



NORTHWESTERN INDIANA  
REGIONAL PLANNING  
COMMISSION

Disadvantaged Business  
Enterprise Program

Program Revised July 2016

Allen Hammond – DBE Liaison Officer  
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**NORTHWESTERN INDIANA  
REGIONAL PLANNING COMMISSION**

**Year 2015-2017 DBE PROGRAM under – 49CFR PART 26**

**Objectives /Policy Statement (26.1, 26.3)**

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

It is the policy of the Northwestern Indiana Regional Planning Commission to ensure that DBEs, and small businesses, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

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

Allen Hammond has been delegated as the DBE Liaison Officer. In that capacity Allen Hammond is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Northwestern Indiana Regional Planning Commission in its financial assistance agreements with the Department of Transportation. Any questions or comments regarding DBE should be addressed to Allen Hammond at 219-763-6060.

\_\_\_\_\_  
Tyson Warner  
Executive Director

\_\_\_\_\_  
July 11, 2014  
Date

Requests for alternate formats please contact Allen Hammond at (219) 763-6060 extension 141 or ahammond@nirpc.org. Individuals with hearing impairments may contact us through the Indiana Relay 711 service by calling 711 or (800) 743-3333.

The Northwestern Indiana Regional Planning Commission (NIRPC) prohibits discrimination in all its programs and activities on the basis of race, color, sex, religion, national origin, age, disability, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program.

## **GENERAL REQUIREMENTS**

### **Objectives 26.1**

The objectives are found in the policy statement on the first page of this program.

### **Applicability 26.3**

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

### **Definitions of Terms 26.5**

The terms used in this program have the meanings defined in 49 CFR 26.5.

### **Non-discrimination Requirements 26.7**

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

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

### **Record Keeping Requirements 26.11**

We will report DBE participation to DOT as follows:

We will report DBE participation on a semiannual basis for standard FTA Grants and on a quarterly basis for ARRA Grants, under Civil Rights in TEAM-Web. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

We will collect this information in the following ways:

The Northwestern Indiana Regional Planning Commission will request and require quarterly reports are completed from its subrecipients showing payments made to prime contractors and subcontractors on DOT assisted contracts.

The Northwestern Indiana Regional Planning Commission will request from the Indiana Department of Transportation (INDOT) on an annual basis a listing of firms controlled by minority women, white women, and minority or other men and the location of the firms in the State.

### **Federal Financial Assistance Agreement 26.13**

The Northwestern Indiana Regional Planning Commission has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### Assurance: 26.13(a)

The Northwestern Indiana Regional Planning Commission shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Northwestern Indiana Regional Planning Commission may impose sanction to include, but not limited to withhold monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the contractor from future bidding as non-responsible. The Northwestern Indiana Regional Planning Commission as provided for under part 26 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.*).

#### **Contract Assurance: 26.13b**

We will ensure that the following clause is placed in every 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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

### **ADMINISTRATIVE REQUIREMENTS**

#### **DBE Program Updates 26.21**

Since the Northwestern Indiana Regional Planning Commission has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

## **Policy Statement 26.23**

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

## **DBE Liaison Officer (DBELO) 26.25**

We have designated the following individual as our DBE Liaison Officer:

Allen Hammond has been delegated as the DBE Liaison Officer. In that capacity Allen Hammond is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Northwestern Indiana Regional Planning Commission in its financial assistance agreements with the Department of Transportation. Any questions or comments regarding DBE should be addressed to Allen Hammond, 6100 Southport Road, Portage, IN. 46368, 219-763-6060, or by email ahammond@nirpc.org.

The DBELO has direct, independent access to the Executive Director of the Northwestern Indiana Regional Planning Commission concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in "Attachment 1" to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments and subrecipients to set overall 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 *NIRPC*'s progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process in Indiana.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **DBE Financial Institutions 26.27**

It is the policy of the Northwestern Indiana Regional Planning Commission 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 consultants on DOT assisted contracts to make use of

these institutions. Unfortunately there are no DBE Financial Institutions in Indiana. . DBE financial institutions will be re-evaluated every three years at the time when the DBE Program and goal is submitted to FTA.

### **Prompt Payment Mechanisms 26.29**

The Northwestern Indiana Regional Planning Commission has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no longer than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use the following methods to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

The Northwestern Indiana Regional Planning Commission will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Northwestern Indiana Regional Planning Commission. When Northwestern Indiana Regional Planning Commission has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The Northwestern Indiana Regional Planning Commission will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contract receives from the Northwestern Indiana Regional Planning Commission. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractors 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 Northwestern Indiana Regional Planning Commission. This clause applies to both DBE and non-DBE subcontracts.

### ***Monitoring Payments to DBEs***

The Northwestern Indiana Regional Planning Commission 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 Northwestern Indiana Regional Planning Commission or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

### **Directory 26.31**

The Northwestern Indiana Regional Planning Commission does not maintain its own list of DBEs. We accept firms listed in the DBE directory of Indiana's Uniform Certification Program (UCP), as maintained by the Indiana Department of Transportation. The list is updated every 24 hours. The directory lists a firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. The directory is available online at:

[https://fs85.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI\\_APPS\\_MWBE.SOI\\_DBE\\_CERT.GBL?&](https://fs85.gmis.in.gov/psc/guest/EMPLOYEE/ERP/c/SOI_APPS_MWBE.SOI_DBE_CERT.GBL?&)

The directory does not subdivide firms into subspecialties, such as prime contractors, for specific types of transportation projects and studies. It should therefore be assumed that the number of available firms, represented by the base number in 26.45, Step 1, will be higher than the actual number of ready and available firms appropriate for projects.

### **Overconcentration 26.33**

The Northwestern Indiana Regional Planning Commission has not identified that overconcentration exists in the types of work that DBEs perform in Lake, Porter, and LaPorte County.

### **Business Development and Mentor-protégé program 26.35**

The Northwestern Indiana Regional Planning Commission has not established a business development program.

### **Monitoring and Enforcement Mechanisms 26.37**

The Northwestern Indiana Regional Planning Commission will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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

49 CFR Part 26 lists the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

We will perform interim audits and certify that contracting records are reviewed and work sites are monitored. The audit will review payments to DBE subcontractors to ensure that the actual

amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### **Fostering Small Business Participation 26.39**

The Northwestern Indiana Regional Planning Commission will facilitate and encourage competition for small businesses, so recipients can make possible more DBE participation, and subsequent participation by additional DBE firms. The United States Department of Transportation believes “a program element that pulls together the various ways that a recipient reaches out to small businesses and makes it easier for them to compete for DOT-assisted contracts will foster objectives of the Disadvantaged Business Enterprise program.”

The DBE Rule states that the “DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation”. DBE Program elements must be actively implemented to foster small business participation.

In order to facilitate opportunities for race-neutral DBE participation, the Northwestern Indiana Regional Planning Commission will include certified small business enterprise firms in its DBE requirements for all contracts.

All references to requirements for prospective contractors and service providers to meet DBE goals will include certified small business enterprises as qualifying classifications for meeting those goals, regardless of those firms’ DBE status.

Small businesses that are recognized under federal, state, or local certification programs will be considered as eligible for inclusion.

## **GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Quotas 26.43**

The Northwestern Indiana Regional Planning Commission does not use quotas in any way in the administration of this DBE program.

### **Overall Goal 26.45**

The Northwestern Indiana Regional Planning Commission will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period.

In accordance with Section 26.45(f) the Northwestern Indiana Regional Planning Commission will submit its overall goal to DOT on August 1 of every third year. Before establishing the overall goals each year, the Northwestern Indiana Regional Planning Commission will obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, effects of discrimination on opportunities for DBE’s, and the Northwestern Indiana Regional Planning Commission’s efforts to establish a level playing field for the participation of DBE’s.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Northwestern Indiana Regional Planning Commission does not anticipate awarding DOT funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the Northwestern Indiana Regional Planning Commission will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) *Step 1.* The first step is to determine the relative availability of DBEs in the market area, “base figure”. We will use DBE Directories and Census Bureau Data, as a method to determine our base figure. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation.

Any methodology chosen will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market.

(d) *Step 2.* Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

In accordance with Section 26.45(g) the Northwestern Indiana Regional Planning Commission will publish a notice announcing the proposed overall goal on our official Internet Web Site [www.nirpc.org](http://www.nirpc.org) informing the public of the proposed goal and its rationale for 30 days following the date of notice. The notice will also inform the public that the NIRPC will accept comments on the goals for 30 days from the date of the notice. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Northwestern Indiana Regional Planning Commission efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, and teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before we are required to submit our goal methodology to the Federal Transit Administration for review. We will document in our goal submission the consultation process that we engaged in. We will not implement our proposed goal until we have complied with this requirement.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Failure to Meet Overall Goal 26.47**

If the awards and commitments shown on our semiannual reporting form at the end of any fiscal year are less than the overall goal, a shortfall analysis and corrective action plan will be established.

### **Transit Vehicle Manufacturers Goals 26.49**

The Northwestern Indiana Regional Planning Commission 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 Northwestern Indiana Regional Planning Commission 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 26.51**

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

We estimate that, in meeting our overall goal we will obtain 100% from race-neutral DBE participation. We base this on previous years goals met through 100% race neutral means.

We 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. For reporting purposes, race-neutral DBE participation includes, but not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Contract Goals 26.51**

The Northwestern Indiana Regional Planning Commission will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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.

The breakout of estimated race-neutral and race-conscious participation can be found on page nine of this program.

### **Contract Goals**

The Northwestern Indiana Regional Planning Commission will arrange 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.

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

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

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

### **Good Faith Efforts Procedures 26.53**

#### **Demonstration of good faith efforts**

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal had documented sufficient good faith efforts to be regarded as responsive: Compliance Officer, Allen Hammond.

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

#### **Information to be submitted**

The Northwestern Indiana Regional Planning Commission treats bidder/offeror's compliance with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidder/offeror 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;
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 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**

Within 5 days of being informed by Northwestern Indiana Regional Planning Commission that it is not responsive because it had not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official: Angie Hayes, 6100 Southport road, Portage, IN 46368, 219-763-6060, or by email to [ahayes@nirpc.org](mailto:ahayes@nirpc.org).

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make or 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 so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealing to the Department of Transportation.

### **Good Faith Efforts procedures in situations when there are contract goals 26.53**

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53; and

That, unless our consent is provided under this paragraph 26.53, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;

- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

[Note: Include the administrative remedies you will use for noncompliance (see 26.53(f)(3)). The following two sentences are examples of such remedies.]

The Northwestern Indiana Regional Planning Commission 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 5 days, which may be extended for an additional 5 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, our 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.

## **Good Faith Efforts when a DBE is replaced on a contract**

We 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. Notify the Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain 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 immediately, our 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.

### **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 Northwestern Indiana Regional Planning Commission 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/offeror, including those who qualify as a DBE. A DBE contract goal of \_\_\_% percent 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 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.

### **Counting DBE Participation 26.55**

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

### **Certification Procedures**

#### **Unified Certification Program 26.81**

A unified certification process had been implemented through the Indiana Department of Transportation.

Department of Transportation  
Economic Opportunity Division, DBE Certification  
100 N. Senate Ave., IGCN 750  
Indianapolis, IN 46204

<https://secure.in.gov/indot/2748.htm>

Northwestern Indiana Regional Planning Commission has acted effectively in directing all applicants to the state and other appropriate agencies for certification and re-certification for DBE.

#### **Certification Appeals 26.89**

Any firm for complainant may appeal a decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation Office of Civil Rights Certification Appeals Branch 400  
7<sup>th</sup> St., SW Room 2104 Washington, DC 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBE's for our DOT-assisted contracting.

### **Compliance and Enforcement**

#### **Information, Confidentiality, Cooperation 26.109**

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

## Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBE's 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 Northwestern Indiana Regional Planning Commission or DOT. This reporting requirement also extends to any certified DBE subcontractor.

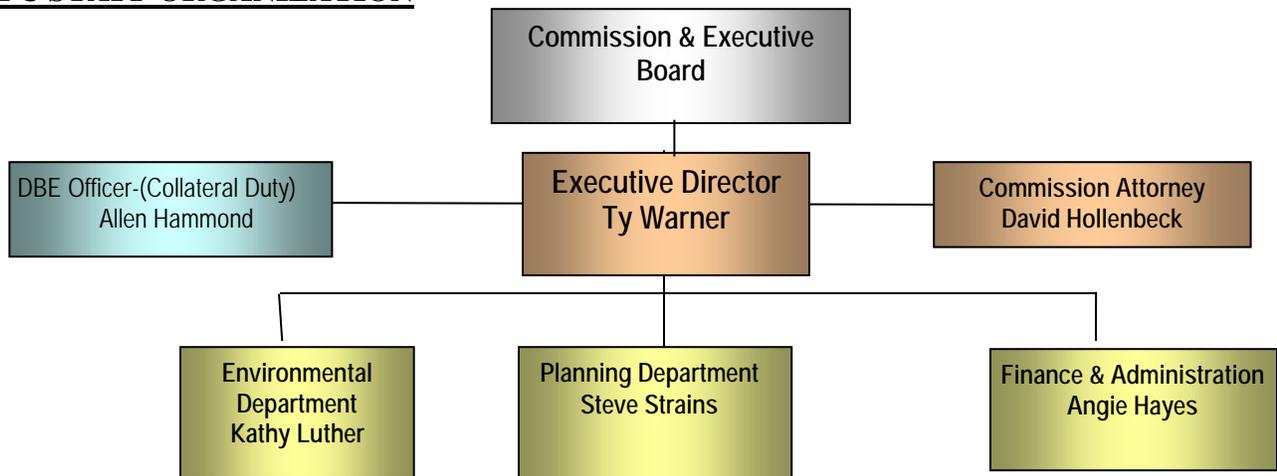
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

## ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	Overall Goal Calculations
Attachment 3	Summary of Public Involvement Activities
Attachment 4	Form 1 & 2 for Demonstration of Good Faith Efforts

### Attachment 1 - Organizational Chart

#### NIRPC STAFF ORGANIZATION



The channel of authority flows through the lines as described above. The Commission hires the Executive Director who is responsible for oversight of the Commission's program. The Executive Director reports to the Executive Board. The Contracting Officer, who is responsible for oversight of the Commission's contractual arrangements, reports to the Executive Director. The Procurement Coordinator, who is responsible for implementing the procurement procedures set forth herein and undertaking procurements reports to the Contracting Officer. The DBE Coordinator (a collateral duty position) provides for the function of ensuring that specific federal requirements designed to foster participation of small minority and female owned businesses in receiving federally-funded contracts are met. The DBE Coordinator reports directly to the Executive Director. Other department heads, responsible for other aspects of the Commission's activities also report to the Executive Director.

## **Attachment 2 - Overall Goal Calculations**

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

The Northwestern Indiana Regional Planning Commission will implement a DBE Program that uses a combination of race-neutral and race-conscious participation.

Step 1-A: Developing a rationale, including assessment of impediments as a recipient of federal funding from the FTA, the Northwestern Indiana Regional Planning Commission is required to establish a three year goal for public transportation-related contracting with DBEs. In effect, the three year goal becomes a performance standard of measuring progress toward achieving the anticipated level of DBE participation, and a partial means of assessing compliance with FTA, DBE regulations.

A two-step process for goal setting has been adopted by the Northwestern Indiana Regional Planning Commission to ensure that the program is narrowly tailored to remedy the effects of discrimination. The process is intended to provide the maximum flexibility while insuring that goals are based on the availability of ready, willing and able DBE's and small businesses in the Northwestern Indiana market.

Step 1: Calculating a baseline figure to represent the availability of ready, willing and able DBE's in the Northwestern Indiana market. The DBE Directory and Census Bureau data was used as a model to determine the baseline figure. Base rate goal = number of DBE firms available divided by the number of all available firms. Weighting is used in the Step One Base Figure calculation by multiplying the base figure and the percent of total contracts.

Step 2 Adjustments: Past Participation Median + Weighted Base Figure

Adjusted Goal:

**Step 1:** The method used to calculate the relative availability to DBE's ("base figure") for Step1" of the process. The percentage figure is calculated by dividing a number representing available DBE's by a number representing all available firms.

The data sources used to derive the numerator and denominator in the calculation was DBE's in the Indiana Department of Transportation Directory and total firms in the NAICS codes for Lake, Porter and La Porte County found in the Census Bureau's database.

The weighted base figure was calculated by multiplying the base figure and the percent of total contracts.

While Northwestern Indiana Regional Planning Commission has no registered DBE, we believe there are disadvantaged firms in the area who are not registered with the Indiana Department of Transportation.

**Step 2:** An adjustment was made to the base figure to reflect past participation. We then determined the historical median of the past three years and averaged it with our base figure.

Since the contracting opportunities were substantially the same over the past three years we decided to make an adjustment based on past participation.

### **DBE Financial Institutions**

It is the policy of the Northwestern Indiana Regional Planning Commission 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 consultants on DOT assisted contracts to make use of these institutions.

### **Attachment 3 - Summary of Public Involvement Activities**

The Northwestern Indiana Regional Planning Commission held a 45 day public comment period to solicit comments from the general public regarding the Federal Fiscal Year 2015 to Fiscal Year 2017 DBE Program Goal for Federal Transit Administration (FTA) Assisted Contracts.

#### **• Comments Received**

No comments/questions were received from the general public at large, minority groups and/or contractors.

#### **• Publicity**

The Northwestern Indiana Regional Planning Commission placed legal notices in two general circulation newspapers:

The Post Tribune and The Northwest Indiana Times on May 29, 2014. No comments were received.

The DBE Goal for the Northwestern Indiana Regional Planning Commission was posted on our website and sent to subrecipients concerning the DBE Policy and Proposed Goal.

The Proposed Northwestern Indiana Regional Planning Commission Fiscal Year 2015 to Fiscal Year 2017 DBE Program Policy and Goal for United States Department of Transportation (USDOT) FTA Contracts document, advertisement, and comments forms were placed at the Northwestern Indiana Regional Planning Commission, 6100 Southport Road, Portage, Indiana, for public viewing and comment from May 29, 2014 through July 13, 2014.

The Northwestern Indiana Regional Planning Commission sent out an invitation to representatives asking them to offer written comments regarding the draft Disadvantaged Business Enterprise Program methodology and resulting participation goal for consideration in the final Disadvantaged Business Enterprise Program submitted for approval by the Federal Transit Administration Civil Rights Officer.

**Attachment 4 - Form 1 & 2 for Demonstration of Good Faith Efforts**

The following information must be included in every contract that is signed by a prime contractor, and every contract the prime contractors sign with subcontractors.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) SMALL BUSINESS UTILIZATION**

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

- Identified portions of the contract work capable of performance by available DBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation even when the bidder could perform those scopes with its own forces.
- Solicited through reasonable and available means (e.g., pre-bid meetings, written notices, advertisements) DBEs to perform the types of work that could be subcontracted on this project, within sufficient time to allow them to respond.
- Utilized resources available to identify available DBEs, including but not limited to DBE assistance groups; local, state and federal minority or women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.
- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as may be required for performance of the contract (if applicable).
- Negotiated in good faith with interested DBEs that submitted bids and thoroughly investigated their capabilities.
- Provided timely and adequate information about the plans, specifications and requirements of the contract. Followed up initial solicitations to answer questions and encourage DBEs to submit bids.

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

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

By: \_\_\_\_\_  
Signature Title

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

**LETTER OF INTENT**

Name of bidder'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 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.)**