

## **MACOG DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

This program is based on 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

### **Definitions of Terms**

The terms used in this program have the meanings defined in 49 CFR 26.5. and are available at [www.fta.dot.gov](http://www.fta.dot.gov) under the Civil Rights & Accessibility menu and the submenu : Disadvantaged Business Enterprise, Subpart A – General, Section 26.5.

### **Objectives/Policy Statement (26.1, 26.23)**

MACOG has established a Disadvantaged Business Enterprise (DBE) program in compliance with 49 CFR Part 26. MACOG has received Federal financial assistance from the Department of Transportation (DOT), and as a condition of receiving this assistance, MACOG has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MACOG to ensure that DBE's, 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 DBE's 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 DBE's; and
5. To help remove barriers to the participation of DBE's in DOT assisted contracts.

A MACOG Transit Planner with direct access to the Executive Director has been designated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MACOG in its financial assistance agreements with the Department of Transportation.

MACOG has disseminated this policy statement to the Policy Board and it will be distributed to the DOT. A statement and description of the DBE Program will be included in the MACOGazette, a quarterly newsletter, to notify other interested parties. MACOG will also work with local transit agencies, chambers of commerce, the minority development business councils, and INDOT to assist in distribution of this policy.

### **Nondiscrimination (26.7)**

MACOG will not 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, MACOG 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.

### **DBE Program Updates (26.21)**

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

### **Quotas (26.43)**

MACOG does not use quotas in any way in the administration of this DBE program.

### **DBE Liaison Officer (DBELO) (26.45)**

A MACOG Transit Planner is designated as the DBE Liaison Officer who can be reached at MACOG, 227 West Jefferson Blvd., Room 1120, South Bend, IN 46601, (574) 287-1829 or at [macogdir@macog.com](mailto:macogdir@macog.com). In that capacity, the DBE Liaison Officer (DBELO) is responsible for implementing all aspects of the DBE program and ensuring MACOG complies with all provisions of 49 CFR Part 26. The DBE Liaison Officer has direct, independent access to the Executive Director of the MACOG concerning DBE program matters. The size of the MACOG staff and transit programs administered by MACOG means that the DBELO does not require other personnel to complete work on DBE issues. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other MACOG transit staff. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT
2. Reviews third party contracts and purchase requisitions for compliance with this program
3. Works with all staff to set overall annual goals
4. Ensures that bid notices and requests for proposals are available to DBE's
5. All procurement activities are considered during DBE goal setting and results are monitored each quarter
6. Participates in pre-bid meetings

7. Consults with the Executive Director on DBE matters and achievement
8. Relies on Uniform Certification Process in Indiana, done by the Department of Administration
9. Reviews the Indiana listing of certified DBE firms on the Indiana Department of Administration website on a quarterly basis
10. The Executive Director of MACOG is responsible to oversee the DBELO efforts

**Federal Financial Assistance Agreement Assurance (26.13)**

MACOG has signed the following assurance, applicable to all DOT assisted contracts and their administration:

MACOG shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. MACOG shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to MACOG of its failure to carry out its approved program the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (312 U.S.C 3801 et seq.).

**DBE Financial Institutions**

It is the policy of MACOG to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on DOT assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained on the Indiana Department of Administration website. (26.25)

**Required Contract Clauses (26.13, 26.29)**

Contract Assurance

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the

termination of this contract or such other remedy as the recipient deems appropriate.

### Prompt Payment

MACOG 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 contract no later than 30 days from the receipt of each payment the prime contractor receives from the MACOG. The prime contractor agrees further to return retainage payments to each subcontractor within 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 MACOG. This clause applies to both DBE and non-DBE subcontractors.

### **Monitoring and Enforcement Mechanisms (26.37)**

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

### **Overall Goals (26.45)**

MACOG's overall 3-Year goal for FY 2016-2019 is the following: 3% of the Federal financial assistance we will expend each year during this three year period in DOT assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

### **Method**

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

1. The method used to determine the number of ready and willing DBE contractors (base figure) for "Step 1" of the process (see 26.45) was determined using the IDOA current listing of certified DBE firms, and the U.S. Department of Commerce, Minority Business Development Agency Publication, "The State of Minority Business: Indiana," This document is based on the 2002 Economic Census. NAICS group codes were used to further classify the DBE firms. MACOG also contacted the Chamber of Commerce of St. Joseph County and the Greater Elkhart County Chamber of Commerce, the Goshen Chamber of Commerce, and the regional Small Business Development located in South Bend, for assistance.
2. The number of contractors in Elkhart, Marshall, and St. Joseph Counties was then determined using the Census Bureau's County Business Patterns. The NAICS

codes were determined for each contractor in the analysis to use in the goal calculation.

3. The number of DBE contractors (base figure) was divided by the number of total contractors and a percentage of DBE contractors determined. No adjustments were made to the “base figure” percentage from Step 1 above.

#### Transit Vehicle Manufacturers (26.49)

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

#### Process

The MACOG submits its overall goal to DOT by August 1 of each 3-year period.

Before establishing the overall goal the MACOG will consult with the general public, as well as the sources listed above to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBE's, and MACOG's efforts to establish a level playing field for the participation of DBE's.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the MACOG office, located at 227 West Jefferson Blvd., Room 1120, South Bend, IN 46601, for 30 days following the date of notice, and informing the public that MACOG and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be advertised in at least two newspapers of general circulation in the region and will be posted on the MACOG web site. Generally, the notice will be issued by June 1 of each third year and will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

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

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

#### Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

1. Direct mailing of all contracting opportunities to DBE firms regardless of their requesting a copy
2. Providing information and communications programs on contracting procedures and specific contract opportunities (including DBE's)
3. We will also attempt to unbundle large contracts to make them more accessible to small business and encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces

We estimate that, in meeting our overall goals we will obtain 100% from race-neutral participation and 0% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: Through past experience, we can meet our DBE goals through the availability of locally and state qualified DBE firms.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Contract Goals (26.51)**

MACOG will use contract goals to meet any portion of the overall goal MACOG 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 our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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 (e.g., type and location of work, availability of DBEs to perform the particular type of work).

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

### **Good Faith Efforts (26.53)**

### Information to be submitted

MACOG treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit, as a matter of responsiveness to the requirements of procurement, the following information:

1. The names and addresses of DBE firms that will participate in the contract
2. A description of the work that each DBE will perform
3. The dollar amount of the participation of each DBE firm participation
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 CFR 49, 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: DBE Liaison Officer and/or the Executive Director.

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

### Administrative reconsideration

Within 10 days of being informed by MACOG that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the [macog.dir@macog.com](mailto:macog.dir@macog.com). The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding the bidder 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

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

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, MACOG will issue an order stopping all or part of payment until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding. (See 26.53(f)(3)).

#### **Counting DBE Participation (26.55)**

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

#### **Certification (26.61 – 26.91)**

MACOG does not certify business enterprises. MACOG relies on a Unified Certification Program (UCP) administered by the Indiana Department of Administration (IDOA).

#### Unified Certification Program

The State of Indiana publishes a listing of current certified Minority and Women Businesses on its website, [www.in.gov/idoa](http://www.in.gov/idoa). The IDOA develops and maintains a current listing of DBE firms. MACOG reviews this listing on a quarterly basis.

#### **Information Collection and Reporting**

##### Monitoring Payments to DBEs

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

MACOG will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.



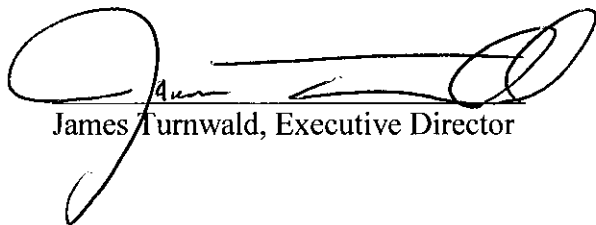
MACOG will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Report to DOT

MACOG reports DBE participation to DOT on a semi-annual basis for Federal Transit Administration (FTA) grants.

Confidentiality

MACOG will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT ) without the written consent of the submitter.



James Turnwald, Executive Director

Date: 8 / 30 / 2016