

## **CITY OF KOKOMO, INDIANA**

### **Disadvantaged Business Enterprise Program PLAN & POLICY 2021**

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**CITY OF KOKOMO, INDIANA**  
**Disadvantaged Business Enterprise Program - DBE**

**1-1 POLICY STATEMENT:**

The City of Kokomo (“City”) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (FTA/DOT), 49 CFR Part 26. The City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26.

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

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

The Human Resource Department will support and work with the individual department heads as the delegated DBE Liaison Officer(s). In that capacity, the Human Resource Department and the individual department heads will be responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Kokomo in its financial assistance agreements with the Department of Transportation.

City of Kokomo has disseminated this policy statement to the Board of Works and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on FTA/DOT-assisted contracts.

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BOW: Board of Works Secretary

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DATE

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BOW: Board of Works President

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DATE

## SUBPART A – General Requirements

### **1-2 Objectives:**

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of FTA/DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for FTA/DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in FTA/DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

### **1-3 Applicability:**

The City of Kokomo – Airport is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

The City of Kokomo - Department of Transportation is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by the Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

The Department of Engineering is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21, Pub. L. 105-178.

### **1-4 Definitions:**

The City of Kokomo will adopt the definitions contained in Section 26.5 of 49 CFR for the City's DBE program.

**Assets** mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

**Business, business concern or business enterprise** means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

**Compliance** means that a recipient has correctly implemented the requirements of this part.

**Contingent Liability** means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

**Contractor** means one who participates, through a contract or subcontract (at any tier), in a FTA/DOT-assisted highway, transit, or airport program.

**Days** mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

**Department** or FTA/DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged business enterprise or DBE** means a for-profit small business concern -

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**FTA/DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with FTA/DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Home state** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Liabilities** mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Operating Administration or OA** means any of the following parts of FTA/DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Primary industry classification** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

**Primary recipient** means a recipient which receives FTA/DOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

**Program** means any undertaking on a recipient's part to use FTA/DOT financial assistance, authorized by the laws to which this part applies.

**Race-conscious** measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral** measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**Recipient** is any entity, public or private, to which FTA/DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**Secretary** means the Secretary of Transportation or his/her designee.

**Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

**Small Business Administration** or SBA means the United States Small Business Administration.

**SBA certified firm** refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

**Small business concern** means, with respect to firms seeking to participate as DBEs in FTA/DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

**Spouse** means a married person, including a person in a domestic partnership or a civil union recognized under State law.

**Transit vehicle manufacturer** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

**Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

### **1-5 Non-Discrimination Requirements:**

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

In administering the City DBE program, the City of Kokomo will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives



of the DBE program with respect to individuals of particular race, color, sex, or national origin.

### **1-6 Record Keeping Requirements:**

#### **Reporting to FTA/DOT: 26.11 (b)**

The City of Kokomo will report DBE participation to FTA/DOT as follows:

City of Kokomo Airport will submit annually FTA/DOT Form 4630, ad modified for use by FAA recipients.

The City of Kokomo - Department of Transportation will report DBE participation on a quarterly basis, using FTA/DOT Form 4630. These reports will reflect payments actually made to DBEs on FTA/DOT-assisted contracts.

#### **Bidders List: 26.11 (c)**

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

The City of Kokomo will collect this information in the following ways:

1. Department head will create the necessary bid specs. If the bid/quote is greater than \$50,000 but less than \$150,000, the department head has the ability to reach out and contact business. If the bid/quote is greater than \$150,000 than it must go through the BOW: Board of Works. Anything over \$5,000 needs to be approved by the Controller's Office.
2. The bid specs will then be sent to the BOW: Board of Works for approval. The bids cannot be opened unless in public meeting.
3. Once the bid/quote is approved than the business is then notified by means of one of following: email, phone call or written notification.
4. Including a contract clause in prime contracts requiring prime bidders to report the name, address, and other information, for all firms who quote to them on subcontracts;
5. A direct survey of all firms bidding on contracts;
6. A notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient.

### **1-7 Federal Financial Assistance Agreement:**

The City of Kokomo has signed the following assurances, applicable to all FTA/DOT-assisted contracts and their administration:

#### **Assurance:**

The City of Kokomo shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA/DOT assisted contract or in the

administration of its DBE program or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of FTA/DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by FTA/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 City of Kokomo of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq).

This language will appear in financial assistance agreements with sub-recipients.

**Contract Assurance:**

The City of Kokomo will ensure that the following clause is placed in every FTA/DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA/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 City of Kokomo deems appropriate.

**SUBPART B – Administrative Requirements**

**DBE Program Updates:**

Since the City of Kokomo has and/or may receive a grant of:

The City of Kokomo – Airport: \$250,000 or more for airport planning and/or development;

The City of Kokomo – Department of Transportation: \$250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year;

The City of Kokomo – Engineering Department: authorized by the statute for which this part applies;

The City of Kokomo will continue to carry out this program until all funds from FTA/DOT financial assistance have been expended. The City of Kokomo will provide to FTA/DOT updates representing significant changes in the program.

**Policy Statement:**

The Policy Statement is elaborated on the first page of this program.

**DBE Liaison Officer (DBELO):**

The City of Kokomo has designated the following individuals as the DBE Liaison Officers for each department:

**The City of Kokomo – Airport:**

Shawn Baker  
(765)456-7541  
3637 E 400 N  
Kokomo, IN 46901  
sbaker@cityofkokomo.org

**The City of Kokomo – Department of Engineering:**

Jon Pyke  
(765)456-7400  
100 S Union St  
Kokomo, IN 46901  
jpyke@cityofkokomo.org

**The City of Kokomo – Department of Transportation:**

David Trine  
(765)456-7556  
215 E Sycamore St  
Kokomo, IN 46901  
dtrine@cityofkokomo.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Kokomo complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Controller with support from the Human Resource Department concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of several between the departments listed. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FTA/DOT.
2. Reviews third party contracts and purchase requisitions for compliance with said program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
6. Analyzes the City of Kokomo’s progress toward attainment and identifies ways to improve the process.
7. Participates in pre-bid meetings.
8. Advises the City Controller\governing body on DBE matters and achievement.
9. Co-Chairs the DBE Advisory Committee.

10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by FTA/DOT and acts as liaison to the Uniform Certification Process in Indiana.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the City of Kokomo's updated directory on certified DBEs.

**DBE Financial Institutions:**

It is the policy of the City of Kokomo to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on FTA/DOT-assisted contract to make use of these institutions. The City of Kokomo uses only financial institutions that are approved by the Indiana Board for Depositories.

Information on the availability of such institutions can be obtained through the City Controller's office.

**Prompt Payment Mechanisms:**

The City of Kokomo will include the following clause in each FTA/DOT-assisted prime contact:

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

**Directory:**

The DBELO will maintain and update a DBE directory that identifies all firms that are eligible to participate as DBEs in this Program. The City of Kokomo will use the DBE directory as a resource in developing overall and contract-specific DBE participation goals and conducting outreach and other programs for DBEs. The DBE directory will also be made available, on request, to contractors and the public. The DBE directory shall include the firm's name, address, telephone number, and types of work (utilizing INDOT's DBE Directory or the North America Industrial Classification System Codes (NAICSS) for which the firm is certified as a DBE.

**Overconcentration:**

If the DBELO determines that DBE participation is so overconcentrated in certain types of work or contracting opportunities that it unduly burdens the participation of non-DBEs

in that type of work, the DBELO will develop appropriate measures to address the overconcentration. The DBELO will seek approval from the FTA/DOT, and at that time, the measures will become part of this Program. Currently, the City of Kokomo is unaware of any types of work that have a burdensome overconcentration of DBE participation. Examples of analysis of DBE overconcentration in a particular field may include:

1. Once the industry is identified, the DBELO may develop ways to assist the movement into non-traditional areas of work;
2. The DBELO may discontinue assigning a goal on a contract that offers a particular NAICS Code for subcontracting in an overconcentrated field;
3. The DBELO may work with primes to find and use DBEs in other industry areas;

#### **Monitoring and Enforcement Mechanisms:**

The City of Kokomo will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The City of Kokomo will bring attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the FTA/DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules)
2. The City of Kokomo will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment \_\_\_ lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. The City of Kokomo will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by [describe the mechanism].
4. The City of Kokomo will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award

#### **Small Business Development Program**

The City of Kokomo will facilitate competition and promote small business participation within its DBE program to the best of its ability. Due to the smallness of the size of contracts and due to mainly operational type services, the opportunities are limited in our area. However, the City of Kokomo will use various methods of reaching out into the community to all small businesses to promote projects where a small business might be able to complete the required work thus creating jobs. The City of Kokomo will contact the local Chamber of Commerce and Small Business Development Corp. (SBDC) on dates and times of outreach meetings and post information on City of Kokomo's webpage under Civil Rights. The City of Kokomo will also advertise such meetings in the local newspaper. Promoting and utilizing small businesses generally will provide another means to augment race-neutral efforts to meet the City of Kokomo's DBE goals.

For large projects or contracts, the City of Kokomo will require the prime contractor to identify elements of the contract or specific subcontracts that a small business, including DBEs, could perform. The City of Kokomo will also look at un-bundling of projects on a project-by-project basis

## **SUBPART C – Goals, Good Faith Efforts, and Counting**

### **Set-asides or Quotas:**

The City of Kokomo does not use quotas in any way in the administration of this DBE program.

### **Overall Goals:**

A description of the methodology to calculate the overall goal and the goal calculations can be found in the City of Kokomo HR Department. This section of the program will be updated annually.

In accordance with Section 26.45(f) the City of Kokomo will submit its overall goal to the FTA on August 1 of each year. Before establishing the overall goal each year, The City of Kokomo will consult with the INDOT DBE Registry registry to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Kokomo efforts to establish a level playing field for the participation of DBEs. Program will identify the persons or groups with whom this consultation normally occurs, without limiting consultation to these persons or groups. The consultation should include, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations.

Following this consultation, the City of Kokomo will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you will accept comments on the goals for 45 days from the date of the notice. State the media in which this notice was issued: e.g. newspapers, available minority- focus media, trade publications, websites.

Normally, the City of Kokomo will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The City of Kokomo's overall goal submission to FTA/DOT will include a summary of information and comments received during this public participation process and our responses. The City of Kokomo will begin using our overall goal on October 1 of each year, unless we have received other instructions from FTA/DOT. If the City of Kokomo establishes a goal on a project basis, the City will begin using their goal by the time of the first solicitation for an FTA/DOT-assisted contract for the project.

### **Transit Vehicle Manufacturers Goals:**

The City of Kokomo will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City

of Kokomo may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

**Breakout of Estimated Race-Neutral & Race-Conscious Participation:**

The breakout of estimated race-neutral and race-conscious participation can be found in the city of Kokomo’s HR department. This section of the program will be updated annually when the goal calculation is updated.

The City of Kokomo will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City of Kokomo will use the following race-neutral means as appropriate to increase DBE participation:

1. Utilize, where appropriate, a strictly competitive bidding process that does not consider the DBEs status as a DBE.
2. Unbundling large contracts.
3. Assisting DBEs in overcoming limitations in bonding and financing.
4. Be a resource to DBEs in obtaining needed technical assistance.
5. Distributing the DBE directory as requested.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if it becomes necessary in order to meet our overall DBE goal with contract goals the City of Kokomo will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation) and we will track and report race-neutral and race-conscious participation separately.

**Contract Goals:**

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

The City of Kokomo will establish contract goals only on those FTA/DOT-assisted contracts that have subcontracting possibilities. The City needs not to establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

The City of Kokomo will express our contract goals as a percentage of the total amount of a FTA/DOT-assisted contract.

**Good Faith Efforts Procedures:**

**Demonstration of good faith efforts (26.53(a) & (c))**

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good

faith efforts. The kinds of efforts that will be considered demonstrative of "Good Faith Efforts" include but are not limited to the following:

1. Whether the contractor solicited through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work;
2. Whether the contractor solicited interest within sufficient time to allow the DBEs to respond and if appropriate steps were taken to follow up with interested DBEs;
3. Whether the contractor selected portions of work to be performed by DBEs and, where appropriate, broke out contract work items into economically feasible units to facilitate DBE participation even when the prime might otherwise prefer to perform these work items with its own forces;
4. Whether the contractor negotiated in good faith with interested DBEs (evidence includes names, addresses and phone numbers; description of information provided regarding plans and specifications; and evidence as to why additional agreements could not be reached);
5. Whether the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services;
6. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance;
7. Whether the contractor effectively used the services of available minority/women community organizations, contractors' groups or other organizations to provide assistance in recruitment and placement of DBEs; and
8. Whether other bidders on the procurement met the DBE goal and performance requirements.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive; The DBELO.

The City of Kokomo will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before the City commits to the performance of the contract by the bidder/offeror.

**Information to be submitted (26.53(b)):**

The City of Kokomo treats bidder/offers' compliance with good faith efforts' requirements as a matter of each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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



**Administrative reconsideration (26.53(d)):**

Within 30 days of being informed by the City of Kokomo that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

The DBE Liaison Officer  
100 S. Union St.  
Kokomo, IN. 46901

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The City of Kokomo will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate DOCR-20140801-001 good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Good Faith Efforts when a DBE is replaced on a contract (26.53(f)):**

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

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

Prior to the termination request, the prime contractor must notify the DBE, in writing of the intent to terminate allowing for five days of response time in opposition of the rejection. The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:

- 1) The DBE fails or refuses to execute a written contract.
- 2) The DBE fails or refuses to perform the work consistent with normal industry standards.
- 3) The DBE fails or refuses to meet the prime contractor's nondiscriminatory bond requirements.
- 4) The DBE becomes bankrupt or has credit unworthiness.

- 5) The DBE is ineligible to work because of suspension and debarment.
- 6) It has been determined that the DBE is not a responsible contractor.
- 7) The DBE voluntarily withdraws, with written notification, from the contract.
- 8) The DBE is ineligible to receive credit for the type of work required.
- 9) The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
- 10) Or other documented compelling reasons.

**Sample Bid Specification:**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Kokomo to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_% has been established for this contract.

The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract. The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation DOCR-20140801-001 from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

The City of Kokomo will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

**SUBPART D - CERTIFICATION STANDARDS**

**Certification Process:**

The City of Kokomo will forward all requests to become an approved DBE vendor to the State of Indiana website. To be certified as a DBE, a firm must meet all certification eligibility standards.

For information about the certification process, firms should contact:  
DBE Liaison Officer  
City of Kokomo  
100 S. Union St.  
Kokomo, IN 4690

## **SUBPART E - CERTIFICATION PROCEDURES**

### **Unified Certification Programs:**

INDOT is the sole certifying agency for the Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise (DBE/ACDBE) programs in the state of Indiana. The City of Kokomo will allow applicant firms to use an INDOT DBE certification as evidence of eligibility for certification hereunder, provided that an applicant must provide the City of Kokomo with written consent permitting INDOT to share all information in its DBE file, excluding financial documents, confidential or otherwise.

### **Certification Appeals:**

Any firm or complainant may appeal our decision in a certification matter to FTA/DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590  
Phone: (202) 366-4754 DOCR-20140801-001  
TTY: (202) 366-9696  
Fax: (202) 366-5575

### **Section 26.91 Action on Appeal**

As recipient the action on the appeal under Section 26.89 is binding. It is not binding on other recipients.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

### **Information, Confidentiality, Cooperation:**

The City of Kokomo will make available records concerning the DBE program that is not prohibited by Federal law.

The City of Kokomo will not release any information to any third parties without written consent that may be construed as confidential business information, consistent with Federal, State and local law. The City of Kokomo will comply with the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). Although, in any certification appeal, this information may be given to DOT or to any state in which the firm has applied for certification.

All participants in the DBE program will cooperate in the event of compliance reviews, certification reviews, investigations, and other requests for information.

The City of Kokomo will not intimidate, threaten, coerce, or discriminate against any firm for the purpose of interfering with any right or privilege secured by this part.

**Monitoring Payments to DBEs:**

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

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

**ATTACHMENTS:**

Attachment 1 Organizational Chart

Attachment 3 Monitoring and Enforcement Mechanisms

Attachment 4 Overall Goal Calculation

Attachment 5 Breakout of Estimated Race-Neutral & Race-Conscious Participation

Attachment 6 Form 1 & 2 for Demonstration of Good Faith Efforts

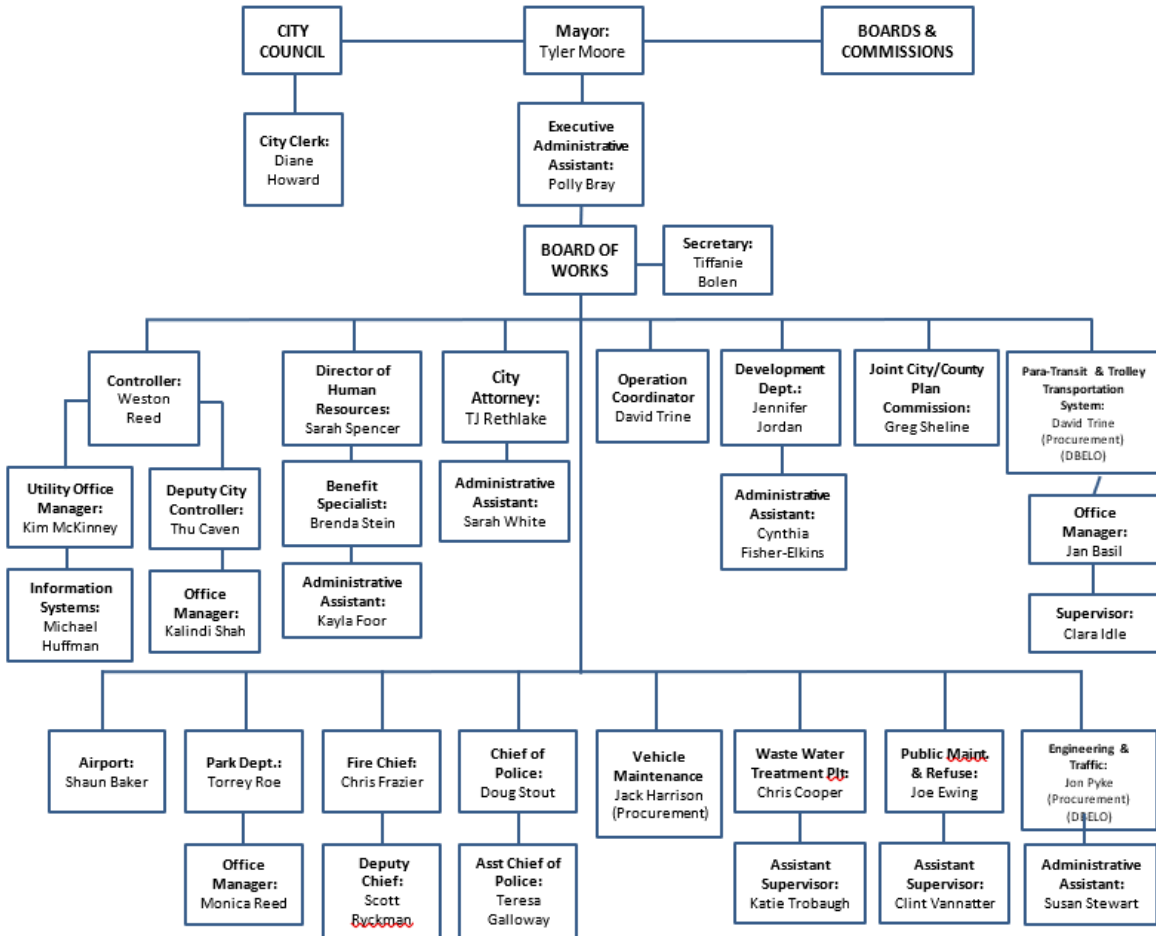
Attachment 7 Certification Application Forms

Attachment 8 Procedures for Removal of DBE's Eligibility

Attachment 9 Regulations: 49 CRR part 26

# ATTACHMENT 1: Organizational Chart

## CITY OF KOKOMO ORGANIZATIONAL CHART



## **ATTACHMENT 2: Monitoring and Enforcement Mechanisms**

The City of Kokomo has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

**Universal Citation:** [IN Code § 5-16-6.5-5 \(2018\)](#)

IC 5-16-6.5-5 Penalties for breach of contract

Sec. 5. (a) If a breach of contract occurs under section 4 of this chapter, the public agency shall suspend all payments to the contractor under that contract unless it determines that the contractor made a good faith effort to avoid the breach but was unable to do so.

(b) If the public agency determines that the contractor did not act to avoid the breach, it may:

(1) rescind the contract and recover all amounts paid under it if the breach occurs under section 4(1) of this chapter;

(2) recover all amounts paid to the contractor under the contract that were intended for expenditure with a disadvantaged business enterprise or a women owned business enterprise if the breach occurred under section 4(2) of this chapter; or

(3) employ any legal or administrative remedies that the agency prescribes by rule or in the contract.

*As added by P.L.70-1987, SEC.1. Amended by P.L.71-1989, SEC.1*

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

**ATTACHMENT 3:**  
**Section 26.45: Overall Goal Calculation**

**Amount of Goal:**

1. The City of Kokomo's overall goal for will be calculated yearly.
2. The goal will be a percentage of the federal award.

**Methodology used to Calculate Overall Goal**

**Step 1: 26.45(c)** : Steps used to determine the goals.

Determine the base figure for the relative availability of DBEs. The base figure for the relative availability of DBE's was calculated as follows: Ready, willing, and able DBEs

Base figure = \_\_\_\_\_ All firms ready, willing and able

The data source or demonstrable evidence used to derive the numerator was:

The data source or demonstrable evidence used to derive the denominator was:

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was:

**Step 2: 26.45(d)**

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible, the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by \_\_%.

The data used to determine the adjustment to the base figure was:

The reason we chose to adjust our figure using this data was because:

From this data, we have adjusted our base figure to:

**Public Participation:**

We publish our goal information in these publications: Kokomo Tribune and websites.

We accept comments and respond to comments.

**ATTACHMENT 4:**  
**Section 26.51: Breakout of Estimated Race Neutral  
& Race-Conscious Participation**

Race-Neutral & Race Conscious Participation

The City of Kokomo will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The city uses the following race-neutral means to increase DBE participation: Below is language to be used for guidance.

Race-neutral means include, but are not limited to, the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.
  - (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
  - (3) Providing technical assistance and other services;
  - (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
  - (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
  - (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
  - (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
  - (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
  - (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- (c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.



(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order to meet your overall goal.

**EXAMPLE TO PARAGRAPH (F)(1):**

Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

**EXAMPLE TO PARAGRAPH (F)(2):**

In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September,

you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

**EXAMPLE TO PARAGRAPH (F)(3):**

Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

**EXAMPLE TO PARAGRAPH (F)(4):**

In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014

**ATTACHMENT 5:  
Forms 1 & 2 for Demonstration of Good Faith Efforts**

[Forms 1 and 2 should be provided as part of the solicitation documents.]

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By: \_\_\_\_\_

Signature

Title DOC

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

Affirmation The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_

Signature

Title

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

## ATTACHMENT 6: Certification

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### *Roadmap for Applicants*

#### **1. Should I apply?**

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

#### **2. How do I apply?**

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

#### **3. Where can I send my application?** [INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]

#### **4. Who will contact me about my application and what are the eligibility standards?**

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

#### **5. Where can I find more information?**

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): <http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

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## **ATTACHMENT 7: DBE's Ineligibility**

### **Ineligibility complaints.**

Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The City of Kokomo will not accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities will be protected as provided in § 26.109(b).

The City of Kokomo will review records concerning the firm, any material provided by the firm and the complainant, and other available information. We may request additional information from the firm or conduct any other investigation that you deem necessary.

If it is determined, based on this review, that there is reasonable cause to believe that the firm is ineligible, written notice will be provided to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If it is determined that such reasonable cause does not exist, the complainant and the firm will be notified in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based.

**Recipient-initiated proceedings.** If, based on notification by the firm of a change in its circumstances or other information that comes to our attention, or we determine that there is reasonable cause to believe that a currently certified firm is ineligible, we will provide written notice to the firm that we propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will be specifically reference the evidence in the record on which each reason is based.

**Grounds for decision.** We may base a decision to remove a firm's eligibility only on one or more of the following grounds:

- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- (2) Information or evidence not available to you at the time the firm was certified;
- (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;
- (4) A change in the certification standards or requirements of the Department since you certified the firm;
- (5) Your decision to certify the firm was clearly erroneous;

- (6) The firm has failed to cooperate with you (see § 26.109(c));
- (7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see § 26.73(a)(2)); or
- (8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

**Notice of decision.** Following the decision, a written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision will be supplied to the firm. The notice will inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. Copies of the notice will be sent to the complainant in an ineligibility complaint or the concerned operating administration that had directed the proceedings to be initiated. No information construed as confidential business information will be shared without written consent (other than to the DOT).

**Effects of removal of eligibility.** When removing a firm's eligibility, the following action will be taken:

- (1) When a prime contractor has made a commitment to using the ineligible firm, or the City of Kokomo has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before issuing the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. The prime contractor will be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- (2) If a prime contractor has executed a subcontract with the firm before we have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after issuing the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.
- (3) **Exception:** If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

**Availability of appeal.** The firm may appeal the removal to the Department under § 26.89.

## **Documents on File at City of Kokomo, City Hall**

Goal Methodology

Copy of CFR Part 26

DBE Directory

