

Illinois Department Of Transportation

FFY 2000

DBE Program Document



Illinois Department of Transportation

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Policy Statement

The Illinois Department of Transportation (IDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. 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 1st day of September, 1999 in the City of Springfield, Illinois.

Kirk Brown, Secretary
Illinois Department of Transportation

Nondiscrimination

IDOT 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, IDOT 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

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

“IDOT 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. IDOT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. IDOT’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 IDOT of its failure to carry out its approved program, DOT 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

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

DBE Liaison Officer

The Bureau Chief of the Bureau of Small Business Enterprises has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Bureau Chief is responsible for developing and implementing all aspects of the DBE program and ensuring that IDOT 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 IDOT in its financial assistance agreements with DOT.

The DBELO, Ana Cecilia Velasco, can be reached at:

Illinois Department of Transportation
Harry R. Hanley Building
2300 South Dirksen Parkway, Room 319
Springfield, IL 62764
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The DBELO has direct, independent access to the Secretary of the Illinois Department of Transportation concerning DBE program matters. The DBELO has a staff of 24 professional employees assigned to the DBE program on a full-time basis and five support personnel who devote a portion of their time to the program. An organizational chart displaying the DBELO's position in the organization is found in Attachment A to this program.

Duties and responsibilities of the DBELO:

- Provides guidance for 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 IDOT contracts.

Duties and responsibilities of the Bureau's three sections:

- Policy and Support Services Section
 - Performs research/analysis of DBE program issues
 - Develops policies and procedures relating to the administration of the DBE program
 - Communicates DBE program policy/procedure changes to IDOT modes
 - Prepares DBE program goal and achievement reports
 - Responds to proposed federal and state legislation affecting IDOT's DBE program
 - Reviews IDOT's 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
 - Coordinates internal supportive services' efforts
 - Provides DBE program information through educational programs, newsletters, brochures and handbooks
 - Develops and conducts training seminars and workshops

- Certification Section
 - Performs audits on initial and recertification applications
 - Conducts on-site interviews with initial certification applicants
 - Maintains the Bureau's Disadvantaged Business Enterprise Directory of certified firms
 - Coordinates "denial of certification" appeals process

- DBE/EEO/Labor Contract Compliance Section
 - Reviews and approves construction DBE utilization plans for certain IDOT modes
 - Makes recommendations on pre and post-award waivers for construction contracts
 - Monitors other waivers and sanctions
 - Conducts labor and EEO contract compliance field reviews
 - Tracks final payments and approves final waiver modifications
 - Creates and maintains necessary program status procedures and reports (including other divisions/modes, local agencies, waivers, 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 EEO statistical data for submittal to federal and state authorities
 - Performs compliance monitoring for OJT training activities
 - Prepares required status reports for federal and state authorities for transportation modes
 - Develops and communicates compliance initiatives

DBE Financial Institutions

It is the policy of IDOT 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. To date, IDOT has identified the following such institutions:

Highland Community Bank	Chicago, Illinois
Illinois Service Federal Savings and Loan Association.....	Chicago, Illinois
International Bank of Chicago.....	Chicago, Illinois
Mutual Bank	Harvey, Illinois
NAB Bank	Chicago, Illinois
National Republic Bank of Chicago	Chicago, Illinois
Pacific Global Bank.....	Chicago, Illinois
Pan American Bank	Chicago, Illinois
Seaway National Bank of Chicago	Chicago, Illinois
The Foster Bank	Chicago, Illinois

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

DBE Directory

IDOT maintains a Disadvantaged Business Enterprises Directory (Directory) identifying all firms eligible to participate as DBEs on federally-funded highway and aeronautics projects. The Directory lists the firm's name, address (physical location and e-mail), phone number and type of work the firm has been certified to perform as a DBE. The Directory is provided on IDOT's web site (continually updated) and available in printed form (updated on a bi-annual basis - January and July - addendums are printed on an as-needed basis) by calling (217) 782-5490. IDOT's web site address is <http://www.dot.state.il.us>. The Directory may be found in Attachment E to this program document.

For the federal transit-funded program, IDOT has transmitted a copy of the Illinois Department of Central Management Services' Directory of Businesses Owned by Minorities, Females or Persons with Disabilities to IDOT subgrantees who might be able to utilize these firms for the purchase of services or commodities.

Overconcentration

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

Business Development Programs

IDOT reserves the option to establish a business development or mentor-protégé program in the future.

Required Contract Clauses

Contract Assurance

IDOT 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.”

Monitoring and Enforcement Mechanisms

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

Legal remedies

To report bid rigging, bidder collusion or other fraudulent activities, IDOT provides DOT's Hotline Complaint Center address and phone number in IDOT's Transportation Bulletin. IDOT will also bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to 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 Section 26.107.

IDOT 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 IDOT'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, IDOT may take one or more of the following actions: 1) cause a forfeiture of the penal sum of the bidder's proposal guaranty to IDOT, 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. IDOT 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 IDOT in accordance with the Special Provision or after liquidated damages have been determined and collected.

Field and contract monitoring

The Bureau of Small Business Enterprises (Bureau) monitors DBE performance for commercially useful function and reviews and approves DBE substitutions and final waivers. 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 IDOT'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. IDOT's representative on each project is the resident engineer. Each resident engineer is responsible for monitoring and reporting any irregularities, problems and 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.

For most federal transit-funded projects, IDOT passes through to its subrecipients USDOT's DBE requirements. In general, those agencies that have a direct grantee relationship with the Federal Transit Administration (FTA), in addition to having a subrecipient relationship to IDOT, will develop their own plan and report their plan accomplishments directly to FTA. Those agencies that do not have a direct grantee relationship with FTA, are subrecipients to IDOT, and meet the DBE threshold amounts, will develop their own plans which will be approved and monitored by IDOT. Those subrecipients that do not meet the DBE threshold amounts will report their activities to IDOT for inclusion in IDOT's reports to FTA. For those federal transit-funded contracts which IDOT enters into directly, IDOT will establish its own goals and monitor accomplishments.

Overall Goal

Amount of goal

IDOT's overall goal for FFY 2000 is the following: 12.5 percent of the federal financial assistance IDOT will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

\$1.424B is the dollar amount of DOT-assisted contracts that IDOT expects to award during FFY 2000. This means that IDOT has set a goal of expending \$178M with DBEs during this fiscal year/project.

FFY 2000 Goal Setting Rationale

IDOT's FFY 2000 overall goal was based on evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in DOT-assisted contracts. Adjustments were made to reflect the program changes that affect the contractors' ability to compete relative to volume capacity.

IDOT precluded using another state's goal as an option based on particular demographics of Illinois and also precluded using census data which did not provide specific areas of availability of firms in construction. The purpose of the IDOT's DBE Directory is to provide a list of certified DBE firms eligible to participate on DOT-assisted contracts. The Directory does not identify the number of these firms that have worked on IDOT contracts, and thus cannot be used to measure volume. Illinois also has not conducted a disparity study. Therefore, in order to establish "ready, willing and able" requirements for the base aspirational goal, IDOT looked at all firms that had actually participated in the past on IDOT contracts in 1997 and 1998.

The United States Department of Transportation (USDOT) requires a two-step process for setting the overall DBE goal. The first step is the calculation of a base figure displaying the relative availability of DBEs to work on IDOT contracts. The second step is an adjustment of the base figure so the final overall goal represents the amount of DBE participation IDOT might expect in the absence of discrimination or its effects.

First Step

- **Determining the Availability of DBE Firms Performing Highway Work**

IDOT has two types of firms that participate on IDOT highway contracts: construction firms and engineering consultant firms.

1. To determine the availability of IDOT's DBE construction firms, the number of IDOT's active DBE construction firms is divided by the number of all active construction firms, including DBE construction firms:

The totals of which are:

177 = 2-year average (FFY 97 and FFY 98) of active DBE construction firms

1126 = 2-year average of all active prime contractor and non-DBE subcontractor construction firms, including DBE construction firms.

$$\frac{177}{1126} = 15.72 \text{ percent availability of active DBE construction firms}$$

2. To determine the availability of IDOT's DBE engineering consultant firms, the number of IDOT's active DBE consultant firms is divided by the number of all active consultant firms, including DBE consultant firms.

The totals of which are:

40 = 2-year average (FFY 97 and FFY 98) of active DBE consultant firms

234 = 2-year average of all active prime contractor and non-DBE subconsultant firms, including DBE consultant firms.

$$\frac{40}{234} = 17.09 \text{ percent}$$

- **Determining the Composite**

Before determining the composite of these numbers, IDOT first weighted the consultant and construction figures. This weighting factor was determined by dividing the last two federal fiscal years' average consultant awards by the total average for consultant and construction awards for the same time period.

$$\frac{55.3}{55.3 + 832.8} = \frac{55.3}{888.1} = .062 \text{ or } 6.2 \text{ percent}$$

This yields a weighted factor of 93.8 percent for contractors and 6.2 percent for consultants.

15.72 percent x 93.8 percent = 14.7 percent
 17.09 percent x 6.2 percent = 1.06 percent
 Composite 15.76 percent

• **Determining the Volume of DBE Firms**

1. To determine the volume of work performed by DBE highway construction firms, the total amount committed to DBE highway construction firms was divided by the total awarded amount of highway construction contracts. The average of the last two federal fiscal years is presented below.

	<u>FFY 97</u>	<u>FFY 98</u>
Total highway construction contracts awarded by IDOT	\$866.3M	\$713.8M
City of Chicago and Cook County FA awards	<u>\$ 47.1M</u>	<u>\$ 38.4M</u>
Total awards	\$913.4M	\$752.2M

Calculated average:

\$913.4M
752.2M
 \$1665.6M divided by 2 = \$832.8M

	<u>FFY 97</u>	<u>FFY 98</u>
Total DBE participation on IDOT highway construction contracts	\$111.4M	\$87.9M
<u>Total DBE participation on City and County FA contracts</u>	<u>\$ 16.7M</u>	<u>\$11.7M</u>
Total DBE participation	\$128.1M	\$99.6M

Calculated average:

\$128.1M
99.6M
 \$227.7M divided by 2 = \$113.9M

Total DBE participation on IDOT highway construction contracts \$113.9M
 Total Awards \$832.8M = 13.67 percent

2. To determine the volume of work performed by DBE engineering consultant firms, the total amount committed to DBE consultant firms was divided by the total awarded amount of consultant contracts. The average of the last two federal fiscal years is presented below.

	<u>FFY 97</u>	<u>FFY 98</u>
Total engineering consultant contracts awarded by IDOT	\$54.7M	\$55.9M

Calculated average:

\$54.7M
<u>55.9M</u>
\$110.6M divided by 2 = \$55.3M

	<u>FFY 97</u>	<u>FFY 98</u>
Total DBE participation on IDOT engineering consultant contracts	\$5.3M	\$4.9M

Calculated average:

\$5.3M
<u>4.9M</u>
\$10.2M divided by 2 = \$5.1M

<u>Total DBE participation on IDOT engineering consultant contracts</u>	<u>\$ 5.1M</u>
Total Awards	\$55.3M = 9.2 percent

- **Determining the Composite**

Before determining the composite of these numbers, the figures were again weighted as above.

13.67 percent x 93.8 percent =	12.82 percent
9.2 percent x 6.2 percent =	<u>.57 percent</u>
Composite	13.39 percent

The number of firms and participation composite figures are then averaged to arrive at the percentage of available DBE firms for IDOT highway work.

Number of firms	15.76 percent
Volume	<u>13.39 percent</u>
	29.15 percent divided by 2 = 14.6 percent

Base figure: 14.6 percent

Second Step

Adjustment of the base figure to reflect changes in the regulation and other program dynamics.

Loss of Firms

Due to the change in the federal regulations regarding the personal net worth (PNW) cap of \$750,000.00, some firms are no longer eligible to participate in IDOT's DBE program. Of the 177 active DBE construction firms indicated in Step One, 16 are no longer certified by IDOT. Utilizing this number (16), the base figure is adjusted as indicated below.

177 active DBE firms minus the 16 firms no longer certified = 161

<u>161</u>
1126 = 14.3 percent availability of active DBE construction firms

This change is also reflected when calculating the composite.

14.3 percent x 93.8 percent =	13.4 percent
17.09 percent x 6.2 percent =	<u>1.06 percent</u>
Composite	14.46 percent (this was on the top of page 10)

This adjusted number is then utilized in calculating the percentage of available DBE firms for IDOT highway work.

Number of firms	14.46 percent
Volume	<u>13.39 percent</u>
	27.85 percent divided by 2 = 13.93 percent

Base figure: 13.93 percent

Trucking regulation changes

IDOT has determined that over the last two federal fiscal years, DBE trucking accounted for an average of 1.1 percent of its total highway program. Using this figure, and projecting that trucking would contribute less to the overall goal due to changes in the federal regulations, an estimate was made to adjust the base figure by half of this percentage or .6 percent.

Base figure	13.93 percent
Less	<u>.60 percent</u>
	13.33 percent adjusted base figure

Weighting

An additional adjustment to the base figure has been done to weight the goal to account for the loss of DBE firms in areas IDOT expects to perform substantial work in FFY 2000.

Of the 16 DBE firms which are no longer certified, two of the top three firms did mainly traffic control work in IDOT's District One (Chicago and collar counties). These two firms had a total commitment of \$3.4M in FFY 97 and 98. Statewide, the total amount awarded for traffic control for CY 97 and 98 was \$24M. With these two firms out of the DBE program, there is only one active certified DBE traffic control firm in this geographic area. With the increased highway program, the amount of traffic control work is expected to increase as well. Total highway construction contracts awarded by IDOT for FFY 97 and 98 were \$1,580.1M. The two above mentioned DBE firms accounted for .22 percent of IDOT's total awards during this period (\$3.4M divided by \$1,580.1M equals .22 percent).

The third of the top three firms is a DBE prime contractor located in IDOT's District Two (northwest part of Illinois), that does mostly bridge and concrete work. As a prime contractor, all of the work done by this firm was counted toward the goal. Currently, there are no other active DBE prime contractors in this area, nor are there any other certified firms with this capacity in this area. With the increased highway program, IDOT expects an increased volume of work in this geographic area. In FFY 97 and 98, a total of \$11.7M was committed to this firm. Total highway construction contracts awarded by IDOT for FFY 97 and 98 were \$1,580.1M. This firm accounted for .74 percent of IDOT's total awards during this period (\$11.7M divided by \$1,580.1M equals .74 percent). The loss of these three firms totals .96 percent (.22 percent plus .74 percent equals .96 percent).

As IDOT's highway program is nearly doubling in FFY 2000, the DBE program can be expected to also grow. It is expected that new firms will enter the DBE program and that currently certified firms will expand to meet the increased demand. However, new DBE firms might not be able to completely replace the three DBE firms that were lost in the traffic control and bridge areas in FFY 2000. Due to the loss of these three firms and the above factors, for FFY 2000, IDOT has estimated that a weighting of .83 percent is appropriate.

Adjusted based figure:	13.33 percent
Less	<u>.83 percent</u> adjustment for dislocation
	12.5 percent overall DBE goal

• **Breakout of Estimated Race-Neutral (RN) Participation**

IDOT will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation. IDOT will use the following RN means to increase DBE participation:

- Letting smaller contracts. IDOT will let 40 to 50 projects of \$500,000 or less in urban areas of the state to enhance the opportunities for DBE contractors to function as prime contractors;
- Creating a more accessible web site market place. IDOT will create an internet market place that will help match DBEs to prime contractors on IDOT projects. The web site will allow registered DBEs and primes to electronically communicate on scheduled lettings; and
- Expanding the contractor training program. IDOT will provide an additional \$500,000 for its training programs to enhance the skill level of DBEs on such items as estimating, unit pricing and work scheduling.

IDOT evaluated current RN accomplishments to determine what portion of the overall goal could be met through RN means. This adjustment was based on volume figures for federal fiscal years 1997 and 1998. The DBE prime contractors received bid awards on non-set-aside highway construction contracts and DBE subcontractors that were chosen on highway construction contracts without DBE goals showed the RN achievement by the industry over this time period.

FFY 97	\$16.2M DBE primes on non-set-asides
	<u>3.5M</u> DBE subcontractors on non-DBE goal contracts
	\$19.7M RN accomplishments

This number is then divided by the total IDOT highway construction awards to determine the percentage of RN achievements.

\$19.7M
 \$866.4M = 2.27 percent

FFY 98	\$19.5M DBE primes on non-set-asides
	<u>2.95M</u> DBE subcontractors on non-DBE goal contracts
	\$22.4M RN accomplishments

This number is then divided by the total IDOT highway construction awards to determine the percentage of RN achievements.

$$\frac{22.4M}{713.9M} = 3.14 \text{ percent}$$

These two percentages are then averaged with the average RN achievements for this time period.

$$\begin{aligned} &2.27 \text{ percent} \\ &\frac{3.14 \text{ percent}}{2} \\ &5.41 \text{ percent divided by } 2 = 2.7 \text{ percent average RN achievement.} \end{aligned}$$

IDOT has estimated that an additional .8 percent will be achieved through the above listed RN means. Therefore, the total portion of the overall highway goal that is projected to be met through RN means is:

$$\begin{aligned} &2.7 \text{ percent average past RN achievements} \\ &\frac{.8 \text{ percent additional RN measures}}{2} \\ &3.5 \text{ percent total RN achievements} \end{aligned}$$

Contract Goals

IDOT estimates that, in meeting the overall highway goal of 12.5 percent, IDOT will obtain 9 percent through race-conscious (RC) measures and 3.5 percent from race neutral (RN) measures.

IDOT will use contract goals to meet any portion of the overall goal it does not project being able to meet using RN means. Contract goals are established so that, over the period to which the overall goal applies, contract goals will cumulatively be used to meet any portion of IDOT's overall goal that is not projected to be met through the use of RN means.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established 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). Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

IDOT will adjust the estimated breakout of RN and RC participation as needed to reflect actual DBE participation [see 49 CFR part 26.51(f)], and will track and report RN and RC participation separately. For reporting purposes, RN 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.

FAA - IDOT Division of Aeronautics

An overall statewide goal of 12.5 percent will be used for the anticipated \$50 million airport development/construction program. IDOT's Division of Aeronautics (Aeronautics) utilizes the same contractors, suppliers, certification and bidding process as established for IDOT's highway construction program. In essence, the work performed is essentially the same for Aeronautics as it is for highways. With the same available pool of prime and DBE contractors, IDOT will utilize the same statewide goals for airport construction as for highway construction. Given that it is essentially the same workplace, IDOT also anticipates that it will obtain the same 3.5 percent race neutral participation in the airport construction program as it anticipates attaining in the highway program.

FTA - IDOT Division of Public Transportation

The primary use of federal dollars obtained by IDOT's Division of Public Transportation is for grants to local government recipients. Under Section 26.45 of 49 CFR part 26, the obligation to establish DBE goals for FTA-funded contracts is imposed on local government grant

recipients that award these contracts. IDOT will include language in its grant agreements advising local government grant recipients of their obligations under 49 CFR part 26.

The only FTA-funded contracts awarded or let by the Division of Public Transportation are for technical studies such as developing specifications for transit vehicles. Historically, these contracts are awarded through a competitive selection process, generally to national firms with no DBE goal requirements or participation.

IDOT anticipates awarding about \$233,000 in technical contracts in the forthcoming fiscal year. Given the relatively small amount of funds, IDOT has not conducted an independent study to establish a goal for these contracts, but rather intends to adopt the goal established by Metra and the Regional Transportation Authority for professional services based upon the ongoing National Economic Research Associates, Inc. study. IDOT understands that Metra will establish such a goal by January 31, 2000, with the first baseline ratio available within eight to ten weeks.

Until that time, IDOT will make a determination of the propriety and attainability of a goal on a contract by contract basis in light of the availability of certified DBEs to perform the scope of services in the particular contract to be awarded.

Transit Vehicle Manufacturers

IDOT will require each transit vehicle manufacturer (TVM), 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, IDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Experimental Program

IDOT intends to start an experimental program in which no DBE goals will be applied to approximately five percent of IDOT's highway and aeronautic construction projects. The projects which will have no goal will be distributed throughout the state on a variety of contracts. The purpose of the experimental program will be to gather additional information about DBE participation in a no-goal setting. The experimental program will not alter the overall goal for the total program.

Goal Submittal/Publication Process

IDOT submits its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, IDOT will consult with the Federal Highway Administration, minority and women and other highway construction industry associations, department officials, and other interested persons/groups to obtain information concerning the availability of disadvantaged and

non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and IDOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, IDOT 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 IDOT's Harry R. Hanley Building and in each district office for 30 days following the date of the notice. The public will be informed that IDOT and DOT will accept comments on the goals for 45 days from the date of the notice. It will be published on IDOT's web site and in the state newspaper, and a copy will be available in each district office, the Bureau of Small Business Enterprises and IDOT's library. Normally, IDOT will issue this notice by June 1 of each year. The notice will include the addresses to which comments may be sent and addresses (including offices and web sites) where the proposal may be reviewed.

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

IDOT will begin using the overall goal on October 1 of each year, unless otherwise instructed by DOT.

Good Faith Efforts

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

Each solicitation for which a contract goal has been established will require the apparent low bidder/offeror to submit the following minimum information within seven (7) working days from the date of the letting:

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:

- DBE/EEO/Labor Contract Compliance Section Manager - James Duncan
- Bureau Chief of Small Business Enterprises – Ana Cecilia Velasco

Compliance staff will ensure that all information is complete and accurate and adequately documents the bidder/offeror's 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 IDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. The following reconsideration official will determine the result of the reconsideration: Mr. James T. Allen, Deputy Director, Office of Finance and Administration, 2300 South Dirksen Parkway, Springfield, Illinois, (217) 524-4686, e-mail address: Allenjt@nt.dot.state.il.us. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. IDOT will send the bidder/offeror a written decision on 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. The result of the reconsideration process is not administratively appealable to USDOT.

Good Faith Efforts when a DBE is replaced on a contract

IDOT 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. IDOT will require the prime contractor to notify the DBELO, District EEO Officer, the Bureau of Small Business Enterprises' (Bureau) Compliance Section and IDOT's Supportive Service Consultant immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, IDOT will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts or documentation of good faith efforts.

Compliance

If the contractor fails or refuses to comply in the time specified, IDOT 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 will be applied.

Counting DBE Participation

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

Prompt Payment

IDOT will include the following Special Provision in each DOT-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 within a specific number of days after receipt of each payment made to the contractor, and to require the prompt return of retainage withheld from subcontractors.

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 partial 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 partial payment to the Contractor. Subcontractors shall be paid in full, including the return of any retainage previously withheld, within 15 calendar days after the subcontractor's work has been satisfactorily completed.

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.”

Certification

IDOT will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. IDOT will make its certification decisions based on the facts as a whole.

Process

IDOT's certification application form and documentation requirements are found in Attachment C to this program document.

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

Ms. Carol Lyle, Certification Section Manager
Illinois Department of Transportation
Bureau of Small Business Enterprises
Harry R. Hanley Building
2300 South Dirksen Parkway, Room 319
Springfield, Illinois 62764
(217) 782-5490.
E-mail: Lylecd@nt.dot.state.il.us

Unified Certification Program

IDOT has not yet taken any steps to create a Unified Certification Program in Illinois. Steps will be taken early in FFY 2000 to start the implementation process. There is no certification reciprocity agreement in effect with other states at this time.

Certification Appeals

In the event IDOT proposes to remove a DBE's certification, it will follow procedures consistent with 49 CFR part 26.87. If IDOT denies a firm's application or decertifies it, the firm may not reapply for certification within a 12-month period.

I. IDOT-Initiated Proceedings

If, based on changes in the circumstances of a firm's eligibility or other information that comes to IDOT's attention, it is determined that there is reasonable cause to believe that a currently certified firm is ineligible, IDOT will provide written notice to the firm informing them of the reasons for the proposed determination.

IDOT 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 part 26.109(b).

IDOT will review the records concerning the firm, any material provided by the firm and the complainant, and other available information. IDOT 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.

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

II. DOT- 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 IDOT to initiate a proceeding to remove the firm's certification.

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

III. Appeal Process

Administrative Review Panel

When there is reasonable cause to remove a firm's eligibility, the firm is given an opportunity for a meeting with IDOT'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. After meeting with the firm, the ARP will notify the firm in writing of its decision.

Grounds for decision

A decision to remove eligibility must not be based on a reinterpretation or changed opinion of information available to IDOT 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 DOT’s certification standards or requirements since the firm was certified; or
- A documented finding that IDOT’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.

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, IDOT 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, IDOT 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

IDOT 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 decisionmaker must be an individual who is knowledgeable about the certification requirements of the DBE program and 49 CFR part 26.87.

Hearing transcript

IDOT 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 DOT under 49 CFR part 26.89, IDOT must provide a transcript of the hearing to DOT 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.

IV. Notice of Decision

Following IDOT's decision, the firm must be 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 DOT under 49 CFR part 26.89.

V. Availability of DOT Appeal

After IDOT makes its administratively final decision to remove a firm's eligibility, the firm may immediately appeal the removal to DOT under 49 CFR part 26.89. The firm must send a letter to DOT within ninety (90) days of the date of IDOT's decision, attaching information and arguments concerning why IDOT's decision should be reversed. Pending DOT's decision, IDOT's decision remains in effect. IDOT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for IDOT's DOT-assisted contracting.

Appeals should be sent to the United States Department of Transportation, Office of Civil Rights, 400 7th Street, S.W., Room 2401, Washington, D.C. 20590.

VI. 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 using the ineligible firm, or IDOT has made a commitment to using 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 IDOT'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.

Recertifications

IDOT will review the eligibility of DBEs that were certified under 49 CFR part 23 to ensure they meet the standards of Subpart D of part 26. Firms certified at the time the new regulations went into effect (March 4, 1999) have been given until October 1, 1999 to submit their Social and Economic Disadvantage and Personal Net Worth Statements. Of these 581 firms, approximately 20 percent are currently doing work with IDOT. As the statements for the active firms are received, their certifications are being reviewed and processed. Those firms not actively participating on IDOT contracts and/or bidding work will be processed at a later date. It is anticipated that all firms will be reviewed by March 1, 2000.

For firms that IDOT has certified or reviewed and found eligible under part 26, IDOT will again review their eligibility three (3) years from their certification anniversary date. These reviews will include the following components: 1) Within 90 working days from a firm's certification expiration, IDOT will send the firm a certification application. 2) The DBE firm will submit the completed application with appropriate supporting documentation. 3) IDOT certification staff will analyze and review the submitted documentation and conduct an on-site interview. 4) The review process for initial applicants will be implemented to ensure each firm meets the eligibility standards of 49 CFR part 26.

"No Change" Affidavits and Notices of Change

All DBEs are required to inform IDOT, in a written affidavit, of any change in its circumstances affecting the ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with the firm's application for certification.

All owners of all certified DBE firms are required to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 49 CFR part 26.83(j). The text of this affidavit is the following:

"I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the IDOT under §26.83(i). [Name of firm] meets Small Business

Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.”

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

All currently certified DBE firms will be notified of these obligations when they are notified of their certification status following IDOT’s review of the personal net worth statements which are due no later than October 1, 1999. 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, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

All disadvantaged owners of firms who are currently being reviewed under part 26 are required to submit a statement of personal net worth by October 1, 1999. DBE firms whose certifications are not currently due to expire must submit a statement of personal net worth by March 2000.

Attachment D sets forth IDOT’s personal net worth form and the documentation firms must submit with it.

Information Collection and Reporting

Bidders’ List

IDOT will create a bidders’ list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders’ list approach to calculating overall goals. The bidders’ list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

IDOT will collect this information in the following ways:

- IDOT will develop a contractor’s registration form by February 2000 and make it available by mail or through its web site. Language will be added to IDOT’s Supplemental Specification for Section 108. Prosecution and Progress that will read 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 www.dot.state.il.us. Contractors prequalified by the Department are not required to register.”
- All firms interested in bidding or quoting on IDOT projects will be required to register either by mail or through IDOT’s web site. Each firm will be issued a contractor’s number, which will serve as the firm’s identification (ID) number.
- Once a firm has indicated an interest in bidding or quoting, this information will be used by IDOT for the purpose of calculating the overall DBE goal, in addition to assisting prime contractors in determining which firms are interested in bidding, without mailing requests for quotes or making telephone calls.

Monitoring Payments to DBEs

IDOT 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 IDOT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

IDOT 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. IDOT maintains records of original commitments and total payments to DBE firms.

IDOT 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 DOT

For FHWA, IDOT will report DBE participation to DOT on a quarterly basis, using DOT Form 4630.

For FAA, IDOT will submit annually DOT Form 4630, as modified for use by FAA recipients.

For FTA, IDOT will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Confidentiality

IDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. In all cases, the Illinois Freedom of Information Act is applicable and must be followed. Any exemption to disclosure requirements must be identified in writing, and must cite to the applicable section of the Act. Notwithstanding any contrary provisions of state or local law, IDOT 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.

Attachments

Attachment A - IDOT Organizational Chart

Attachment B - Definition of Terms

Attachment C - DBE Certification Application

Attachment D - Addendum to DBE Certification Application (Determination of Social and Economic Disadvantage and Personal Net Worth Statements)

Attachment E - Disadvantaged Business Enterprises Directory

Attachment F - 49 Code of Federal Regulations (CFR) part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Programs