whole or in part with Federal or State funds. The contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 and the Special Provision to ensure that said businesses have the maximum opportunity to compete for and perform under this contract. The contractor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts.

(3) Project and Bid Identification

Complete the following information concerning the project and bid:

Route _____	Total Bid _____
Section _____	Contract DBE Goal _____
Project _____	(Percent) (Dollar Amount)
County _____	
Letting Date _____	
Contract No. _____	
Letting Item No. _____	

(4) Assurance

I, acting in my capacity as an officer of the undersigned bidder (or bidders if a joint venture), hereby assure the Department that on this project my company : (check one)

Meets or exceeds contract award goals and has provided documented participation as follows:
Disadvantaged Business Participation _____ percent

Attached are the signed participation statements, forms SBE 2025, required by the Special Provision evidencing availability and use of each business participating in this plan and assuring that each business will perform a commercially useful function in the work of the contract.

Failed to meet contract award goals and has included good faith effort documentation to meet the goals and that my company has provided participation as follows:
Disadvantaged Business Participation _____ percent

The contract goals should be accordingly modified or waived. Attached is all information required by the Special Provision in support of this request including good faith effort. Also attached are the signed participation statements, forms SBE 2025, required by the Special Provision evidencing availability and use of each business participating in this plan and assuring that each business will perform a commercially useful function in the work of the contract.

Company

By _____

Title _____

Date _____

The "as read" Low Bidder is required to comply with the Special Provision.
Submit only one utilization plan for each project. The utilization plan shall be submitted in accordance with the special provision.

Bureau of Small Business Enterprises 2300 South Dirksen Parkway Springfield, Illinois 62764	Local Let Projects Submit forms to the Local Agency
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The Department of Transportation is requesting disclosure of information that is necessary to accomplish the purpose as outlined under State and Federal law. Disclosure of this information is REQUIRED. Failure to provide any information will result in the contract not being awarded. This form has been approved by the State Forms Manager Center.

Attachment E

