

IOWA

DEPARTMENT OF TRANSPORTATION'S

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM

September 2, 1999
(REVISED June 19, 2000)
(REVISED September 24, 2004)
(REVISED April 1, 2006)

Notes: June 1, 2000 revision includes the additions to the Iowa DOT DBE Program that were added in our March 24, 2000 memo to FHWA Iowa Division Administrator, Bobby Blackmon.

Notes: September 24, 2004 revision includes the additions to the Iowa DOT DBE Program that were added as a result of an FHWA review.

Note: The April 1, 2006 changes were made as a general update to the Program.

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Policy Statement and Objective

The Iowa Department of Transportation (DOT) has prepared its disadvantaged business enterprise (DBE) program to meet Federal DBE regulations set forth in 49 CFR part 26. To continue receiving Federal financial assistance, appropriated under Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA LU), the Iowa DOT must comply with these regulations.

Consistent with requirements of 49 CFR part 26, it is the policy of the Iowa DOT to ensure that DBEs have equal opportunities to receive and participate in U.S. DOT-assisted contracts. To accomplish this objective, the Iowa DOT will take the following actions:

1. Ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts
2. Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts
3. Ensure that the DBE program is narrowly-tailored in accordance with applicable laws
4. Ensure that only firms, fully meeting the eligibility standards of 49 CFR part 26, are permitted to participate as DBEs
5. Help remove barriers to the participation of DBEs in U.S. DOT-assisted contracts
6. Assist in the development of DBE firms, enabling them to successfully compete outside the DBE program

This policy statement has been distributed to all offices of the Iowa DOT, as well as to all DBE and non-DBE businesses that perform work on U.S. DOT-assisted contracts. The statement will also be published in *The Des Moines Register*.

Nancy Richardson, Director
Iowa Department of Transportation

Date

IOWA DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The purpose of this document is to explain how the Iowa DOT plans to comply with requirements of 49 CFR part 26. The main body of the document is subdivided into five different sections, similar to chapters, each corresponding to one or more subparts of 49 CFR part 26. The sections are as follows: General Information; Administrative Requirements; Goals, Counting, and DBE Participation; Certification; and Monitoring, Compliance, and Enforcement.

Subsections within each of these sections address specific topics covered by 49 CFR part 26. The location of each of these topics within 49 CFR part 26 is identified in parentheses beside the corresponding subsection title.

Attachments A through F provide additional information pertaining to the emerging small business program, the supportive services program, DBE availability and usage, the annual good faith efforts program, setting contract goals, good faith efforts determinations, and certification standards and procedures. Copies of specific documents and forms are included as Attachment G.

SUBPART A: GENERAL INFORMATION (49 CFR § 26)

Subpart A of 49 CFR part 26 provides general information about the Iowa DOT's DBE program. Specific topics discussed in this section include definitions of terms, nondiscrimination, contract assurances of nondiscrimination, and the Iowa DOT's Federal financial assistance agreement.

Definitions of Terms (49 CFR §26.5)

The terms used in this program are defined in 49 CFR part 26.5. The reader is referred to this section of the Federal regulations for detailed information about their meanings.

Nondiscrimination (49 CFR §26.7)

The Iowa DOT will never exclude any person from participating in any contract on the basis of race, color, sex, or national origin. The Iowa DOT will also never deny any person the benefits of such a contract nor will it discriminate against anyone in connection with the award and performance of such a contract. In administering its DBE program, the Iowa DOT will not, directly nor through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of DBE program objectives.

Contract Assurance of Nondiscrimination (49 CFR §26.13)

The Iowa DOT will include the following assurance in every U.S. 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 U.S. 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 Iowa DOT deems appropriate.

Federal Financial Assistance Agreement (49 CFR §26.13)

The Iowa DOT has signed a financial assistance agreement with the U.S. DOT, providing the following assurance of nondiscrimination that is applicable to all U.S. DOT-assisted contracts:

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

SUBPART B: ADMINISTRATIVE REQUIREMENTS (49 CFR §26)

Subpart B of 49 CFR part 26 provides information about DBE administrative requirements. Included in this section is a discussion of specific requirements pertaining to DBE program compliance and updates, the DBE Liaison Officer and External Civil Rights Section, DBE financial institutions, prompt payment clauses, the DBE directory, over concentration of DBEs, business development programs, and monitoring and enforcement mechanisms.

DBE Program Compliance and Updates (49 CFR §26.21)

In order to continue receiving federal funds appropriated under the SAFETEA LU, the Iowa DOT will remain in compliance with its DBE program and 49 CFR part 26. The Iowa DOT will provide the Federal Highway Administration (FHWA) with any updates representing significant changes in the program.

DBE Liaison Officer and External Civil Rights Section (§26.25)

The name, address, and phone number of the Iowa DOT's DBE Liaison Officer is:

Roger Bierbaum, Director of the Office of Contracts
Iowa DOT
800 Lincoln Way
Ames, Iowa 50010

515-239-1414
E-mail: roger.bierbaum@dot.iowa.gov

In his capacity as DBE Liaison Officer, Mr. Bierbaum is responsible for implementing all aspects of the DBE program and for ensuring that the Iowa DOT complies with all provisions of 49 CFR part 26. Mr. Bierbaum has direct, independent access to the Director of Transportation concerning DBE program matters.

Staff members of the Iowa DOT's External Civil Rights Section provide administrative support for the purpose of developing, implementing, and monitoring the DBE program in coordination with Mr. Bierbaum. Members of the External Civil Rights Section, including Mr. Bierbaum, are identified as follows:

Roger Bierbaum	Office Director, Office of Contracts
Ed Kasper	Assistant Office Director
Craig Russell	Civil Rights Administrator
Peg Muxfeldt	Secretary
Len Hill	DBE Specialist
Jim Kelly	DBE Specialist/EEO Compliance

Kurt Harvey	Engineering Tech. Sr.
Kristine Brinkman	Engineering Tech. Sr.
David Wells	Engineering Tech. Sr.

Duties and responsibilities of the External Civil Rights Section include the following:

1. Gather and report statistical data and other information as required by the U.S.DOT
2. Set appropriate Contract DBE goals on a monthly basis.
3. Ensure that plans and bidding documents, are available to DBEs in a timely manner
4. Analyze the Iowa DOT's progress toward meeting the Annual DBE Goal (through both race-neutral and race-conscious measures) and identify ways to increase or decrease participation to ensure the goal is achieved.
5. Participate in pre-bid meetings to provide representation on matters pertaining to the DBE program
6. Advise the Director and Commissioners of the Iowa Department of Transportation on the attainment of DBE goals and on other matters pertaining to the DBE program.
7. Determine contractor compliance with good faith efforts.
8. Provide DBEs with as much information and assistance as possible in preparing bids.
9. Plan and participate in DBE training seminars.
10. Certify DBEs according to the criteria set by the U.S. DOT.
11. Provide outreach to potential DBEs through community organizations, small business seminars, career fairs, etc. offering advice about opportunities available to them
12. Maintain an updated directory of DBEs certified by the Iowa DOT.
13. Provide supportive services to certified firms.
14. Including technical and educational assistance as per Attachment B.
15. Monitor DBE attainment throughout the federal fiscal year to insure the annual goal is achieved.
16. Establish Annual DBE Goal.

DBE Financial Institutions (49 CFR §26.27)

The Iowa DOT will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in Iowa. The Iowa DOT will make reasonable efforts to use these institutions and will also encourage their use by prime contractors. To date, no such institutions have been found by the Iowa DOT, although the following institution, which is willing to work with the DBE community, has been identified:

West Bank of Des Moines, IA
Contact person: Ms: Michele Belden, VP

Additional information regarding these institutions can be obtained from the DBE Liaison Officer.

Prompt Payment Clause (49 CFR §26.29)

The Iowa DOT has implemented the following procedures to ensure contractors and subcontractors are paid promptly for satisfactory completed work:

A. Progress Payments to Prime Contractors

For work extending over a period of more than one month, the Contractor will receive monthly progress estimate payments based on the amount of work completed in an acceptable manner. For Primary and Secondary projects in which the Contracting Authority is the Department or a county Board of Supervisors, these progress payments will be bi-weekly if requested by the Contractor. For late payment, the Contracting Authority will pay a penalty of 1.0% per month (or part of a month), or a minimum of \$250, whichever is the greater amount, on any work completed but not processed for payment within 14 calendar days after completion of the work. Completion of the work includes physical completion of the work and submittal of all paperwork required by the contract. Should a reasonable doubt arise as to the integrity of any part of the completed work, the payment for that portion will not be allowed until the cause for such doubt has been removed. The Engineer's estimates of work completed will result in partial payments on the contract sum, and the allowance of a progress payment by the Contracting Authority does not constitute final acceptance of the work upon which the payments are based.

B. Prompt Payment to Subcontractors.

The Contractor shall promptly pay each subcontractor. Any delay or postponement of payment among the parties may take place only for good cause, with written notification to the subcontractor. A payment, excluding retainage, to a subcontractor for satisfactory performance of the subcontractor's work shall be made by the Contractor no later than one of the following, as applicable:

1. Seven calendar days after the Contractor receives payment for the subcontractor's work.
2. Seven calendar days after the Contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

C. Joint Checks

Prime contractors in the past have withheld payment to subcontractors because of a fear that the subcontractor would not pay for materials and the prime would ultimately be responsible to pay for the subcontractor's materials. The Iowa DOT therefore, encourages the use of joint checks for payment to subcontractors for their materials is acceptable under the following conditions:

1. The request for a joint check from the prime contractor is made by the materials supplier.
2. The joint check issued by the prime contractor is for an amount not to exceed the cost of unpaid invoice(s) from the materials supplier to a subcontractor on that contract.
3. The joint check is given to the subcontractor and the subcontractor must release the joint check to the material supplier.
4. The use of joint check by the prime contractor is applicable to all their subcontractors.

5. Joint Check usage will be monitored as part of the Company's EEO Contract Compliance Review.

D. Payment of Retainage.

Three percent of each progress estimate will be deducted and held as retainage on the first \$1,000,000 paid on a contract, with no additional retainage withheld on the remainder of the contract payment amount.

The Contractor may withhold up to 5% of each progress estimate on work performed by subcontractors. All retained funds due a subcontractor shall be payable by the Contractor within 30 calendar days after the date of final acceptance completion of the work by the subcontractor. These payments will be documented and certified by the prime contractor at the completion of the project on form 518002 which shall be submitted with the final voucher. The original form will be forwarded to the Office of Contracts. Contracts will track each Prime Contractors performance. Any non-complying reports without acceptable documentation will be investigated. Prime Contractors that develop a pattern of non-compliance without cause will be required to submit an action plan to correct the deficiencies or face bidding sanctions for up to six months. Non-bonded subcontractors may be required to submit proof of payment for all material bills and wages to the Contractor before the Contractor is required to pay the retainage.

E. Posting of payment information

The Iowa DOT is implementing a process to post progress payment information on the Internet for projects paid by the Iowa DOT. Contractors and material suppliers will be able to view quantities paid to date, and the quantities paid on the most recent progress voucher.

F. Prompt Payment Complaint Process

Compliance with prompt payment is the responsibility of both the Contracting Authority and Contractor. If the Contractor feels the Contracting Authority has not complied with the prompt payment provisions, the initial attempt to resolve the issue shall be with the Project Engineer. The attempt to resolve the issue shall include at least one written request to the Project Engineer, stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed, and signature of a representative of the Contractor. If a subcontractor feels Contractor has not complied with the prompt payment provisions, the initial attempt to resolve the issue shall occur with the Contractor. The attempt to resolve the issue shall include at least one written request to the Contractor, stating the project number, items of work, quantities, unit prices, dates work was performed, total amount owed, and signature of a representative of the subcontractor.

If the initial attempt to resolve the issue does not result in satisfactory payment for completed work, the Contractor or subcontractor shall submit a written complaint to the Office of Contracts. The written complaint shall include copies of the correspondence with the Project Engineer or Contractor that provides the details stated above. The Department will investigate and provide written response to the complainant with 15 business days of receipt of the complaint. Upon completion of the Contract, form 518002 will be submitted by the Prime Contractor stating the date their sub-contractors work was completed and the date they were paid in full. Any final payments exceeding 30 days from completion date requires verifiable justification.

DBE Directory (49 CFR §26.31)

The Iowa DOT maintains a directory identifying all firms eligible to participate as DBEs in its program. The directory lists each firm’s name, address, phone number, fax number, e-mail address, and the type of work it has been certified to perform as a DBE. The directory is reprinted every calendar year, hard copies are sent to all firms that do business with Iowa DOT. The directory is updated every month, any amendment to it is attached to bidding proposals that have a DBE goal. This information is also available on the Internet and at the Iowa DOT's Office of Contracts, which is located at 800 Lincoln Way, Ames, Iowa.

Overconcentration of DBEs (49 CFR §26.33)

The Iowa Department of Transportation has established four criteria to determine overconcentration of DBE as required by 49CFR part 26, Section 26.33. The Department considers both whether the DBEs’ work performing a unique element of work exceeds their proportional share based on their availability, and if DBEs’ share of the work for that element exceeded 50% of the work available. Overconcentration may be by one DBE firm or a group of DBE firms. This produces the following 2 by 2 matrix:

	Availability within worktype	Majority of the work
Overconcentration by DBEs as a group when the number of DBE firms > 1	1. DBE firms are obtaining a larger share of the market than their availability	2. DBE firms are obtaining the majority of the market
Overconcentration by an Individual DBE firm	3. A DBE firm is obtaining an excess share of the market	4. A DBE firm is obtaining the majority of the market

Overconcentration has been determined if any of the following four criteria is met:

Criteria #1- DBE firms are obtaining a larger share of the market than their availability

The percentage of the total amount of work awarded to the DBE firms in a fiscal year exceeds the percentage of the firms that the DBE represent who perform that element of work.

Criteria #2 - DBE firms are obtaining the majority of the market

The percentage of the total amount of work DBE firms obtain for an element of work exceeds 50% of that type for a fiscal year.

Criteria #3 - A DBE firm is obtaining an excess share of the market

The percentage of the total amount of work awarded to an individual DBE firm in a fiscal year exceeds twice it’s share of the marketplace if the work was evenly divided by all firms who perform that element of work.

Criteria #4 - A DBE firm is obtaining the majority of the market

An individual DBE firm is obtaining over 50% of the work awarded for an element of work for a fiscal year. (Note to readers: Criteria #4 is not necessary because this would already be covered by Criteria #2)

The following are the guidelines for overconcentration:

- An element of work may be a *group of bid items*, a *specific function*, or a *product* that is furnished by a supplier or manufacturer. The calculations are based on a percentage of the whole element, not a percentage of the work subcontracted.
- Percentages are based on dollar value of the element, not the number of units performed or supplied.
- Overconcentration for an individual DBE only applies to that DBE. Overconcentration for “DBEs as a group” applies to all DBEs.
- The year for calculations is July 1 to June 30, and would be used for contracts let from October 1 to September 30.
- Overconcentration applies to both proposal commitments and Annual GFE.
- All determinations of over-concentration require FHWA concurrence and approval.

DBE Underutilization

49CFR part 26, Section 26.33(b) states “These measures may include the use of incentives... and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened.”

The DBE regulations do not require the recipients to address areas of underutilization. The Iowa Department of Transportation reviewed the possibility of offering incentives for contractors to use DBE firms in areas of underutilization, but decided not to give additional credit for using DBEs in underutilized areas. However, the Iowa DOT is planning to offer additional supportive services to DBE firms attempting to enter into areas of underutilization.

Business Development Programs (49 CFR §26.35)

The Iowa DOT offers two business development programs, the emerging small business program and the supportive services program. See Attachments A and B, respectively, for further information about these programs.

Monitoring and Enforcement Mechanisms (49 CFR §26.37)

If the Iowa DOT knows of any false, fraudulent, or dishonest conduct in connection with its DBE program, it will take appropriate action consistent with applicable Federal, State, and local laws and regulations. Such action could result in referral to the Department of Justice or the U.S. DOT Inspector General for possible criminal prosecution, suspension and debarment, a finding of non-responsibility for future contracts, and other possible sanctions and penalties.

SUBPART C: GOALS, COUNTING, AND DBE PARTICIPATION (49 CFR §26)

Subpart C of 49 CFR part 26 provides information about goals, counting, and DBE participation. The specific topics discussed in this section include quotas, overall goals, contract goals, good faith efforts, methods of counting, and commercially useful functions.

Quotas (49 CFR §26.43)

The Iowa DOT does not use quotas or set-asides in any way in the administration of its DBE program. To ensure compliance with 49 CFR part 26, the Iowa DOT encourages the use of DBEs on Contracts with or without goals.

Overall Goals (49 CFR §26.45)

By August 1 of each year, the Iowa DOT will propose an overall goal for the participation of DBEs in the Iowa highway construction industry. The proposed overall DBE goal will be submitted to *The Des Moines Register*, *The New Iowa Bystander*, and *El Comunicador* for public notification. The notice will state that, for 30 days following the date of public notification, both the proposed goal and its rationale will be available for public inspection during normal business hours at the Iowa DOT's Office of Contracts. The public will also be informed that both the Iowa DOT and the U.S. DOT will accept comments about the goals for 45 days from the date of public notification. The following addresses will be provided to the public for inspecting information and mailing comments:

Address of the Iowa DOT's Office of Contracts (for inspection and comments):

External Civil Rights Section
Office of Contracts, Iowa DOT
800 Lincoln Way
Ames, Iowa 50010
Website: www.dot.state.ia.us

Address of the U.S. DOT (for comments):

Federal Highway Administration
105 Sixth Street
Ames, Iowa 50010

The Iowa DOT will submit its proposed overall goal to the FHWA on August 1 of each year, along with a summary of comments received by the public and the Iowa DOT's response to these comments. Unless the Iowa DOT receives other instructions from the FHWA, it will begin using the overall goal on October 1 of each year.

Race-Neutral and Race-Conscious Measures

The Iowa DOT will meet as much of the overall goal as possible by using race-neutral measures to facilitate DBE participation in the Iowa highway construction industry. Participation arises from race-neutral measures when DBEs receive prime contracts, because such contracts are awarded to the lowest bidder. Participation is also considered race-neutral when DBEs are awarded subcontracts or portions of subcontracts that do not include or consider DBE goals. A list of contracts and subcontracts awarded on a race-neutral basis includes, but is not limited to, the following:

1. DBE prime contracts
2. DBE subcontracts on prime contracts that do not carry DBE goals
3. DBE subcontract amounts that exceed contract goals
4. DBE subcontracts awarded by prime contractors who did not consider firms' DBE statuses when making the awards

To facilitate DBE participation through race-neutral measures, the Iowa DOT will offer outreach and technical assistance to DBEs, as well as to emerging small business contractors. The Iowa DOT will also provide an Annual Good Faith Effort Program.

Outreach and technical assistance will include assistance and training in areas such as the preparation and use of a business plan, contract administration, bonding assistance, banking assistance, and working with the Iowa DOT. Through the Annual Good Faith Effort Program, prime contractors will be encouraged to work with new DBE contractors and to use them in the types of work where DBEs are underutilized. To accomplish this objective, the program will enable prime contractors to use DBE subcontractors on less complex projects, and it will allow prime contractors to receive credit for helping DBEs become viable companies within the Iowa highway construction industry. See Attachments A and C, respectively, for additional information about the outreach and technical assistance plan and the Annual Good Faith Effort Program.

Race-neutral participation will be monitored by the Iowa DOT to ensure that DBE participation does not fall short of the overall goal. Race-conscious measures will be used to meet any portion of the overall goal that cannot be met through race-neutral measures. The Iowa DOT will separately track each type of measure, and report the results to the FHWA.

The Iowa DOT will implement race-conscious measures by establishing goals that apply only to U.S. DOT-assisted contracts with subcontracting possibilities. For each contract of this type, the size of the goal may vary, depending on circumstances such as the type and location of work and the availability of DBEs to perform a given type of work. The contract goal will be expressed as a percentage of the total contract, and it will be established based upon the procedure described in Attachment D.

Establishing the Overall DBE Goal

To comply with 49 CFR part 26.45, the Iowa DOT will establish its overall DBE goal based on the availability of ready, willing, and able DBEs, within the Iowa highway construction industry, relative to the availability of all ready, willing, and able businesses within the same industry (hereafter, this proportion is referred to as "the relative availability of DBEs").

Establishing the overall DBE goal involves two primary steps:

1. Determining a base figure for the relative availability of DBEs.
2. Examining evidence in the state to determine what adjustments, if any, are necessary to the base figure to arrive at the overall goal.

Step One: Determining the Relative Availability of DBEs

The Iowa DOT considered two methods for determining the relative availability of DBEs. These methods determined availability based, respectively, on the percentage of DBE firms within the Iowa highway construction industry and the percentage of DBE firms within this industry that was awarded a contract or subcontract. In contrast to percentages expressed in terms of **firms** and firms receiving **awards**.

Method one. Under method one, it was assumed that all DBEs, listed in the Iowa DOT's DBE directory that do highway construction, are ready, willing, and able to participate in the Iowa highway construction industry.

Although a comparable database does exist for all firms pre-qualified to participate in the Iowa highway construction industry, records indicate that some of these firms have never submitted an Iowa DOT bid proposal. It was assumed, therefore, that firms from this group were ready, willing, and able to participate if they submitted an Iowa DOT contract or subcontract bid proposal during the last three years. They were considered available for participation regardless of whether they were actually awarded the contract or subcontract.

The relative availability of DBEs was calculated by comparing the number of different firms, listed in the Iowa DOT's DBE directory, with the number of different firms that either submitted an Iowa DOT bid proposal during the last three years or received an Iowa DOT subcontract during that time. Suppliers, manufacturers, truckers, and consultants were not included when making the calculation, which is represented by the following mathematical formula:

$$\frac{(\# \text{ of different DBE firms in DBE directory})}{(\# \text{ of different firms that submitted proposals during last 3 years})} = \text{Relative Availability of DBEs}$$

Method two. Under method two, it was assumed that all DBEs and all businesses, defined as ready, willing, and able to participate in the Iowa highway construction industry, had been awarded at least one Iowa DOT contract or subcontract during the last three years. The relative availability of DBEs was calculated by comparing the number of different DBE firms, awarded at least one Iowa DOT contract or subcontract during the last three years, with the number of different firms from the population of all businesses that had been awarded at least one such contract or subcontract during the same time period. Suppliers, manufacturers,

truckers, and consultants were not included when making the calculation, which is represented by the following mathematical formula:

$$\frac{\text{\# of different DBE firms receiving contracts or subcontracts}}{\text{\# of different firms, in industry, receiving contracts or subcontracts}} = \text{Relative Availability of DBEs}$$

Step 2: Examining Available Evidence to Make Adjustments, if Necessary

To determine what adjustments, if any, were necessary to estimates of the relative availability of DBEs, the Iowa DOT examined the following three factors:

1. The percentage of all Iowa DOT prime contracts that DBEs received through the race-neutral, low-bid process.
2. The percentage of all Iowa DOT subcontracts that DBEs received through both race-neutral and race-conscious measures.
3. The percentages of all Iowa DOT contract dollars (for both federal and non-federal aid contracts) that DBE firms received.

Factor 1. The percentage of all Iowa DOT prime contracts, received by DBEs, was examined because such contracts were awarded through a race-neutral, low-bid process. The percentage should, therefore, represent the ability of DBE firms to compete and obtain prime contracts in a race-neutral market. The following formula was used to obtain this percentage:

$$\frac{\text{\# of DBE prime contract awards}}{\text{\# of all prime contract awards}} = \text{Percentage of prime contracts received by DBEs}$$

Factor 2. The percentage of all Iowa DOT subcontracts received by DBEs, for both Federal and non-Federal aid projects, was examined because this percentage represents the ability of DBEs to compete and obtain subcontracts through both race-neutral and race-conscious measures. Suppliers, manufacturers, truckers, and consultants were not included when calculating this percentage with the following mathematical formula:

$$\frac{\text{\# of DBE subcontracts awarded}}{\text{\# of all subcontracts awarded}} = \text{Percentage of subcontracts received by DBEs}$$

Factor 3. In addition to the percentage of all Iowa DOT **contracts and subcontracts** received by DBEs, the percentage of all contract **dollars** received by DBEs, for both Federal and non-Federal aid projects, was examined. The resulting percentage determined the amount of work received by DBEs relative to the maximum total work capacity of all firms. The following formula was used to obtain this percentage:

$$\frac{\text{Total dollars awarded on all DBE contracts and subcontracts}}{\text{Total dollars awarded on all contracts (to all firms in the industry)}} = \text{Percentage of all contract dollars received by DBEs}$$

Calculations for all of the above percentages include work on DBE prime contracts that was subcontracted to non-DBE firms, as well as work by non-DBE truckers that matches up to 50% of the work done by DBE truckers. The new Federal DBE regulations no longer allow work subcontracted to non-DBE firms to be credited toward the DBE goal. They also will not allow credit for work performed by non-DBE truckers. The percentages of all Federal and non-Federal aid dollars, for both contracts and subcontracts received by DBEs prior to July 1, 2000, were adjusted to reflect the DBE crediting changes in the new DBE regulations..

Good Faith Efforts (49 CFR §26.53)

The proposal will specify if the proposed contract has an established DBE goal. The established DBE goal will be shown on the proposal as a percent of the total amount bid.

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Iowa highway construction industry. Subcontractor expenditures, which may be counted towards the DBE commitment, will include DBE trucking, purchase of materials from a DBE Manufacturer or Supplier, or off-site services provided by a certified DBE firm.

Good Faith Effort Determination at the Letting

A. For contracts with established project goals the Bidders will be required to complete the Form "STATEMENT OF DBE COMMITMENTS" number 102115, which is included in the bidding documents and in the computer software provided by the department.

The bidder shall list the following information on the Statement of DBE Commitments form that is submitted with their bid:

- Certified DBE firms contacted
- Date that each DBE firm was first contacted concerning quoting on the proposal to be bid
- Whether each DBE firm submitted a quote on the proposal to be bid
- If the DBE firm is being used as part of the bidder's DBE commitment
- If used as part of the bidder's DBE commitment, the work items that the DBE will be used for on the contract
- If used as part of the bidder's DBE commitment, the "Quote Amount" which has been committed to each DBE firms which will be used on the contract
- If the DBE firm is being used as a supplier (in which case, only 60% of the dollars paid to the DBE firm will count toward the DBE commitment)
- The "Net Dollar Commitment" of each DBE firm which will be counted towards the DBE commitment

The percent of DBE participation of each bidder will be calculated by the Office of Contracts by dividing the sum of the commitments to each DBE firms by the total of the contract amount as defined by Article 1102.10. Each bidder's DBE participation commitment will be calculated to

the nearest tenth of a percent. If two or more projects are combined on one proposal, the DBE commitment will be calculated using the sum of DBE commitments and the sum of the project totals. Only DBE firms listed in the Directory for the current letting may be used.

B. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid. Contractors who have met or exceed the proposed contract goal will be assumed to have made Good Faith Effort to utilize DBE firms. DBE firms who bid as prime contractors will be considered to have met the goal.

C. If a goal has been established for a contract, the Iowa DOT will award the contract to the lowest bidder making good faith efforts to meet the contract goal. The following is the Department's process used to judge the Good Faith Efforts of bidders who have not met the established DBE goal:

1. **Eighty Percent of the Goal** - Bidders who have achieved 80% of the established goal will be assumed to have made a Good Faith Effort to achieve the goal.
2. **Eighty Percent of the Average Commitment** - The Department has utilized an objective measurement of good faith effort of Good Faith Effort since October 31, 1988 where Good-faith effort is determined by calculating 80% of the average of the percentages of the DBE commitments submitted by all bidders on the contract.
3. **Contractors with History of Utilizing DBEs** – Bidders who have demonstrated their ability to utilize DBE firms on both federal aid and non-federal aid projects let by the Department in the previous fiscal years will be assumed to have made a good faith effort to achieve the project goal.
4. **Administrative Reconsideration of Project Specific Good Faith Efforts** – Office of Contracts Proposal Coordinators determine on the day of the letting any Contractors who have submitted the low bid on goal contracts and not met any of the previous three thresholds. The Department's Administrative Reconsideration Committee are advised of the contract in question, they in turn will inform the Contractor of the situation and offer them a chance to explain their position, or Administrative Reconsideration. This committee consists of the Department's Contract Engineer, Assistant Contracts Engineer, and the EEO/AA Administrator. The determination made by the Administrative Reconsideration Committee shall be considered final.

Good Faith Efforts When a DBE is Replaced on a Contract

If a DBE, committed for a goal on a contract, has been terminated or has otherwise failed to complete work on a contract, the contractor must make good faith efforts to replace the DBE, to the extent needed to meet the goal on the contract, with another certified DBE. The prime contractor must immediately notify the project engineer of the DBE's inability or unwillingness to perform, providing reasonable documentation to support the notice. The project engineer will then notify the Civil Rights Administrator in the Iowa DOT's Office of Contracts and will obtain the administrator's approval of any substitution that is made.

When requesting approval of a substitution, the prime contractor must provide the Civil Rights Administrator with copies of new or amended subcontract requests, along with documentation of good faith efforts to continue meeting the original contract goal. If the contractor fails or refuses to provide the required information, the contractor will be penalized,

dollar for dollar, for any work committed to DBEs but performed by non-DBEs. Repeated violations may result in suspension of the contractor's bidding privileges.

Counting DBE Participation (49 CFR §26.55)

When calculating credit for DBE contract goals, the Iowa DOT will count only the work performed by DBE firms. With respect to the amount of work counted for different kinds of DBE firms, the following rules and definitions will apply:

DBE Manufacturer

A DBE manufacturer is a DBE firm that owns and operates the facilities needed to produce a product. The product must be required by a contract and purchased by a contractor. If such products are purchased from a DBE manufacturer, 100% of the amount paid for the products will be counted toward the DBE goal.

DBE Supplier

A DBE supplier is a DBE firm that sells goods to the general public and maintains its inventory at an owned or leased warehouse or store. If goods are purchased from a DBE supplier, 60% of the amount paid for the goods will be counted toward the DBE goal.

DBE Broker

A DBE broker is a DBE firm that does not manufacture products or supply goods on a regular basis. If materials purchased by such a broker are resold by the broker to a contractor and if the materials become permanent parts of a contracted project, 100% of the fee or commission received by the DBE broker will be counted toward the DBE goal.

DBE Trucker

A DBE trucker is a DBE firm that performs trucking with its own employees and with its own trucks; trucks leased on a long-term basis; or trucks leased from another DBE firm, including an owner-operator who is a certified DBE. For a contractor to receive credit for 100% of the amount paid to a DBE trucker, the trucker must own at least one fully licensed, insured, and operational truck for work performed on a contract.

A DBE trucker may also lease trucks from a non-DBE firm, including an owner operator. If a contractor purchases transportation from a DBE trucker under these circumstances, the contractor will receive credit only for the fee or commission paid to the non-DBE firm by the DBE trucker. The contractor will not receive credit for the total amount it paid to the DBE trucker because the DBE was a lesser rather than the actual provider of transportation services.

At all times, the DBE trucker must be responsible for managing and supervising the entire trucking operation. A subcontract with the DBE trucker must not be an arrangement contrived to create the appearance of meeting the DBE contract goal.

In order for a DBE trucker to be credited with the delivered price of materials and supplies, the trucker must also be certified as a supplier or manufacturer of these goods. In addition, the trucker must be responsible for selecting the source of the goods, ensuring their quality, and negotiating their price.

DBE Contractor

A DBE contractor is a DBE firm that contracts or subcontracts to perform highway construction work. To be considered a DBE contractor, the DBE firm must perform work using its own employees and it must order and pay for all of the supplies and materials it uses. When a DBE contractor performs a defined and clearly measurable portion of a contract by providing its own labor and materials, the prime contractor will receive credit for 100% of the amount it paid to the DBE contractor.

Commercially Useful Function (49 CFR §26.55)

A key requirement of the new Federal DBE regulations is that DBEs perform a commercially useful function, which means that DBEs must be responsible for executing a distinct portion of the work. To fulfill this responsibility, DBEs must meet certain requirements with regard to their management; employees; and materials, supplies, and equipment. Compliance with these requirements will be monitored and enforced by the Iowa DOT.

Management

To perform a commercially useful function, a DBE must actually perform, manage, and supervise work involved in a contract. DBE management responsibilities include scheduling work operations, preparing and submitting certified payrolls, and hiring and firing employees. All operational and managerial decisions must be made by the DBE. Supervision of daily operations must also be performed by the DBE personally or by a full-time, knowledgeable, and skilled superintendent directly supervised by the DBE.

Employees

Performance of a commercially useful function requires that all work on a contract be performed by the DBE's own workforce. To be considered an independent business, the DBE should maintain a workforce, and the DBE shall not "share" employees with another contractor, especially a prime contractor.

Materials, Supplies, and Equipment

With respect to the materials, supplies, and equipment used to perform a commercially useful function, the DBE must be responsible for negotiating the price of these goods; determining their quality and quantity; arranging for their delivery; and ordering, installing (where applicable), and paying for the goods. The Iowa DOT may review invoices to verify that they were billed to and paid by the DBE. No credit will be given toward a contract's DBE goal when goods used on the contract were paid for by the prime contractor.

The cost of materials purchased by the DBE from the prime contractor and the cost of equipment leased from the prime contractor will also not count toward the contract's DBE goal.

Monitoring and Enforcement

The performance of a commercially useful function by DBEs is monitored by Iowa DOT field personnel daily and spot checked by staff from the Iowa DOT's Office of Contracts. Field personnel observe who owns the equipment used by DBEs and who supervises and pays DBE employees. Staff from the Office of Contracts will also complete the DBE Field Audit Review Form (page 26) when making these field visits. All DBEs and employees are required to cooperate with personnel conducting the field audits and with staff from the Office of Contracts.

Work performed by a DBE will not be counted toward a contract goal if the DBE did not perform a commercially useful function while doing the work. Failure to perform a commercially useful function could also lead to the Iowa DOT's withholding of payment for the work. If deliberate fraud was involved, such failure could also result in criminal prosecution of both the prime contractor and the DBE.

Any of the following situations may be indicative of a DBE's failure to perform a commercially useful function:

1. Employees shared by both the DBE and another contractor
2. Supervision of the DBE's crew by another contractor
3. DBE's use of the prime contractor's equipment
4. DBE's use of other equipment, which is neither owned nor leased by the DBE
5. Materials for the DBE that were ordered and/or paid for by the prime contractor
6. An item of work performed jointly by the DBE and another contractor

SUBPARTS D & E: CERTIFICATION (49 CFR §26)

Subparts D and E of 49 CFR §26, respectively set forth DBE certification standards and procedures, that will be used by the Iowa DOT to determine a firm's eligibility for participation as a DBE in U.S. DOT-assisted contracts. Certification decisions are based on the facts as a whole, and all certification standards must be met before a firm will be eligible for participation as a DBE.

Specific aspects of these standards and procedures are discussed within this section, including re-certifications, personal net worth, "notice of change" and "no change" affidavits, confidentiality, removals and denials of certification, and the unified certification program. Further information about DBE certification standards and procedures can be found in Attachment E.

Although the Department does accept SBA 8A applications, all documentation requirements of the Iowa Uniform Certification Application must be met, and an on-site review must be performed.

To receive a copy of the Unified Certification Application Form or to obtain information about the certification process, firms should contact:

Craig Russell, Civil Rights Administrator
Iowa DOT
Office of Contracts
800 Lincoln Way
Ames, Iowa 50010

Phone number: (515)-239-1422
Fax number: (515)-239-1325
Craig.Russell@dot.iowa.gov

Recertification (49 CFR §26.83)

Firms certified with the State of Iowa are required to recertify every three years. New Uniform Certification Applications and directions are sent to affected firms 60 days prior to their expiration date. This three year renewal requires the same supporting documentation as the original certification, including a statement of Personal Net Worth.

"Notice of Change" Affidavits and "No Change" Affidavits (49 CFR §26.83)

All DBEs are required to inform the Iowa DOT, in a written affidavit, of any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR part 26. This notification must be provided within 30 days of the occurrence of the change.

Each year, all DBEs are required to submit a "no change" affidavit on the date designated. Each affidavit must be accompanied by documentation of the DBE's size and gross receipts. To meet the requirements of 49 CFR part 26.83(j), the text of each affidavit must read as follows:

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 Iowa DOT 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 do not exceed the maximum dollar limit, as defined by SBA rules (13 CFR 121.402), over the firm's previous three fiscal years. The Secretary of Transportation adjusts this amount for inflation from time to time, and will vary with the type of firm.

The Iowa DOT has mailed a notice about these required affidavits to all currently certified DBEs. Specifically, the notice informed DBEs that when submitting the "no change" affidavit, DBE owners must swear or affirm that they meet all regulatory requirements of 49 CFR part 26, including those pertaining to personal net worth. Likewise, if a DBE owner knows or should know that he, she, or the DBE's firm fails to meet an eligibility requirement of 49 CFR part 26, including any requirement pertaining to personal net worth, the DBE owner is obligated to submit a notice of change.

Confidentiality (49 CFR §26.83)

Consistent with Federal, State, and local law, the Iowa DOT will safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information. Notwithstanding any contrary provisions of Federal, State, or local law, the Iowa DOT will not release personal financial information, submitted by a DBE applicant, to a third party (other than the U.S. DOT) without the consent of the applicant.

Denial and Removal of Certification (49 CFR §26.85, 26.87 & 26.89)

An applicant, who has been denied certification as a DBE, or whose certification has been removed, will be provided an opportunity to appeal the decision to the Iowa DOT DBE appeal committee. The committee is comprised of five Iowa DOT employees, from outside the Department's Office of Contracts, who are appointed by the director of the Iowa DOT's Project Development Division. The committee will be chaired by the Assistant Contracts Engineer, although that individual will not vote nor be considered a member of the committee. The assistant contracts engineer and each of the committee members understand the certification requirements, and they will review all evidence provided to the Iowa DOT's affirmative action officer, who made the initial determination.

The applicant will be offered an opportunity to meet, face-to-face, with the committee to present his or her side of the findings. No new evidence will be reviewed at the meeting, which will be informal.

Procedures set forth under 49 CFR part 26.87 will be followed by the Iowa DOT if it proposes the removal of a DBE's certification. Attachment E explains these procedures in detail.

If, based upon its review of all records, materials, and other required information, the Iowa DOT proposes to remove a DBE's certification, the proposal is forwarded to the DBE appeal committee, which makes the decision on whether to remove the certification. To ensure a separation of functions in such a decision, members of the DBE appeal committee will not have participated in any way in proceedings - or the decision to initiate proceedings - leading to the proposal to de-certify. An administrative "firewall" has been established to make certain that the separation of functions is always maintained.

A firm that either has had its eligibility removed or has been denied certification must wait 12 months before reapplying for certification. In either action, however, a firm may appeal the Iowa DOT's decision to the U.S. DOT. Such appeals may be sent to:

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

The Iowa DOT will promptly implement any U.S. DOT certification appeal decisions affecting the eligibility of DBEs for U.S. DOT-assisted contracts. Thus, if the U.S. DOT determines that the Iowa DOT erroneously removed a firm's eligibility or denied certification to a firm, the Iowa DOT will promptly certify the firm.

Unified Certification Program (49 CFR §26.81)

The Iowa DOT has established a unified certification program (UCP) for all government entities receiving U.S. DOT funds in the State of Iowa. With respect to participation as a DBE on U.S. DOT-assisted contracts, the Iowa DOT will make all DBE certification decisions through the UCP on behalf of these entities. The purpose of the UCP is to provide "one-stop-shopping" to certification applicants, which means that once they have been certified, their certification will be honored by all other entities in the State that receive U.S. DOT funds.

SUBPART F: MONITORING, COMPLIANCE, AND ENFORCEMENT (49 CFR §26)

Highway construction practices involving DBEs are monitored at all stages, ranging from the initial request for subcontracts to dispute resolution and any necessary action consistent with applicable Federal, State, and local laws and regulations. Within this section of subpart F, several aspects of construction monitoring are discussed, including subcontract requests, monitoring and documentation of work performed by DBEs, payment of DBEs, assistance offered to DBEs, and dispute resolution. Methods of reporting and tracking the usage of DBEs are also presented.

If the Iowa DOT knows of any false, fraudulent, or dishonest conduct in connection with its DBE program, it will take appropriate action consistent with applicable Federal, State, and local laws and regulations. Such action could result in referral to the Department of Justice or the U.S. DOT Inspector General for possible criminal prosecution, suspension and debarment, a finding of non-responsibility for future contracts, and other possible sanctions and penalties.

Subcontract Requests

When making requests to subcontract, prime contractors must submit their "Subcontract Request and Approval" forms (Form 830231) when they return their signed contracts to the Iowa DOT's Office of Contracts. In certain situations, with the approval of the Iowa DOT, the contractor may request an extension of up to 30 days to submit the "Subcontract Request and Approval" forms. Either a new or an amended "Subcontract Request and Approval" form must be submitted if unforeseen field conditions require additional subcontractors or replacement of terminated subcontractors.

The Iowa DOT encourages the use of DBEs on all of its projects, including those with work above and beyond an established contract goal and those with no goal at all. The use of DBEs on all projects is viewed as a good faith effort and a step toward the possible reduction or elimination of goals in the future.

DBE Work Performance and Payment of DBEs

The work activities and work accomplishments of DBEs on all projects will be monitored and documented by the Iowa DOT to ensure that DBEs are performing work as contracted at the time of its award. In addition, the Office of Contracts intends to interview all active DBE's during each construction season. During these interviews the "DBE Field Audit Review Form (page 26) will be completed. Any concerns will be immediately reported to both the project engineer and the prime contractor.

Upon a DBE's successful completion of the work, the project engineer will be responsible for comparing the amount actually paid to the DBE with the amount committed to the DBE when the contract was awarded. The amount paid to the DBE is reported on the "Certification of DBE Accomplishment" (Form 102116), which is submitted to the project engineer by the prime contractor when the work is completed.

Payments of less than the amount committed will require justification (i.e., item under-

runs, item deletions, etc.) by the project engineer. The prime contractor can be penalized, dollar for dollar, for the shortage if it is not justified by the project engineer. Repeated shortages can result in suspension of the prime contractor's bidding privileges.

For three years following a DBE's performance of work on a contract, the prime contractor is required to maintain records of payments made to all DBEs. The records must be made available for inspection upon the request of any authorized representative of the Iowa DOT or the U.S. DOT.

The Iowa DOT will perform interim audits of contract payments to DBE subcontractors. The audit will review payments to these DBEs to ensure that the actual amount they were paid equals or exceeds the dollar amounts stated in the "Disadvantaged Business Enterprise Information Statement of DBE Commitments" (Form 102115).

Assistance Offered to DBEs by Prime Contractors

Prime contractors are allowed to offer construction assistance to DBE subcontractors, but only in areas where DBEs can benefit from prime contractors' expertise or in situations arising from unforeseen emergencies or natural disasters. The assistance must be short-term (one day or less) and involve only equipment, not workers. Before offering the assistance, the prime contractor must notify the project engineer and obtain the approval of the Civil Rights Administrator in the Iowa DOT's Office of Contracts.

Other forms of assistance, such as offering technical advice and occasional guidance, are encouraged. Before offering these forms of assistance, however, it is also necessary to notify the project engineer and obtain the approval of the Iowa DOT's Civil Rights Administrator.

Dispute Resolution

Disputes within the highway construction industry usually involve conflicts between two or more parties about such things as costs, delays, payment disputes, and the timeliness of performance. Dispute Review Boards (DRB) are pre-selected, project-specific panels, used increasingly as a technique for resolving such issues. The boards are comprised of three neutral and impartial members, mutually selected and respected by all parties involved in a contract. Members could also have valued experience in the type of work encompassed by the dispute.

The use of DRBs increases the likelihood of resolving disputes at the project level. Their use is not intended to replace any existing procedures. Rather, they are meant to supplement those procedures with open-mindedness.

Reporting to the U.S. DOT

At the completion of each contract with DBE usage, the Iowa DOT will continue requiring prime contractors to submit a "Certification of Actual Dollars Paid to DBE Firms" (Form 102116). The form will be used to verify the accuracy of subcontract information submitted prior to beginning work on a project.

Semi-Annually a report of "DBE Awards and Commitments and Payments" is completed and forwarded to FHWA. The report covering the first half of the federal fiscal year is due June 1, the report covering the second half is due December 1. The first part of this report provides information on actual dollars awarded and committed during the reporting period to DBE's, the second part, breaks those dollars down into ethnic groups receiving the dollars. The third and final part shows the Total original committed Dollars to DBE's on contracts completed over the

six month reporting period. The actual Dollars paid to DBE's after the contracts were completed is then entered, the actual Dollars paid should meet or exceed the Dollars committed.

Bidders List

For the purpose of calculating overall DBE goals, the Iowa DOT will create a bidders list. The list will include the following kinds of information about each DBE and non-DBE firm that submits bids on U.S. DOT-assisted contracts: name, address, DBE/non-DBE status, age, and annual gross receipts.

The bidder's list is compiled by using data stored in both the Iowa DOT's AASHTO Trns•port System and its Letting Award System (LAS). All requests for plans, proposals, and bidding documents, on each contract being let by the Iowa DOT, are recorded in the AASHTO Trns•port System. Any contractor submitting a bid would need these documents in order to prepare the quote or bid proposal.

Iowa Department of Transportation DBE Field Audit Review:

1. Project No. _____
2. Prime Contractor: _____
3. Work Type/Location: _____

Name of DBE Company: _____
 DEB Work Type/Contract Amount: _____

Question	Response
1. Name of DBE Supervisor	
2. Who orders materials?	
3. Is DBE equipment owned or leased?	
4. If leased, from whom?	
5. Brief description of the work being performed.	
6. Are number of DBE employees sufficient for the work being performed.	
7. Visual Inspection:	
a. Is work being performed in accordance with the specifications?	
b. Is any assistance being given to the DBE. If yes explain.	
8. Does the delivery invoices (if available) name the DBE as the purchaser?	

Remarks:

 (Signature and Title) (Date)

 (FHWA Reviewer and Title) (Date)

EMERGING SMALL BUSINESS (ESB) PROGRAM

General Provisions

Purpose

The ESB Program is intended to provide assistance to eligible small businesses, which could not otherwise participate successfully in the competitive process for award of Iowa DOT contracts for construction work, to enable such businesses to gain the knowledge, experience and resources needed to participate on their own in the competitive process for such contracts, thereby increasing competition and lowering the cost to the public for such work.

Applicability

These rules determine the approval, denial, suspension and revocation of eligibility for ESB status.

Iowa DOT will provide certain development assistance tools to increase the opportunity for participation in designated Iowa DOT construction projects by all ESBs that meet the criteria and requirements. Development assistance available to ESBs will be provided through the Iowa DOT Supportive Services Program for DBE and ESB contractors.

Definitions

The following definitions shall apply to terms used in The ESB Program:

1. **Small Business:** Any enterprise which is located in the state of Iowa, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than three million dollars computed as the average of the three preceding fiscal years.
2. **Affiliates:** Affiliate companies that have any individual who is an officer, director, or partner in both companies, or if one or more person or entities own or control 20 percent or more of the stock of both companies.
3. **Bid:** The offer of a contractor, on the prescribed bid proposal form, to perform the work and to furnish the labor and materials in conformance with the invitation for bids at the prices quoted.
4. **Business:** A sole proprietorship, partnership, corporation, or any other legal entity authorized by law to perform construction work on Iowa DOT projects in Iowa. For the purposes of the eligibility requirement contained in Chapter 3(II)(2)(f) of these Rules, the term "business" shall also be construed to mean any principal of the business.
5. **Business Development Plan:** A plan for growth and development of the business. The plan will be developed by the ESB with the assistance and approval of the Iowa DOT

ESB Administrator. The plan will identify specific training that the ESB must complete during the time period identified in the plan in order to develop the necessary skills and resources to obtain and perform work on projects.

6. Iowa DOT: The Iowa Department of Transportation.
7. Construction: Building, altering, repairing, improving, or demolishing work as described in a project let by the Iowa DOT.
8. Contractor: Any individual, partnership, corporation, joint venture, company, firm, association, or any other legal entity contracting with, or intending to contract with, Iowa DOT for performance of prescribed work.
9. Controlling Interest: Ownership of 51 percent or more of the business by one person, or ownership of the largest single portion of the business by one person if no one person holds 51 percent or more.
10. Eligibility determination: The process of review by the Iowa DOT ESB Administrator of a business' qualifications to determine whether the business is eligible for the ESB Program.
11. Emerging Small Business (ESB): A business that Iowa DOT has determined meets the eligibility criteria and requirements of the ESB Program.
12. Independent business: A business that is not an affiliate any other business.
13. Principal: A sole proprietor, a general or limited partner, a person who owns 25 percent or more or a controlling interest, a director, or an officer of the business.
14. Supportive Services: Development assistance tools described in the Iowa DOT Support Services Program for DBE and ESB contractors (Attachment B).

Eligibility Determination

Application Requirements

A business that desires to take part in the ESB Program must file an application for eligibility determination with Iowa DOT. The business must submit a complete application to Iowa DOT not less, than 60 calendar days prior to the date the business desires to participate in the ESB Program.

The business must obtain the application forms and a copy of the ESB Program from Iowa DOT. The business must complete and, if necessary, supplement the application forms to provide all information necessary for Iowa DOT to determine whether the business is eligible for the ESB Program.

The applicant shall provide the following information in the application:

1. The name, telephone number, address, and legal status (sole proprietorship, partnership, corporation, etc.) of the business seeking ESB eligibility.
2. The name, address, and telephone number of the registered agent of the business, if the business is a corporation.
3. The names, addresses, and telephone numbers of all principals of the business, and a listing of other businesses in which such persons have been or are currently principals.
4. The names, addresses, and telephone numbers of all persons or legal entities which own any interest in the business and affiliates and subsidiaries of the business, if any, and the percentage of ownership held by each.
5. A notarized document, signed by the owner or manager of the business, which reports the gross income for the business for the previous three years, if the business has been in existence for that period. If the business has not been in existence for the previous three years, then a document indicating the total gross income of the business for that period. If the business is a new business with no income earned to date, it must so certify on the form provided by Iowa DOT for that purpose.
6. A statement as to whether any principal or owner of the business has either been debarred or convicted of bid related crimes or violations within the past six years in any state or federal jurisdiction, or is under notice of intent to debar in any jurisdiction, and the current status of any such principal or owner and debarment.
7. A statement in which the business identifies all of its current resources, experience, education, training, capability, managerial skills, and the qualifications of its personnel;
8. A statement in which the business identifies:
 - a. specific areas where it needs assistance, including but not limited to work performance, contract skills, resources, and experience; and
 - b. specific development assistance tools authorized by the Supportive Services Program which can provide help to the business in successfully obtaining and performing work on Iowa DOT construction projects.

Eligibility Determination Procedure

The following procedure shall govern Iowa DOT approval or denial of ESB eligibility:

1. The business shall submit the application and supporting information to the Iowa DOT ESB Administrator. The business shall answer any questions the Iowa DOT ESB Administrator may have concerning the application information. The business shall provide all additional information requested by Iowa DOT as soon as possible. The ESB application will not be considered complete until all questions of the Iowa DOT ESB Administrator relative to the application have been answered to the satisfaction of Iowa

DOT. The business shall have one year from the date of the initial application to provide the additional information needed to complete the application. Iowa DOT will not be required to take any action concerning an incomplete application.

2. Iowa DOT will approve or deny an initial or renewal application for ESB eligibility status based upon all the terms and conditions of these Rules, including the following criteria:
 - a. The business must be an independent business.
 - b. The business must meet the definition of a small business.
 - c. The business, and all principals or owners must not be an affiliate of any other highway construction business.
 - d. Eligibility is limited to businesses performing construction work. Suppliers, manufacturers, truckers, consultants, and brokers are not eligible.
 - e. The business must not have made false, deceptive, or fraudulent statements in the application for ESB eligibility or in any other information, statements, or documents submitted to Iowa DOT.
 - f. The business must not have been in the ESB Program for longer than a maximum five calendar year period. The five year eligibility period shall commence with the date of Iowa DOT approval of the initial application of the business to enter the program and shall terminate five consecutive calendar years from that date, regardless of the then current eligibility status of the business.
 - g. The business must commit in writing to complete the Business Development Plan and participate in the Supportive Services Program.
 - h. The business, or any principal or owner of the business, must not have been debarred or convicted of bid-related crimes or violations within the past six years in any state or federal jurisdiction, or be under notice of intent to debar in any jurisdiction.
3. The Iowa DOT ESB Administrator shall give written notice of approval or denial of a completed ESB application, including renewals, promptly after receipt of such application.
4. If Iowa DOT approves an application, the term of ESB eligibility shall be for a period of one calendar year from the date of approval. ESB eligibility may be renewed for additional one-year terms, up to the maximum of five consecutive years from the date of initial Iowa DOT approval of an application for ESB status, subject to the requirements of the ESB Program.

Eligibility Maintenance

After Iowa DOT has approved an initial application for ESB status, the ESB must submit a separate application for renewal of ESB status on an annual basis to maintain eligibility. The

renewal application must comply with these requirements, and must be submitted to the Iowa DOT ESB Administrator not later than 60 calendar days prior to the expiration of the ESB's annual eligibility period. The application for renewal shall also contain:

1. A form, provided by Iowa DOT, describing completion of the previous year's Business Development Plan.
2. A commitment in writing to complete a new Business Development Plan in the renewal year.

Termination of ESB Status

ESB status shall be terminated by:

1. The ESB exceeding the annual gross income limitation of a small business.
2. The passage of five consecutive calendar years since initial ESB determination, as defined.
3. The ESB's failure to meet all requirements and criteria of the ESB Program, as determined by Iowa DOT.

Iowa DOT may review the ESB eligibility status of a business at any time. If the ESB status of a business is terminated, the business may reapply for ESB eligibility status for any remainder of the maximum five consecutive calendar year eligibility period, unless it exceeded the income limitation of a small business. No reinstatement of ESB eligibility will be permitted after termination for exceeding the income limitation.

Denials, Suspension, and Revocation

Denial of ESB Eligibility

Iowa DOT may deny an application for ESB eligibility if Iowa DOT determines that the applicant business does not meet all of the requirements and criteria of the ESB Program. Iowa DOT shall send the business a written notification of its determination.

Revocation of ESB Eligibility

1. Iowa DOT may revoke ESB eligibility if the Iowa DOT ESB Administrator determines that:
 - a) The business is declared in default of or commits a willful violation of any Iowa DOT contract or subcontract.
 - b) The business has made false, deceptive or fraudulent statements on its application for ESB eligibility, or in any documents submitted on a Iowa DOT project including prequalification, or in any other information submitted to Iowa DOT, or in the course of any determination or hearing associated with ESB eligibility.

- c. The business commits any action or omission which evidences a lack of business integrity or honesty in performing public projects.
- d. The business does not meet all requirements and criteria of the ESB Program at all times.

SUPPORTIVE SERVICE PROGRAMS OFFERED BY THE IOWA DOT

Iowa Department of Transportation (Iowa DOT) will provide supportive services to all certified Disadvantaged Business Enterprises (DBEs) and Emerging Small Businesses (ESBs). These services include but are not limited to:

1. Provide a toll free telephone number for DBEs and ESBs to call Iowa DOT for assistance.
2. Publish and mail a Weekly Letting Report, which list each project to be let the following month with project number, location, item quantities and the DBE goal (if applicable).
3. Provide in person or by mail free plans and proposals for all projects requested by each DBE and ESB.
4. Provide technical assistance and answers to questions about projects to be bid.
5. After award of contracts, provide by mail to each DBE, a list of those projects that they were used to fulfill a commitment.
6. Verify that each and every DBE subcontract request form meets or exceeds the amount committed at the time of bid
7. Provide technical assistance during the construction phase of a project.
8. Provide technical assistance to help DBEs and ESBs secure bonding and bank financing.
9. Provide workshops and seminars in locations throughout the state (including but not limited to:

Scott County Community College that have available 16 Small Business Centers throughout the state which include a nine (9) week, and an eleven (11) week Fast Track Training Course; and Des Moines Area Community Colleges) on plan reading, estimating, cost accounting, business plans, insurance, financing, equipment and other requested topics.

10. If necessary, provide referrals to U. S. DOT bond and loan programs, all SBA programs and services and local resources.

11. Provide information and technical assistance, including alternate dispute resolution, to DBEs and ESBs who are having a problem with a prime contractor or with Iowa DOT.
12. Provide a list of prime bidders on upcoming Iowa DOT projects.
13. Provide business counseling and technical assistance to DBEs and ESBs through the use of our DBE Consultant, EEO Section supportive services, or Senior Engineering Technicians.
14. Provide field technical assistance to DBEs and ESBs through the Office of Contract's Senior Engineering Technicians (External Civil Rights Section) and retired Iowa DOT Construction Technicians.
15. Provide financial assistance totaling up to fifty percent (50%) of the initial cost of services for certified DBEs, requiring a Certified Public Accountant (CPA) to a reviewed Financial-Experience-Equipment Statement to become prequalified to bid as prime contractors on Iowa DOT projects.
16. Provide technical assistance and support to DBEs and ESBs with the possible assistance of a Business consultant. Services shall include but not be limited to: office visits, site visits, seeking out new DBEs and ESBs to enter the program, and attending meetings with DBEs and ESBs, if requested.
17. Provide the Construction Manual, Standard Specifications for Highway and Bridge Construction books (in English and/or Metric), and other construction materials and manuals at no cost to DBEs and ESBs.
18. Provide assistance, when requested by DBEs and ESBs, concerning prompt payment on projects let by Iowa DOT.
19. Participation by DBE firms in Iowa DOT's Expanded Supportive Services Programs will be optional and limited to the first five- (5) years in the program.
20. Participation by ESB firms in Iowa DOT's Expanded Supportive Services Program shall be limited to five (5) years. The first two- (2) years of participation shall be mandatory; the last three- (3) years shall be optional.
21. Provide self-study plan reading courses used by Iowa DOT inspectors at no cost to DBEs and ESBs.
22. Provide financial assistance totaling up to fifty percent (50%) of the cost of securing bonding.

Contractors with History of Utilizing DBE's Good Faith Efforts (GFE) Program

Bidders that have demonstrated through prior usage their ability to utilize DBE's on Contracts let by the Iowa DOT, will be assumed to have made a good faith effort to achieve the DBE goal.

The evaluation of prior usage of DBE firms will be from Contracts let by the Department during the 24 month period previous to the letting.

Usage is calculated by:

1. One point for each percentage of subcontracted dollars awarded to a DBE subcontractor.
2. An additional point for each percentage going to a DBE/ESB.

For a Contractor to be eligible they will need enough points to exceed 67% of the Departments Annual DBE Goal. This is based on the assumption that 2/3 of the goal is achieved by Race Conscious means. They must also have been awarded at least two contracts during the period being reviewed. They must also have been awarded a dollar amount at least twice the size of the contract under consideration.

These points are based upon signed subcontract request forms that have been submitted to the Office of Contracts up until five days prior to each letting. The list of eligible firms will be calculated four days prior to the letting. Contractors that are eligible are listed on-line at Bidx.com. All Contractors, regardless of their eligibility, can call the Office of Contracts during this period to find out their status.

Setting Contract Goals

DBE Goal Setting Committee

Seven weeks prior to the letting, a goal setting meeting is held. Those persons attending the goal setting may include the Civil Rights Administrator, the Proposal Engineers, DBE contractors and members of the Associated General Contractors. Representatives from FHWA and Materials Suppliers may also attend.

This is an open meeting and anyone with an interest in the process or in a specific project is welcome to attend.

Criteria for Setting Highway Construction Contract Goals

The following criteria are used as a guide in setting DBE goals.

- Set only on US DOT-assisted proposals.
- Try to attain the dollar amount of DBE usage represented by the overall goal on all contracts let by the Iowa DOT. The percentage of DBE accomplishments, tracked year-to-date from prime contracts awarded to DBE contractors and subcontract request forms, will be used to adjust the total amount of DBE goal set per letting. Contract goals will be set to make up the difference in the amount of DBE usage that can be obtained through race neutral means and the overall goal.
- Set the total dollar amount of the DBE goal on an individual proposal greater than \$10,000.
- Balance DBE goals work between industries such as structures, paving, asphalt, and grading.
- Balance DBE goals work between county, city, and state projects.
- Maintain a balance of DBE goal work across the state so all-geographical locations share in the DBE Program.
- Identify individual items that are normally subcontracted. Iowa DOT staff will share the approximate percentage of the overall contract estimate for the Committee to review.
- Consider availability of DBE contractors who are ready, willing, and able to quote the work available to subcontract.
- Assure at least 3 ways to make a DBE goal. This may be three or more items that can be subcontracted to DBE contractors to meet the goal or three or more DBE contractors ready, willing and able to quote on the available subcontract work. A goal should never be set on a proposal so that there is only one way available for bidders to meet that goal.
- Set DBE goals for individual proposals from 2.5% to 15.0%, in 2.5% increments.
- Evaluate Major Change Orders on existing Contracts to determine potential DBE usage.

DBE CERTIFICATION STANDARDS

Burden of Proof

Each applicant firm has the burden of demonstrating to Iowa DOT by the preponderance of evidence that the firm is eligible for certification. Preponderance of evidence means the greater weight in the areas of group membership, ownership, control, and social and economic disadvantage.

Applicants who are members of a presumed group do not have to prove social disadvantage but must explain how they have been socially disadvantaged and sign a sworn affidavit attesting to this. The disadvantage must pertain to education, employment, business or access to capital or credit, based on race, sex, color or national origin. Applicants who are not members of a presumed group have the burden of proving to Iowa DOT by a preponderance of evidence that they are socially and economically disadvantaged.

Eligibility Standards

Group Membership (§26.63): Each applicant who is not readily identifiable as a group member must demonstrate by a preponderance of the evidence that he or she is a member of a presumed group. The applicant must be regarded as a group member by both group members and the general community. The group membership and recognition must be of long standing and not just for a short time before the application.

Business Size (§26.65): An applicant firm including all affiliates must meet SBA standards of 13 CFR Part 121 appropriate to the type of work the firm seeks to perform. In any federal fiscal year, if the firm and all affiliates have gross receipts over the firm's previous three fiscal years, in excess of the current SBA Standard of \$19.57 million. the firm is not eligible to be a DBE. A congratulatory letter of completion will be sent to the firm.

Social Disadvantage (§26.67): Every applicant, who is readily identifiable, as a protected group member must submit a signed, notarized affidavit. The affidavit should describe how the person has been disadvantaged or discriminated against due to their race, sex, color or national origin. The disadvantage should pertain to access to education, capital, employment or business opportunities. Applicants who are not protected group members must provide proof of disadvantage.

Economic Disadvantage (§26.67): Each qualifying applicant must have personal net worth (PNW) of less than \$750,000, excluding the value of the primary residence and the value of their ownership in the applicant company. The PNW statement must have a signed, notarized affidavit swearing to the truth of the figures submitted. If the qualifying applicant's personal net worth exceeds \$750,000, the owner is no longer disadvantaged and the firm is not eligible to be a DBE. A congratulatory letter of completion will be sent to the firm.

Ownership (§26.69): To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. The ownership must be real, substantial and continuing. The contributions of capital or expertise to acquire ownership must be real and substantial.

Examples of unqualified contributions are:

1. A promise to contribute or an unsecured note.
2. A gift.
3. Un-renounced joint assets.
4. Transfers from non-disadvantaged individuals.

Examples of qualified contributions are:

1. A legal settlement, with court documents.
2. Inheritance after a death.
3. Legally transferred assets from a spouse, with court documents.
4. Personally held assets.

Control (§26.71): The socially and economically disadvantaged owners must possess the power to control daily operations and long-term destiny. The owner must hold the highest office, must control the board of directors or be the controlling partner. The disadvantaged owner must have technical competence and experience in the field of operations as well as managerial expertise. Office management, bookkeeping, or clerical expertise is not sufficient to demonstrate control. The owner cannot have other employment or businesses that conflict or require attention during normal business hours. For businesses where other family members are owners or employees, the disadvantaged owner must demonstrate clear control. A franchise is eligible so long as there is no affiliation, restrictions or common management.

Independence (§26.71): An independent business does not rely on another firm for personnel, facilities, equipment, capital or other resources. The firm cannot be dependent on a former non-disadvantaged owner. The firm cannot have exclusive or primary dealings with another firm or dealings outside normal industry practice.

Cooperation (§26.73): Every applicant and certified DBE firm shall cooperate fully with all Iowa DOT requests for information. Failure to do so in a timely manner is ground for denial or removal of eligibility.

Commercially Useful Function (CUF): All new firms applications are quickly examined for recording purposes, this data includes company name, owner, address, and work type. If it is determined at that time that the work type the applicant performs would obviously preclude them from being able to perform work on a USDOT funded contract, the application will be returned and not considered for certification.

Iowa DOT Procedures

Objectives: Iowa DOT's commitment is to maximize contracting opportunities to bona fide DBE firms and DBE majority controlled joint venture firms. These must be small businesses owned and controlled by one or more socially and economically disadvantaged persons.

Definitions: A socially disadvantaged person is one who is a U. S. citizen or legal resident, has been subject to discrimination in education or business, has documented such discrimination and is:

1. Black American
2. Hispanic American
3. Native American
4. Asian-Pacific American
5. Subcontinent-Asian American
6. Woman
7. Others determined to be disadvantaged

An economically disadvantaged person is one who is a member of one of the above protected groups and who has a personal net worth of less than \$750,000.00 excluding the value of one personal residence and the value of the ownership in the applicant firm. See Appendix D of 49 CFR Part 26.

An eligible firm is an existing small business (in business over 1 year) at least 51% owned and controlled by one or more socially and economically disadvantaged persons.

Application: An applicant must complete Iowa DOT Form 650180, an eight page application and enclose all required documents on the checklist. All incoming applications are checked for completeness and compliance with business size and ownership. Complete applications will receive a decision letter within 90 calendar days. Incomplete applications may be returned.

Document review: Each complete application is assigned to an Iowa DOT DBE specialist for an in-depth review. The specialist will evaluate the operational and managerial control through corporation, partnership, and leasing documents review the financial statements, personal and business tax returns, verify proof of ownership, resume of experience and the firm's work experience.

On-site interview: An interview is scheduled with the owner(s) at the firm's office. The DBE specialist uses Iowa DOT's on-site review questionnaire and supplements it with areas of concern specific to the firm.

Job-site review: If the firm has any type of job in progress, the DBE specialist will visit the job site, interview employees, look at equipment and speak with other contractors or inspectors at the job site.

Evaluation: At the completion of the review, the DBE specialist will evaluate all information and conduct any final verification. The initial recommendation of the specialist is the first step in the team process. The file then goes to the certification team, which is comprised of the Civil Rights Administrator, Office Director and Assistant Office Director of the Office of Contracts,

two DBE Specialists, and two Senior Engineer Technicians. If there are any questions, uncertain issues, a denial, or removal of eligibility, the team meets to discuss and perhaps request further investigation. If all concur, a denial letter is sent. If necessary, the file may be returned to the specialist for further work.

Certification: When a firm is certified, they will be notified in writing, added to the DBE directory and mail list and be given an opportunity to request specific support services to meet their needs. Every 3 years the firm must submit a new application and required supporting documentation to verify their continued eligibility.

Annual affidavit: Each year by an assigned date (April 15) every certified DBE firm must submit a signed, sworn notarized statement that the firm meets the size standard and has no changes in ownership or control that would affect eligibility. The statement must be accompanied by supporting documentation, which may include personal tax return, personal financial statement, the company tax return and the company financial statement. Failure to do so by the assigned date will result in an intent to decertify the firm for failure to cooperate.

Decertification Process

The following dates and corresponding lengths of time in days shall apply to all forms of Decertification, i.e. failure to cooperate, voluntary withdrawal.

February 15: Mail DBEs the initial request for information - Regular Mail.

April 1: (45 days) Mail a reminder notice to firms who have failed to provide the requested information - Regular Mail.

April 15: Deadline for information.

April 16: Warning Notice.

Firms that have not sent the documentation or been granted an extension will be sent a warning notice of the Department's intent to remove DBE certification for "failure to cooperate" if required information is not received within fifteen (15) calendar days from the receipt of the notice - Certified Mail.

May 1: Notice of intent to Decertify.

Firms that have not sent in the require documentation or been granted an extension will be sent notice of the Department's intent to remove DBE certification for "failure to cooperate". As required by 49 CFR, Part 26.87 (d), this notice must inform the DBE of the opportunity to request an appeal hearing with the Department's DBE Appeal Committee. As provided by the Department's Policies and Procedures Manual (PPM No. 300.18), the DBE firm ahs fifteen 915) calendar days form the date this notice is received to request the hearing - Certified Mail.

May 15: Notice of Decision.

If there is no request for appeal, or if an appeal is upheld, the DBE firm will be sent a notice of removal of certification for “failure to cooperation”. As required by 49 CFR, Part 26.87 (g), this notice must inform the firm of the consequences of this decision and the availability of an appeal to U.S. DOT. Firm is removed from the Directory - Certified Mail.

Note: At least one (1) extension may be granted upon written request filed before the April 15 deadline.

Denials

When the application review team recommends denial of a new applicant, the applicant firm is notified in writing, sent certified mail. The letter explains the reason for denial and specifically references the evidence to support each reason for denial. The applicant firm has fifteen (15) calendar days from receipt of the notice to appeal the decision to the Iowa DOT

A denied firm may not reapply for a period of 12 months from the date of the denial letter. The firm may appeal in writing to Iowa DOT DBE Appeal Committee and if the denial is upheld by the Committee they applicant can appeal to the U. S. Department of Transportation.

Removal of Eligibility

Complaints: Iowa DOT will accept written complaints from any person alleging that a currently certified DBE firm is ineligible and stating specific reasons for ineligibility. Anonymous or general complaints will not be accepted. The Iowa DOT will thoroughly investigate the complaint and if reasonable cause is found, will notify the DBE and the complainant in writing.

Iowa DOT Initiated: When Iowa DOT has reason to believe a certified DBE firm is ineligible, the DBE will be notified of the finding in writing. The letter will state the reason and cite the evidence.

USDOT Initiated: The USDOT may notify Iowa DOT of reasonable cause to find a certified DBE firm to be ineligible. The Iowa DOT must immediately initiate removal procedures.

Hearing: When a DBE firm receives written notice of intent to remove eligibility, the firm has 15 days to request an informal hearing to refute the allegations. The Iowa DOT must prove by a preponderance of evidence that the firm is ineligible. The Iowa DOT will provide a Tape Recorder to record the hearing and prepare a transcript. The decision-maker for the appeal hearing will be the Iowa DOT Appeal Committee.

Decision: The decision to remove eligibility will be based on circumstances that have changed since certification, evidence that was not available at certification, evidence that was concealed or misrepresented, a change in certification standards or a documentation of erroneous facts.

Notice of Decision: Following the decision, the Iowa DOT will notify the DBE firm in writing of the decision and any consequences. The firm remains an eligible DBE throughout the investigation and hearing process. The removal of eligibility becomes effective on the date of the decision letter.

Effects: The prime contractor will receive DBE credit for all DBE work that is currently under contract. If there was a bid commitment but no written subcontract was executed yet, the prime contractor must make a good faith effort to find another DBE firm for all or part of the committed amount.

US DOT Appeals

Who May Appeal: Any applicant who has been denied certification by the Iowa DOT or a previously certified firm whose eligibility was removed by the Iowa DOT may appeal. Any complainant in an ineligibility complaint to the Iowa DOT may appeal if the Iowa DOT does not remove eligibility and they believe the finding to be in error.

Where: Send appeals to:

Department of Transportation
Office of Civil Rights
400 SW 7th ST Room 2401
Washington D. C. 20590

When: The complete appeal must be filed within 90 days of the decision letter date.

What: The appeal must contain a narrative as to why the Iowa DOT decision was in error and documents to show or prove the error. If you are an applicant who was denied or a DBE whose eligibility was removed, you must disclose in the appeal all other denials or rejections within one year of the date of the appeal. Failure to do so is a failure to cooperate.

Recipient: The Iowa DOT will provide to USDOT the administrative record and hearing transcript within 20 days.

Record Keeping Requirements

The Iowa Department of Transportation will provide inspection and supportive services on highway construction projects with DBE participation, part of this service is maintaining accurate records on the activities and progress of the project while also monitoring the quality of materials and workmanship being incorporated into the project. To insure prompt and accurate payment for work successfully completed, all project information is kept daily in the field book, this should include working day reports, item progress, payment vouchers, field test results, etc.

DBE GUIDELINES

For Local Public Agency (LPA) Consultant and Locally Let Federal-aid Contracts

NOTE: Any LPA or Consultant that awards a Federal-Aid contract must verify they have an approved DBE Program of their own, or they have adopted the Iowa DOT's DBE Program.

Introduction

The Disadvantaged Business Enterprise (DBE) program was created to ensure nondiscrimination in the award and administration of United States Department of Transportation (U.S. DOT) assisted contracts. It seeks to create a level playing field for minority and women firms to compete, and to help remove barriers to participation in these contracts. It also aims to help DBE firms grow, so that they may compete successfully outside of the DBE program. It applies only to contracts that include U.S. DOT funds. General regulations for the program are set forth in 49 CFR 26.

The Iowa Department of Transportation (Iowa DOT) is responsible to certify DBE firms, ensure that contract opportunities are provided for DBE firms, and submit a semi-annual DBE report to the Federal Highway Administration (FHWA). For LPA federal-aid projects, the LPA has the ultimate responsibility for determining contract goals and awards.

For the specific steps needed to address the DBE requirements on federal-aid consultant contracts, refer to Index No. 1. For the specific steps needed to address the DBE requirements on locally let construction contracts, refer to Index No. 9. The following general guidelines are intended to provide a framework for making decisions on how DBE participation should be addressed on both federal-aid consultant contracts and locally let federal-aid construction contracts. These indexes are found in the Project Development Information Packet.

Which Firms are Certified DBE firms?

The Iowa Directory of Certified Disadvantaged Business Enterprises is the official register of eligible DBE firms. This directory is available from the Iowa DOT, Office of Contracts, and is also available on the internet. Amendments to this directory are published monthly to coincide with the regular Iowa DOT contract lettings.

When Should a DBE Goal be Set?

DBE goals can only be set on federal-aid contracts. However, they do not need to be set on all federal-aid contracts. The federal regulations require each contract to be analyzed to determine the potential for DBE participation. Following are some issues the LPA should consider when deciding if a DBE goal should be set for a federal-aid contract.:

1. Availability of Firms: The availability of DBE firms, as identified in the Iowa Directory of Certified DBE firms, should be a primary factor in establishing a goal. Consulting firms may also be required to be on the Iowa DOT's list of prequalified consultants in order to receive a contract or subcontract.
2. Multiple ways to Meet a Goal: contracts that provide more than one opportunity to meet a DBE goal should be given consideration. For example, DBE firms are available to perform three different types of work on the contract; or three different DBE firms are available to perform a single type of work included on the contract.
3. Size of Contract and Subcontracts: The size of the estimated contract and subcontract amounts should also be given consideration. In general, larger contracts provide more opportunities for substantial subcontracts (i.e., those that exceed \$10,000). In contrast, small contracts often provide only very limited subcontract opportunities, or none at all. The Iowa DOT has developed the following ranges of estimated contract costs to assist the LPA in determining if a DBE goal should be set:
 - Less than \$100,000 - These contracts generally do not provide subcontract opportunities that exceed \$10,000. Therefore, DBE goals are usually not set on these small contracts.
 - Between \$100,000 and \$250,000 - These contracts usually have subcontract opportunities that would exceed \$10,000. Therefore, DBE goals are usually set for these contracts, provided the contract contains work that is normally done by available DBE firms.
 - Contracts with estimated costs greater than \$250,000 - These contracts almost always present sufficient subcontract opportunities. Therefore, these contracts should always be considered for DBE goals. The Office of Contracts should be consulted for information on availability of DBE firms to perform work on the contract.

What Size DBE Goal Should be Set?

The availability of DBE firms and the options available for the prime contractor to meet the DBE goal should be considered in setting the size of the DBE goal. The items of work on the proposed contract should also be reviewed. Goals on Iowa DOT let contracts are normally established in a range from 0% to 15%, in 2.5% increments. The Iowa DOT recommend use of similar procedures for LPA consultant and locally let construction contracts.

Advertising for DBE Participation

Opportunities to include DBE firms in the contract should be made even if not DBE goal is set. This can be done by notifying available DBE firms of the upcoming contract and by encouraging the prime contractor or consultant to seek out DBE firms to use as subcontractors or subconsultants.

For consultant contracts, the LPA should consider including the following phrase in the Request for Proposal (RFP) when no DBE project goal was set: “No Disadvantaged Business Enterprise (DBE) goal has been set on this contract. However, use of DBE firms is encouraged.”

Demonstration of Good Faith Efforts by Contractors or Consultants

All firms submitting a bid or proposal for contracts with a DBE goal should provide with their bid or proposal sufficient documentation of their good faith efforts to achieve the goal. This information should include: the names of the DBE firms contacted, a list of those DBE firms who submitted a quote or proposal to perform work on the contract, and an explanation of the reasons why any DBE firm that submitted a quote or proposal was not used. The documentation submitted with the bid or proposal should be sufficient for the LPA to determine the reasonableness of the contractor’s or consultant’s good faith effort.

LPA Review of Contractor or Consultant Good Faith Efforts

If the contractor or consultant has met the DBE goal, no review of their good faith effort is required. But if a contractor or consultant did not meet the established DBE goal, the LPA must review their good faith efforts before a contract can be awarded to such a contractor or consultant.

However, the determination of which contractor is the low bidder (or in the case of professional services, which consultant is best qualified) should be made **without regard** to whether or not the contractor or consultant achieved the DBE goal. The contractor’s or consultant’s good faith effort to meet the DBE goal is evaluated only **after** it is determined whom the contract would otherwise be awarded to.

To demonstrate a good faith effort, the contractor or consultant must take all steps that would reasonably be expected to achieve the DBE goal. If the contractor or consultant exceeded 80% of the average DBE commitment of other contractors or consultants who submitted a proposal for the contract, this is considered a good faith effort, and no further review is required.

If the contractor’s or consultant’s DBE commitment was less than 80% of the average noted above, the LPA must make a fair and reasonable judgment as to whether the contractor or consultant made an adequate good faith effort to meet the DBE goal. The LPA should consider the quality, quantity and intensity of the efforts documented by the contractor or consultant to demonstrate an active and aggressive effort to meet the goal. Guidelines to assist the LPA in making this judgment are listed below:

- Past relationships between a prime and a DBE subcontractor or subconsultant may be considered in evaluating good faith efforts, with certain restrictions. A prime may elect not to use a particular DBE subcontractor or subconsultant because of demonstrated and documented difficulties in past working relationships. However, a prime may not elect to avoid a DBE subcontractor or subconsultant solely because they have established a relationship with a non-DBE firm for similar services. One objective of the DBE program is to provide opportunities for DBE firms that they otherwise may not have had. Continuing to use non-DBE firms solely because of familiarity interferes with that objective.

- Proximity to the work site may not be considered as a reason to not select a DBE subcontractor or subconsultant. It is the responsibility of the subcontractor or subconsultant to perform the work. The subcontractor or subconsultant should have the option to travel or take other measures to adequately perform, if they are willing to do so.
- Incompatibility of electronic data systems may be considered when selecting a subcontractor or subconsultant. Primes and subs must have the ability to communicate efficiently and accurately in order to complete the work. However, efforts to overcome these differences must be made similarly for both DBE and non-DBE firms.
- Additional cost that might be associated with utilizing DBE firms may be used as a reason to not select a DBE firm. However, it is recognized that the DBE program will have some costs in order to meet the federal government's objective for the program, therefore, it is expected that the contractor or consultant may have to charge more in order to achieve the DBE goal.

Disputes Concerning Good Faith Efforts

The federal regulations require the LPA provide an opportunity for administrative reconsideration to firms that will be denied a contract due to lack of good faith effort to achieve the DBE goal. Administrative reconsideration involves providing the contractor or consultant an opportunity to present their case as to why they were unable to achieve the DBE goal.

The administrative reconsideration meeting must be conducted with individuals who were not involved in the original decision to deny the contract award. The **sole** responsibility of the individuals involved in the administrative reconsideration is to confirm that the contractor or consultant did not make reasonable effort to achieve the DBE goal. The individuals conducting the administrative reconsideration cannot revise the project DBE goal, or allow the contractor or consultant to revise the amount of their DBE commitment. For LPA federal-aid projects, the administrative reconsideration will be conducted by the Iowa DOT.

Good Faith Efforts when a DBE Firm is Unable to Perform Work

If a DBE is unable to perform the work for which they were committed to perform, the prime contractor or consultant should notify the LPA and the Iowa DOT. The contractor or consultant must make a good faith effort to replace the dollar amount of the lost DBE commitment. No monetary sanction will be imposed if the DBE firm is unable to perform for reasons beyond the control of the prime contractor or consultant. Monetary sanctions should be imposed if the prime contractor or consultant intentionally fails to meet their original DBE commitment.

DBE Reporting Forms

For LPA consultant and locally let federal-aid contracts, two forms are used to report the use of DBE firms. The Iowa DOT compiles the information submitted on these forms into a semi-annual report to FHWA that documents DBE usage on all federal-aid contracts in Iowa. These forms are briefly described below. Instructions are included with each form. The procedures for completing and submitting these forms are described in Index No.1 and Index No. 9 for consultant and locally let federal-aid contracts, respectively. These index's are found in the Project Development Information Packet.

DBE Award / Commitment Information (Form 517010): Available in Microsoft Word or PDF format, this form is submitted by the LPA when requesting FHWA authorization for any federal-aid consultant contract; or upon award of any locally let federal-aid construction contract, even if no DBE goal was set or no DBE awards or commitments were included in the contract. This form documents the amount of DBE participation planned for each federal-aid contract.

DBE Payment Information (Form 517011): Available in Microsoft Word or PDF format, this form is submitted by the LPA upon completion of any federal-aid consultant or locally let federal-aid construction contract, even if no DBE goal was set or no DBE awards or commitments were included in the contract. This form documents the actual amount paid to any DBE firms used in the completion of the contract.

ON-SITE REVIEW FORM

I. GENERAL INFORMATION

1. Authorized Name of Firm _____

2. Street Address of Firm _____

3. Address _____ City _____ State _____ Zip Code _____

4. Contact Person _____ Phone No. _____

FAX No. _____ Cell Phone No. _____

5. Person(s) Being Interviewed

Name	Address	Title
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_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Type of Firm

Sole Proprietorship Partnership Corporation LLC

7. Description of Work Performed

8. (a) Date Business was Established _____

(b) List Other Business Names Previously Used

9. Identification Numbers and Certification

(a) Federal Identification Number _____

(b) If Firm SBA 8(a) Certified? _____ Yes _____ No
(If yes, attach a copy of current certification)

(c) If firm DBE, MBE, or WBE certified by another Federal, State, or Local agency?

_____ Yes _____ No
(If yes, attach a copy of current certification)

10. Has this firm or any of its owners, members of the Board of Directors, Officers, or management personnel ever been denied certification or been decertified as a DBE, MBE, or WBE by any agency in any state?

_____ Yes _____ No (If yes, indicate state(s), agency(s), and date(s))

(Provide a copy of the denial or decertification letter.)

11. Does this firm have any M/W/DBE applications pending in other States or Agencies?

_____ Yes _____ No (If yes, please list.)

II. FINANCIAL INFORMATION

12. (a) Provide the following banking information:

Name of Financial Institution _____

Officers _____

Address and Phone _____

(b) If you have established bonding capacity, identify agent, surety, and limit.

Name _____

Address _____

Phone _____

Bonding Limit: Aggregate _____ Project _____

(c) Indicate the source of investment capital for disadvantaged group members or women who have an ownership interest in the business. What is the percentage of ownership of each, value of investment, and date acquired?

(1) _____ Personal Savings

(2) _____ Joint Savings - Identify joint account holders

(3) _____ Proceedings from sale of real estate or personal property.
(If property sold in past 6 months, indicate date the sales contract was executed.)

(4) _____ Gift

(5) _____ Personal Loan

(6) _____ Jointly owned property used to collateralize loans

(7) _____ Other (specify)

(d) If the source of capital is a gift, state the following:

Name of Source(s) _____

Date of Gift(s) _____

If gift is conditional, state conditions _____

(e) Identify all sources, amount, and purposes of money loaned to firm, including name of person securing loan, if other than owner. Provide copies of all loan agreements.

13. Identify three contracts your firm has been awarded and has completed. Indicate the following.

Name of Owner or Prime Contractor

Dollar amount of contract

Type of work involved in contract

(a) _____

(b) _____

(c) _____

III. PERSONNEL/MANAGEMENT

ETHNIC CODES

Woman	W
Disadvantaged:	D
Black American	B
Hispanic American	H
Native American	N
Asian-Pacific American	P
Asian-Indian American	I

14. List names of principals who are permanent residents of the U.S. (Indicate ethnic code letters.)

_____ ()
 _____ ()
 _____ ()
 _____ ()
 _____ ()
 _____ ()

15. List the names of all supervisory personnel. (Indicate ethnic code letters.)

_____	()
_____	()
_____	()
_____	()

16. If applicable, identify individuals or firms who provide any contracted services to your firm: (e.g. accountant, attorney, computer services, etc.)

_____	()
_____	()
_____	()
_____	()

17. List current licenses/permits held by your firm (e.g. Contractor, Engineer, Architect, Interstate Commerce, etc.)

Individual's Name	License Name	Date of Expiration	License Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

18. Submit work experience resume of each owner. (Please attach)

19. Identify the current Board of Directors. (Submit a work experience resume for each.)

Name	Address	Ethnic Code	Sex	Other Business Affiliation
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

20. (a) Do any employees of the firm perform a management or supervisory function for any other business?

_____ Yes _____ No

(If yes, identify by name, title, business, and function.)

- (b) Do any owners/employees of the firm own or work for other firms which have a business relationship with this firm?

(Relationships include: ownership interest, shared office space, financial investments, equipment leases, or personnel sharing.)

_____ Yes _____ No

(If yes, identify by name, title, business, and function.)

21. (TO BE COMPLETED FOR A SOLE PROPRIETORSHIP)

(a) Date established _____

(b) Is business registered? _____ Yes _____ No

List state, city, or town in which business is registered:

Date of registration _____

- (c) If title of business was purchased or received as a gift to the present owner, please complete the following:

Date title was transferred to present owner _____

Name of previous owners:

22. (TO BE COMPLETED IF FIRM IS A SUPPLIER)

(a) Indicate type of supplier

- Manufacturer Franchise
 Distributor Dealership
 Manufacturing Rep. Wholesaler
 Other (Specify) _____

(b) Does your firm stock the goods supplied to customers on proper owned or leased by the firm?

- Yes No

(c) Does your firm take ownership title to the goods supplied to customers?

- Yes No

(d) Does your firm insure goods that are supplied to customers? (i.e. against damage, theft, or fire)

- Yes No

(e) Is your firm normally required to acquire a performance bond for supply contracts with customers?

- Yes No

(f) In the event of dissatisfaction on the part of the customer, due to untimely delivery, damaged or defective goods, or failure to perform by your business, to whom does the customer have legal recourse?

- Your Business Manufacturer Other (specify)

Explain if customer has legal recourse to more than one party.

IV. OPERATIONAL BACKGROUND

23. (a) Equipment

List major pieces of equipment. Attach copies of current lease agreements, if leased.

Equipment	Model	Current Value
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Plant

Describe owned or leased warehouse, office, and yard. Attach copies of lease agreements for space rental.

Address	General Description	Square Feet	Current Value/ Amount of Rental
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(c) Do you rent space from another company? ____ Yes ____ No

If yes, list name of company _____

Name of principal owner(s) _____

QUESTIONS FOR DBE AUDIT

1. What equipment does your company own?
2. Can you provide proof of purchase?
3. What equipment or facilities are rented from other contractors?
 - a. Do you have a written lease or rental agreement?
 - b. If not, what is the hourly, weekly, or monthly rental rate?
4. Can you provide proof of payment for the leased equipment?
5. How many shares of stock have been issued by your company?
6. Do you have stock certificates showing your stock ownership?
7. What company underwrites your insurance?
8. Please provide names of all company employees, full and part-time.
9. May I see documents showing employment taxes paid on these employees?
10. Who makes up the Board of Directors of your company?
11. Please provide a copy of the company's by-laws.
12. Does your company owe money to a bank, other contractor, or other individual?
13. If so, what collateral did you use?
14. May I see copies of checks written on the company account?
15. May I see copies of deposit slips for bank deposits?
16. Who is eligible to write checks on the company account?
17. What proof do you have of check writing authorization?
18. Please provide copies of your payroll transcripts for projects worked this year.

