

FTA

F E D E R A L T R A N S I T A D M I N I S T R A T I O N

Iowa Department of Transportation Disadvantaged Business Enterprise (DBE) Program Compliance Review

Final Report
May 2017



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology

This report details the findings of FTA's compliance review of the Iowa Department of Transportation's (Iowa DOT's) Disadvantaged Business Enterprise (DBE) program implementation. It examines Iowa DOT's DBE program procedures, management structure, actions, and documentation.

On behalf of FTA's Office of Civil Rights, the Collaborative, Inc. of Boston, Massachusetts conducted the review in three stages:

1. Preparation: compilation of information covering policies, procedures and reported data
2. Site visit: observation of Iowa DOT's DBE program files, contracts, and staff interviews
3. Analysis and reporting: identification of deficiencies requiring corrective actions and suggestions of effective practices in DBE programs

Iowa DOT's DBE program includes the following positive program elements:

Positive Program Elements

- The certification program is robust and well managed.
- The supportive services program and blog are an excellent DBE resource.

Iowa program includes the following administrative deficiencies:

Administrative Deficiencies

- The DBELO is incorrectly identified in the DBE Program Plan.
- Contract documents for FTA-funded projects do not contain the required provisions.

Iowa program includes the following substantive deficiencies:

Substantive Deficiencies

- The DBE Program Plan is highway focused with almost no mention of the FTA-funding program.
- The DBELO is not sufficiently involved in FTA program oversight.
- DBE goal public participation efforts are insufficient.

This report highlights several steps to help Iowa DOT implement its DBE program in good faith.

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1 General Information

This section provides basic information concerning this compliance review of the Iowa Department of Transportation. Information on the grantee, the review team, and the dates of the review are presented below.

Grant Recipient:	Iowa Department of Transportation (Iowa DOT)
City/State:	Ames, Iowa
Grantee Number:	1812
Executive Official:	Mr. Mark Lowe, Acting Director
On-site Liaison:	Todd Sadler
Report Prepared By:	The Collaborative, Inc., Boston, MA
Dates of Site Visit:	December 13–16, 2016
Review Team Members:	William Schwartz, Z. Wayne Johnson, Lamont Pray

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2 Jurisdiction and Authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (U.S. DOT) Programs."

Iowa DOT is the recipient of one or more Federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, Iowa DOT is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in Iowa program and were the basis for this compliance review.

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3 Purpose and Objectives

This section discusses the purpose and objectives of FTA's DBE compliance reviews and the review process.

3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26.

The primary purpose of the compliance review is to determine the extent Iowa DOT has implemented 49 CFR Part 26 as represented in its DBE Program Plan. The compliance review is intended to be a fact-finding process to: (1) assess Iowa Program Plan and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

The compliance review is not solely designed to investigate whether there is discrimination against individual DBE firms or complainants or to adjudicate these issues on behalf of any party.

3.2 Objectives

The objectives of U.S. DOT's DBE regulations, as specified in 49 CFR Part 26, are to:

- Ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for U.S. DOT-assisted contracts.
- Ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in U.S. DOT-assisted contracts.
- Promote the use of DBEs on all types of Federally assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- Determine whether Iowa DOT is honoring its commitment to comply with 49 CFR Part 26.
- Examine the required components of Iowa DOT's DBE Program Plan against the compliance standards set forth in the regulations, U.S. DOT guidance, and FTA policies, and document the compliance status of each component.

Gather information and data regarding the operation of Iowa DOT's DBE Program Plan from a variety of sources, including DBE program managers, other Iowa DOT management personnel, DBEs, prime contractors, and other stakeholders.

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4 Background Information

The purpose of this section is to provide an understanding of Iowa DOT's operations and scale. The section highlights Iowa DOT's services, FTA projects, and history of its DBE program.

4.1 Introduction to Iowa DOT and Organizational Structure

Located in Ames, IA, Iowa DOT is responsible for the organization, construction, and maintenance of the state's primary highway system. Iowa DOT is also responsible for licensing drivers, and for programming and planning aviation, rail, and transit.

While Iowa's 12 large urban transit systems (population over 50,000) receive direct FTA funding, Iowa DOT receives FTA funding and is responsible for seven small urban transit systems (population under 50,000) and 16 multi-county transit systems, referenced in this report as the 23 subrecipients.

Iowa DOT is organized into the following divisions:

- Performance and Technology Division
- Motor Vehicle Division
- Information Technology Division
- Highway Division
- Operations and Finance Division, which includes the Civil Rights section, responsible for the agency's overall DBE program
- Planning, Programming, and Modal Division, which includes the Office of Public Transit (OPT) and the Office of System Planning (OSP).

The eight-person OPT is responsible for administering FTA funding programs, including the FTA DBE program. The Director of OPT¹ serves as the department's primary resource on transit policy. Staff members involved with FTA DBE-related activities include:

- Kristin Haar, Compliance and Training Officer, who conducts subrecipient compliance reviews, provides technical assistance, and arranges local, regional, and statewide training as needed.
- Sreeparna Mitra, Grant Manager, who manages the grants database, performs all Federal and state reporting (including semiannual reports), is responsible for the statewide asset management group plan, and serves as the office specialist for other programs. She works with the 23 subrecipients and coordinates the DBE program.
- Ryan Ward, Transit Programs Administrator, who supports transit vehicle procurements.

Iowa also has 18 regional planning agencies (RPAs) and 9 metropolitan planning organizations (MPOs) that receive combined FTA and Federal Highway Administration (FHWA) Flex funding. This funding is included in Iowa DOT's DBE goal. OSP works with these 27 entities.

This organizational structure places DBE oversight of the FTA funding program with OPT, which resides in a different division from the Civil Rights section.

¹ Michelle McEnany held this position at the time of the site visit.

4.2 Budget and FTA-Assisted Projects

Transit funding in Iowa is from local, state, and Federal sources. The FFY 2017–2019 DBE goal narrative forecasts approximately \$53.5 million in FTA-assisted spending, or just under \$14 million per year, comprised of operating, capital, and RPA/MPO planning funds (FTA and FHWA).

The prior triennial goal (FFY 2014–2016) was forecast based on \$61.2 million in FTA funding, or \$20.4 million per year. The review team’s examination of transit-funded contracts covers this timeframe. Table 4.1 summarizes total and DBE spending reported to FTA on the Semiannual Uniform Reports for 2014–2016. The majority of contracts/purchases in this triennial period were for goods (e.g. signs, software, etc.) with limited spending for professional services. Iowa DOT engaged a DBE training consultant (\$3,242). The Corridor MPO engaged a consultant for a regional transit study, which included a DBE subcontract for a public involvement specialist (\$19,785). Reported DBE expenditures also included \$7,000 in MPO funding for a transit study the City of Ames transit agency (CyRide), an FTA grantee, undertook, which included a DBE public participation subcontractor.

Table 4-1 Iowa DOT FTA Funding and DBE Contracts (FFY 2014–2016)

FFY	FTA Funds	Contracts/Purchases	Actual DBE Funds*	Comment
2014	\$17,235,502	4	\$3,561	Subrecipient purchase of goods
2015	\$16,206,991	9	\$18,968	Goods, RPA/MPO study
2016	\$14,769,658	10	\$25,587	Goods, RPA/MPO study
Total	\$48,212,151	23	\$48,116	

* Excludes DBE expenditures reported erroneously (see below)

In response to FTA’s pre-visit information request, Iowa DOT identified FTA-funded items and projects comprised of Iowa DOT, RPA/MPO, and subrecipient (Sub) contracts with spending in excess of \$1,000, which the review team examined, See Table 4-2. One listed contract and one listed purchase involved firms for which DBE certification was subsequently invalidated; Iowa DOT reported these issues to the review team. See Section 6.14 for a discussion of recordkeeping. The Corridor MPO transit study and an Ames MPO survey, both of which included full requests for proposals (RFPs) are discussed throughout Section 6 with respect to missing provisions.

Table 4-2 Iowa DOT-Reported DBE Spending

Type	Grantee	Services	Paid	Comment
Direct	Iowa DOT	DBE training	\$3,242	Confirmed
Sub	Jefferson Lines	Printing services	\$4,879	Confirmed
Sub	Region 1	Decals, signs, etc.	\$14,365	Confirmed
Sub	Clinton	Dispatch software upgrade	\$29,230	DBE certification obtained after contract issued
MPO	Corridor MPO	Transit study public engagement	\$19,785	Confirmed
MPO	Ames MPO	Survey	\$110,244	Vendor withdrew certification; Examined RFP and contract
MPO	Ames MPO	Ames RTA transit study public engagement	\$7,000	Funding contribution; Ames RTA reported DBE spending

4.3 DBE Program

Iowa DOT's Operations and Finance Division includes the Civil Rights section, which is responsible for the agency's overall DBE program. Mr. Todd Sadler, Director of the Office of Employee Services, is the DBE Liaison Officer (DBELO). The Civil Rights section administers the program and serves as the single DBE certification agency for the state.

According to Mr. Sadler's job description (provided to the review team):

This position supervises the Affirmative Action Team. The organization of this team came from a [FHWA] review recommending the centralization of the department's programs covered under this umbrella. The duties of this team . . . include ensuring Iowa DOT compliance with federal regulations for the following civil rights programs: Title VI, Contractor EEO/AA, OJT (On-Job Training), DBE (Disadvantaged Business Enterprise) program. Failure to comply with federal civil rights regulations would lead to loss of more than \$300 million of federal funds annually. The Civil Rights staff are responsible for ensuring Iowa DOT compliance with federal regulations for the following civil rights programs: Title VI, Contractor EEO/AA, OJT (On-Job-Training), DBE (Disadvantaged Business Enterprise) program.

As discussed throughout this report, Iowa DOT's FHWA DBE program is well managed and organized. Iowa DOT and its contractor community have policies and procedures to comply with U.S. DOT DBE regulations for highway and bridge construction, enabling the agency to meet its FHWA DBE goals. However, Iowa DOT's FTA DBE goal has been and remains low, as follows:

- FFY 2011–2013: 0.37 percent
- FFY 2014–2016: 0.1 percent
- FFY 2017–2019: 0.15 percent

Furthermore, Iowa DOT has not always been able to meet its low goal, primarily because the majority of subrecipient funds apply to operating costs while most of its RPA funds apply to staffing. In addition, there are few or no available DBE-certified firms available to meet subrecipients' procurement needs.

The level of DBE expertise in the Civil Rights section is very good as applied to certification and management of the FHWA-funded program. However, OPT and OSP employees are not sufficiently trained to grow the FTA DBE program. Iowa DOT must ensure consistency for all of its DBE activities. See Section 6.3.

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5 Scope and Methodology

The purpose of this review is to provide FTA with a tool for determining whether a recipient of FTA funding is in compliance with the 49 CFR Part 26 DBE requirements. However, the deficiencies identified and findings made in this report are by necessity limited to the information available to and the observations made by the review team at the time of the site visit. A lack of findings in a particular review area does not constitute endorsement or approval of an entity's specific policies, procedures, or operations; instead, it simply indicates that no deficiencies were observed at the time of the review.

The scope of the review and the methodology employed by the review team are described in detail below.

5.1 Scope

Implementation of the following DBE program components specified by the FTA are reviewed in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to Iowa DOT DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by Iowa DOT as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed made available to the public and updated at least annually [49 CFR 26.31]
- Determination that over-concentration does (not) exist and address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on U.S. DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]
- A shortfall analysis and corrective action plan when Iowa DOT did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include Iowa DOT seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- Nondiscrimination and prompt payment clauses are included in all FTA-assisted contracts and a prompt payment verification process is in place. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard U.S. DOT application, the standard U.S. DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65 -26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE

program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

5.2 Methodology

The FTA Office of Civil Rights sent a notification letter to Mr. Paul Trombino III, Iowa DOT Director, on October 25, 2016, to confirm the timeframe for the review and ask for information within 21 days. (See Attachment A.)

Before the site visit, the review team examined the requested materials, as well as documents available from FTA's TrAMS website and other sources. This includes:

- DBE Program Plan
- DBE goal methodology
- List of FTA-assisted contracts
- DBE supportive services program website
- Small Business Element from TrAMS
- Transit vehicle procurements
- DBE certification documents and website
- Shortfall analysis
- Subrecipient list
- Iowa Transit Manager's Handbook
- Semi-annual Uniform Reports from TrAMS

At the beginning of the compliance review, FTA representatives, Iowa DOT staff, and the review team conducted an opening conference with the following participants:

- Stuart Anderson, Director, Planning, Programming, and Modal Division, Iowa DOT
- Todd Sadler, Director, Office of Employee Services and DBELO Iowa DOT
- Karen Kienast, Civil Rights Team Lead, Iowa DOT
- Jacqueline Miskimins, Civil Rights AA/EEO, Iowa DOT
- Michelle McEnany, Former Director, Office of Public Transit, Iowa DOT
- Sreeparna Mitra, Public Transit Grants Manager, Iowa DOT
- Kristen Haar, Public Transit Compliance and Training Officer, Iowa DOT
- Andrea White, Statewide Planning Coordinator, Iowa DOT
- Britney Berry, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- William Schwartz, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative
- Lamont Pray, Review Team Member, the Collaborative

Following the opening conference, the review team examined Iowa DOT's DBE Program Plan and other documents. The team then interviewed staff regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. The review team also examined contract specifications and related procurement documents.

At the end of the site visit, FTA representatives, Iowa DOT staff, and the review team convened for the exit conference to discuss initial findings and corrective actions. Participants included:

- Stuart Anderson, Director, Planning, Programming, and Modal Division, Iowa DOT
- Lee Wilkinson, Director, Operations and Finance Division
- Todd Sadler, Director, Office of Employee Services and DBELO, Iowa DOT
- Karen Kienast, Civil Rights Team Lead, Iowa DOT
- Michelle McEnany, Former Director, Office of Public Transit, Iowa DOT
- Sreeparna Mitra, Public Transit Grants Manager, Iowa DOT
- Kristen Haar, Public Transit Compliance and Training Officer, Iowa DOT
- Ryan Ward, Transit Programs Administrator, Iowa DOT
- Andrea White, Statewide Planning Coordinator, Iowa DOT
- Britney Berry, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- William Schwartz, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative
- Lamont Pray, Review Team Member, the Collaborative

Iowa DOT received a draft copy of the report to review and respond. See Attachment B for a summary of technical corrections.

5.3 Stakeholder Interviews

The review team contacted six Iowa-U.S. DOT certified DBEs. Three declined to participate; the review team interviewed:

- Sandy's Sign Shop – New Hampton, IA-based bus sign vendor
- Mobilitat Software – Wyoming-based paratransit software vendor
- Curtis Contracting Corporation – Ely, IA-based roadway construction contractor

Sandy Sign Shop and Mobilitat Software contract directly with Iowa DOT's transit subrecipients. Curtis Contracting participates in road and bridge construction bids with prime contractors.

None of the companies the review team interviewed reported interacting directly with Iowa DOT where they perform their work. None reported any contacting or prompt payment issues. All three spoke positively of Iowa DOT's supportive services efforts.

All three characterized Iowa certification team as easy to work with; one firm described the process as protracted and did not like having to recertify annually.

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6 Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to Iowa program are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed in terms of “deficiency” or “no deficiency.” Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review
- A statement concerning the DBE requirements being violated or potentially being violated
- A statement concerning the required corrective action to resolve the issue

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

6.1 DBE Program Plan

Basic Requirement (49 CFR Part 26.21): Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the recipient’s implementation of the DBE program. See Attachment C. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

Discussion: During this compliance review, deficiencies were found with Iowa Program Plan because it lacks sufficient information about the FTA DBE program. While the document is properly organized and contains the required elements, it emphasizes the highway construction program and makes only a single reference to FTA in the DBE Goal Setting Methodology attachment (C).

This section identifies specific DBE Program Plan elements that need to be revised to include FTA references such as the DBE Liaison Officer (Section 0), Overconcentration (Section 6.6), Good Faith Efforts (Section 6.8-E), Protecting for Termination Against Convenience (Section 6.8-F), and elsewhere.

In addition, Iowa DOT’s FTA and FHWA triennial DBE goal periods are out of sequence. The DBE Program Plan references the 2012–2014 FHWA goal and the 2011–2013 FTA goal, which is six years earlier than the current FTA goal. (The FHWA 2015–2017 goal is under review.) Page 15 states:

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

Iowa DOT should update this paragraph to incorporate a schedule for submitting DBE goals to FTA. One approach to keep the DBE Program Plan current is to list the schedule for future goal submissions. For example, the following statement would explain the submission status and schedule for the FTA DBE goal:

The Iowa DOT submitted its proposed triennial DBE goal for FFY 2017–2019 to FTA on July 28, 2016, along with a summary of public participation process. FTA approved the goal on August 10,

2016. The next submission will be [on] August 1, 2019, and every three years thereafter. Unless the Iowa DOT receives other instructions from FTA, it will begin using the overall goal on October 1 of each submission year. The current goal is available for download at [insert website address].

Iowa DOT can provide similar information for the FHWA goal, only updating the DBE Program Plan when required.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must update its DBE Program Plan to fully incorporate the FTA DBE program. Iowa DOT must provide a copy of this updated information to the FTA Office of Civil Rights.

6.2 DBE Policy Statement

Basic Requirement (49 CFR Part 26.23): Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

Discussion: During this compliance review, no deficiencies were found with Iowa Policy Statement, which is included on Page 5 of the Program Plan. The statement is signed and dated and includes a commitment to the following actions:

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

Iowa DOT distributed the statement throughout its offices, to DBE and non-DBE firms through dissemination of its DBE Program Plan and via email to Iowa-certified DBEs.

6.3 DBE Liaison Officer

Basic Requirement (49 CFR Part 26.25): Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

Discussion: During this compliance review, deficiencies were found with these requirements.

The DBE Program Plan names as the DBELO the Director of the Office of Operations and Finance, which at the time of the site visit was Mr. Lee Wilkinson; he oversees the Office of Employee Services and Civil Rights section. However, Mr. Todd Sadler, Director of the Office of Employee Services is currently Iowa DOT's DBELO. Both Mr. Wilkinson and Mr. Sadler have direct access to the Iowa DOT Director.

While as DBELO, Mr. Sadler handles application and delivery of the FHWA-funded DBE program, he is less involved with the FTA-funded program. According to Mr. Sadler's job description provided to the review team:

This position supervises the Affirmative Action Team. The organization of this team came from a [FHWA] review recommending the centralization of the department's programs covered under this umbrella. The duties of this team . . . include ensuring Iowa DOT compliance with federal regulations for the following civil rights programs: Title VI, Contractor EEO/AA, OJT (On-Job Training), DBE (Disadvantaged Business Enterprise) program. Failure to comply with federal civil rights regulations would lead to loss of more than \$300 million of federal funds annually. The Civil Rights staff are responsible for ensuring Iowa DOT compliance with federal regulations for the following civil rights programs: Title VI, Contractor EEO/AA, OJT (On-Job-Training), DBE (Disadvantaged Business Enterprise) program.

The DBE Program Plan also outlines the following duties and responsibilities of the "External Civil Rights Section," which in addition to the Civil Rights section, includes Mr. Wilkinson and Mr. Sadler:

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

The review team interviewed the Civil Rights section employees during the site visit. The employees understand the U.S. DOT DBE requirements and oversee a DBE program to undertake the above-referenced duties. However, the DBE program is primarily focused on the highway construction program and does not adequately incorporate FTA-funded DBE activities.

OPT oversees the FTA-funding program and is responsible for establishing Iowa DOT's triennial FTA DBE goal (including public participation), monitoring subrecipients, overseeing transit vehicle procurements, and reporting to FTA. The DBE Program Plan doesn't refer to OPT or the DBELO's FTA-related oversight duties. In addition, with the exception of compiling roll-up information from subrecipients for the required FTA semiannual reporting, OPT does not regularly discuss track DBE goal

attainment or discuss goal attainment status with the DBELO. Also see Counting DBE Participation (Section 6.8-G).

The review team discussed the FTA-funded DBE program with Mr. Sadler and [former] OPT Director, Ms. Michelle McEnany. They described prior discussions about agency reorganization aimed at addressing the imbalance between the FHWA and FTA programs and stated no changes had yet been made.

Regardless of how Iowa DOT chooses to address these and other deficiencies, it must improve formal communication and internal reporting procedures and provide additional DBE training to the OPT staff handling FTA DBE-related activities. Examples of training include attending FTA's DBE course offered through the National Transit Institute (<http://www.ntionline.com/disadvantaged-business-enterprise>) or use of consultants to provide DBE expert services. Iowa DOT may need additional resources to oversee subrecipients and provide the necessary technical assistance to improve the DBE program.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must update its DBE Program Plan to identify the correct DBELO. Iowa DOT must also ensure the DBELO is actively involved in applying required DBELO duties to *all* U.S. DOT funding programs, including FTA. Iowa DOT must evaluate its staffing resources and organizational structure for DBE programs and report its ongoing progress to the FTA Office of Civil Rights.

6.4 DBE Financial Institutions

Basic Requirement: (49 CFR 26.27) Recipient must 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 U.S. DOT- assisted contracts to make use of these institutions.

Discussion: During this compliance review, a deficiency was found with this requirement. In its DBE Program Plan, Iowa DOT pledged to thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in Iowa, to make reasonable efforts to use these institutions, and also encourage their use by prime contractors.

Iowa DOT's investigation did not identify any such institutions and instead identified West Bank of Des Moines, IA as a local financial institution that would work with DBEs.

The review team independently researched the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in Iowa via the FDIC website (<https://www.fdic.gov/regulations/resources/minority/MDI.html>) and identified Pinnacle Bank in Marshalltown, IA as a "Minority Depository Institution." According to the bank's website (<https://www.bankpinnacle.us/native-american-services>), "Chartered in 1927, Pinnacle Bank has been 100% native owned by the Sac and Fox Tribe of the Mississippi in Iowa (Meskwaki) since 2009."

Iowa DOT representatives were aware of Pinnacle Bank, stating they had arranged a January 2016 meeting with a Pinnacle Bank representative, but did not meet due to a scheduling conflict. They never rescheduled the meeting.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must initiate discussions with Pinnacle Bank (or other socially and economically financial institutions it identifies), and report the results of these efforts to the FTA Office of Civil Rights. Iowa DOT must also undertake efforts to encourage prime contractors on U.S. DOT –assisted contracts to use financial institutions owned and controlled by socially and economically disadvantaged individuals.

6.5 DBE Directory

Basic Requirement (49 CFR Part 26.31): A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

Discussion: During this compliance review, no deficiencies were found with this requirement. Iowa DOT publishes a directory on its website listing all eligible DBE firms, with firm name, primary contact, address, phone number, fax number, e-mail, website, NAICS code(s), and description of services. Mr. Hector Torres-Cacho of the Civil Rights section manages the directory using a Microsoft Access database, enabling the publication of updates in real time. He demonstrated its use to the review team.

The Iowa DOT DBE web page (http://www.iowadot.gov/civilrights/dbe_program.html) provides links to the directory, which visitors may download in Excel or search by firm name or NAICS code or work type.

6.6 Overconcentration

Basic Requirement (49 CFR Part 26.33): The recipient must determine if DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, and then devise appropriate measures to address this overconcentration.

Discussion: During this compliance review, no deficiencies were found with this requirement. According to DBE Program Plan (see Attachment C) pages 13–14, Iowa DOT has identified the following four criteria to determine if overconcentration of DBE firms is present:

1. DBE firms are obtaining a larger share of the market than their availability
2. DBE firms are obtaining the majority of the market
3. A DBE firm is obtaining an excess share of the market
4. A DBE firm is obtaining the majority of the market

Iowa DOT uses the following guidelines for overconcentration:

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

Iowa has 250 certified DBE firms statewide with just over 25 percent working in construction, the area where almost all DBE expenditures occur. This includes firms based in Iowa and neighboring states. The Civil Rights section tracks projects around the state and knows whether and how far firms travel to work on projects elsewhere in Iowa. This knowledge enables Iowa DOT to track the potential for overconcentration. Consistent with the findings in Section 6.1, the last bullet in the above guidelines should refer to FTA.

6.7 Business Development Programs

Basic Requirement (49 CFR Part 26.35): The recipient may or must (upon FTA’s direction) establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

Discussion: During this compliance review, no deficiencies were found with this requirement. An advisory comment is made regarding increased small business outreach activities.

Iowa DOT provided the review team with its 2012 FHWA-approved Small Business Element. The DBE Program Plan also includes Attachment (A Small Business Development Contracts), which references DS-09036 (Developmental Specifications for Small Business Contracts) from 2010. The DBE Program Plan also references Attachment B (Supportive Services Programs Offered by Iowa DOT). These documents reference a number of helpful approaches to increasing small business opportunities with Iowa DOT and its subrecipients.

Iowa DOT has engaged CPMI, Inc. to assist highway-related DBE-certified companies, providing:

- Technical assistance, including alternate dispute resolution
- Construction manuals and standard specifications books
- Classroom and self-study education courses
- Certified public accountant financial assistance
- Bonding financial assistance

The review team interviewed CPMI’s Mr. Bob Harmon to discuss the program. He confirmed that most of the program is geared to DBEs seeking highway work. He manages a robust blog (<http://idotdbess.blogspot.com>) that dates from 2014 and provides links to key resources. He also communicates via email to a subscriber community.

Mr. Harmon has participated in Iowa DOT-sponsored transit workshops aimed at matching transit providers with potential vendors to build relationships and encourage participants to explore mutual opportunities. Because Iowa funds vertical construction and design services with state (not Federal) funds, DBE opportunities for the architect/engineer and building construction community are limited.

According to Mr. Harmon and OPT staff, some Iowa firms could certify as DBEs but have not yet applied. One reason cited is a perception that the potential value of work does not justify the required paperwork. While FTA-funded business opportunities through Iowa DOT are not substantial, they do exist. Supportive services outreach activities should further explore such opportunities; however, they require a proactive approach.

One challenge is the reliance on 23 subrecipients and 27 RPA/MPOs to meet the DBE goal. In addition, as noted, the existing DBE marketplace does not align well with subrecipients’ primary spending categories. For example, in the FY 2017–2019 DBE goal setting analysis, approximately 90 percent of the expected FTA spending is in categories where Iowa DOT did not identify available DBEs. Furthermore, categories where more than one DBE firm is available (concrete contractors, building construction, and engineering) account for just 0.7 percent of the total spending.

This highlights the need to identify potential DBE-certified businesses in higher spending categories such as general automotive repair and maintenance and automotive parts and accessories. See Determining and Meeting Goals-Calculation (Section 6.8-A).

Advisory Comment: To increase the number of Iowa-certified DBE firms, an effective practice is to target small companies offering goods or services in areas of greater transit spending and provide technical assistance and outreach to increase procurement opportunities.

6.8 Determining/Meeting Goals

A) Calculation

Basic Requirement (49 CFR Part 26.45): To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

Discussion: During this compliance review, no deficiencies were found with Iowa DOT's DBE goal calculation methodology. Advisory comments are offered about analyzing the availability of DBE firms and coordinating with other Iowa DOT staff when setting goals.

OPT is responsible for developing the triennial FTA DBE goal and uses the following three-step process:

To determine the overall DBE Goal, a two-step process was used. In Steps 1 and 2, base figures were calculated to determine the relative availability of DBE's in specific areas of expertise using the State of Iowa Directory of Certified Disadvantaged Businesses. In Step 2, an assessment of known relevant evidence available to Iowa DOT, NAICS codes was analyzed to determine what adjustments, if any, were needed to narrowly tailor the base figures to Iowa DOT's and its subrecipients' marketplace. In Step 3, weight and availability was used to calculate the weighted base figure. The Excel worksheet tool provided by FTA was used to do the Step 1-3 calculations. Iowa DOT's data of the actual DBE participation in U.S. DOT-assisted contracts during the previous fiscal year [was used] in order to adjust the base figures, and these calculations are included in Table 4.

This method produced an initial three-year goal of 0.14 percent, which Iowa DOT adjusted to 0.15 percent based on the prior three-year DBE participation rate. Iowa DOT established the goal as race neutral because almost all spending is via direct engagement of DBE companies (primarily goods).

Total spending is \$53.5 million, comprised of subrecipient operations, subrecipient capital projects, and RPA/MPO funds (including FHWA Flex funding). Every three years in May, in preparation for submitting its August 1 triennial goal, OPT asks subrecipients to complete an online form. OPT provides subrecipients with current FY formula funding as well as projections for the next FY, and asks them to extrapolate a three-year estimate, including any estimates of one-time capital expenditures. OPT asks subrecipients to estimate operations-related contracting opportunities in eight categories (49 subcategories) and assigns one NAICS code to each category. OPT defines these opportunities as:

All types of contracts anticipated to be awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. Note, this includes items for which no physical contract will be created, but rather use of a purchase order, direct billing, credit card, or cash purchases.

Subrecipients also estimate non-rolling stock capital opportunities such as "bus lifts, radios, shelters, signage, service vehicles, shop equipment or tools, architectural and engineering services, construction, land acquisition, and remodeling." For the 2017–2019 goal, subrecipients reported \$2.1 million in capital spending. After discussions with the review team, OPT revised the forecast to account for a data entry error, resulting in an adjusted capital forecast of just under \$1.7 million. This includes four categories of relatively large-scale expenditures: Commercial & Institutional Building Construction (\$100,000), Concrete Contractors (\$468,300), Prefabricated Metal Building & Component Manufacturing (\$375,000), and Automotive Parts, Accessories, & Tire Stores (\$244,450).

At least two of these four categories offer potential DBE prime or subcontracting opportunities for the 11 DBEs in the Commercial & Institutional Building Construction category, and three DBEs in the Concrete Contractors category. While the other two categories do not correspond to available DBEs, given the

spending amounts and the number of available firms, Iowa DOT may wish to communicate this spending forecast to potential DBE-eligible firms and encourage them to apply for DBE certification.

In addition, Iowa DOT's supportive services program and/or its subrecipient community may identify individual parts or maintenance companies to apply for DBE certification. It can "de-bundle" larger purchases or identify common commodities or services across multiple recipients. By collaborating with its subrecipients and others, Iowa DOT can identify opportunities and provide technical assistance where required. See Section 6.7.

Iowa's DBE Community

Iowa DOT's Civil Rights section staff and its supportive services contractor know the relatively small (250 firms) DBE community in Iowa, but OPT staff has less familiarity. This may be why OPT did not explore all potential DBEs when it completed its availability analysis, perhaps ruling out companies with similar NAICS codes that don't align with the transit spending category codes it has established.

The review team examined the DBE directory and identified three potential companies under different codes whose services may align with subrecipients' needs. (See Table 6-1.) The three firms provide goods and services in categories with more than \$2.2 million in anticipated spending. The automotive parts and accessories category is of particular interest since some vehicle parts do not require direct purchases from vehicle manufacturers. According to OPT, a woman-owned automotive parts vendor in Iowa currently sells parts to at least one subrecipient and has not yet obtained DBE certification, perhaps because she is not aware of the potential benefits of doing so. Although Iowa DOT's FTA-funded spending in NAICS category 441310 is forecast at \$1,623,789, Iowa DOT does not publicize this specific level of spending. See next section.

FTA suggests including all knowledgeable Iowa DOT staff and perhaps the DBE supportive services contractor in DBE-related discussions, particularly for setting goals. See Section 6.9.

OPT's current triennial DBE goal calculation relies upon subrecipients to forecast spending and may not involve sufficient coordination or analysis. As part of its shortfall analysis and corrective action plan discussed in Section 6.9, OPT sought input from subrecipients and RPAs and MPOs regarding DBE opportunities and participation. One subrecipient reported inviting a DBE firm, Community CPA & Associates, to bid on auditing assignments but got no response. Others identified this firm and intended to invite them to bid on future audit assignments. FTA suggests contacting this firm directly to assist them with future RFPs.

Advisory Comments: When analyzing availability of DBE firms and setting goals, an effective practice is to research DBE firms' capabilities rather than to rely on NAICS codes. It is also an effective practice to involve other agency staff and DBE supportive services consultants in goal-setting discussions. Another effective practice is to fully analyze subrecipient spending forecasts to identify and promote potential DBE purchase opportunities that may induce DBE-eligible businesses to apply for DBE certification.

Table 6-1 Iowa-Certified DBE Firms Not Included in Goal Calculation

Goal Calculation			Potential Alignment			
NAICS/ Spending	Description	Firms	NAICS	Description	Firm	Location
441310 \$1,623,789	Automotive Parts & Accessories	0	423120, 423130	Motor vehicle parts and accessories, new, merchant wholesalers (non-stocking distributor); Motor vehicle tire and tube merchant wholesalers (non-stocking distributor); Tire tubes, motor vehicle, merchant wholesalers (non-stocking distributor)	Transit Auto Parts, LLC	Chicago, IL
541211 \$627,579	Office of Certified Public Accountants	0	531213	CPA Audits, Accounting, Payroll, Taxes, and Business Consultation	Community CPA & Associates	Des Moines, IA
			541219, 541611	Bookkeeping services including payables, receivables, billing, payroll and data entry	One on 1 Accounting & Consulting Services, LLC	York, PA

B) Public Participation

Basic Requirement (49 CFR Part 26.45): In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

Discussion: During this compliance review, deficiencies were found with this requirement. Iowa DOT does not sufficiently encourage public participation to meet its FTA-DBE goals.

OPT provided the review team with press releases and copies of newspaper advertisements announcing two meetings on April 29, 2016 and a June 3, 2016 to discuss the proposed goals. Newspapers included the *Des Moines Register*, *El Comunicador*, *Iowa Bystander*, and *Iowa Fronteras*.

OPT also accepted written comments on its goal via mail or email and provided contact information.

OPT forwarded the meeting announcement to the Civil Rights section with the intent of disseminating the email to Iowa DOT's DBE email list. However, Iowa DOT could not provide the review team with evidence that it transmitted OPT's email to its mailing list. The review team also consulted the DBE Supportive Services website blog archive for April–June 2016. No postings mentioned these meetings, both of which were held at Iowa DOT in Ames. No one attended either meeting and OPT received no feedback via mail or email. The lack of attendance or any other feedback indicates outreach efforts are inadequate.

One strategy to increase participation includes expanding the narrative accompanying DBE goal communications to describe and promote the potential business opportunities. For example, with 23 subrecipients and 18 RPAs receiving FTA funding, this represents 41 entities potentially procuring services. Another approach is to directly contact DBE firms that have done business with the 41 entities to

invite their participation in the goal setting process. Iowa DOT may want to examine the geographic location of DBEs from the past three to six years and hold such meetings closer to participating businesses. Another option is to explore online meeting opportunities such as webinars.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must prepare a DBE public participation strategy for goal setting that invites more participation. Iowa DOT must provide a copy of this strategy to the FTA Office of Civil Rights.

C) Race-Neutral DBE Participation

Basic Requirement (49 CFR Part 26.51): The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

Discussion: During this compliance review, no deficiencies were found with the requirement related to race-neutral DBE participation. Iowa DOT's 0.15 percent FTA DBE goal is all race neutral.

According to its DBE Goal Setting Methodology, Iowa DOT's overall race-neutral methods include:

“making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses, unbundling large contracts to make them more accessible to small businesses, encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves, and providing technical assistance, communications programs and other support services to facilitate consideration of DBEs and other small businesses.”

The foregoing discussion generally applies to Iowa DOT's FHWA-funded program. Almost all of the spending in the FTA-funded program is via direct engagement of DBE companies (primarily goods) and is thus fully race-neutral. The two FTA-funded services contracts that included DBE participation and made available to the review team were race-neutral.

D) Race-Conscious DBE Participation

Basic Requirement (49 CFR Part 26.51): The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

Discussion: During this compliance review, no deficiencies were found with this requirement. As noted, Iowa DOT's current FTA DBE goal of 0.15 percent is all race neutral. Iowa DOT established the goal as race neutral because almost all spending is via direct engagement of DBE companies (primarily goods).

E) Good Faith Efforts

Basic Requirement (49 CFR Part 26.53): The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract, a description of the work each DBE will perform, the dollar amount of DBE participation, written commitment to use the DBE submitted in response to the contract goal, written confirmation from each DBE listed, or GFEs as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

Discussion: During this compliance review, deficiencies were found because Iowa DOT does not apply this requirement to its FTA-funded program.

Pages 17–20 of the DBE Program Plan in Attachment C include comprehensive GFE requirements Iowa DOT applies to its road and bridge construction program. This includes a section titled, “GFE

Determination at Letting,” which outlines committee review processes, and a section titled, “GFE When a DBE is Replaced on a Contract.” Iowa DOT’s Civil Rights team is well versed on applying these requirements when necessary, but in general, they said prime contractors meet DBE goals on FHWA-funded projects. The procedures are also included in Iowa DOT’s Standard Specifications for Highway and Bridge Construction, available from Iowa DOT’s electronic reference library and in Attachment D. (See <http://www.iowadot.gov/specifications/index.htm>)

As noted in the DBE Goal Calculation discussion above, most of the FTA-funded DBE procurements are for goods, typically through purchase orders or other methods. The review team requested and examined RFP and contract documents for the two FTA-funded RPA/MPO transit studies (Ames MPO and Corridor MPO). Neither RFP contained a DBE goal or any language regarding GFEs.

Because Iowa DOT’s comprehensive process for reviewing bids with DBE goals and for GFE verification may be too complex for non-construction projects, the review team requested examples of other professional service procurements with applicable GFE language, but Iowa DOT was unable to provide any.

OPT provides subrecipients with a downloadable Transit Manager’s Handbook (<http://www.iowadot.gov/transit/handbook.html>), which covers a range of topics including procurement and civil rights. The DBE discussion (pages 111–113) provides no guidance regarding GFE requirements. See Attachment E.

As also noted in the DBE Goal Calculation discussion above, the review team identified a handful of potential subrecipient construction projects. Should these advance as capital projects, Iowa DOT may wish to apply its current bid review process without modification.

Given the availability of DBE firms in concrete and building industries, Iowa DOT should work with their transit subrecipients to establish DBE goals on any construction projects where DBE contractors are available and help subrecipients prepare bid documents that contain the GFE requirements.

In addition, Iowa DOT should to develop its own contract language to address DBE goals and GFE requirements for any future professional services solicitations using Federal funds, which could also apply to subrecipients or RPAs/MPOs. See Section 6.11.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must revise its subrecipient documents to incorporate the Part 26.53 requirements, including the precise wording in the DBE assurance clause, and revise its DBE Program Plan to apply these requirements to *all* Federally funded projects with DBE goals. Iowa DOT must provide copies of these revised documents to the FTA Office of Civil Rights.

F) Protecting Against Termination for Convenience

Basic Requirements (49 CFR 26.53 and 26.13): Recipients must implement mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform work of the terminated subcontractor with its own forces or those of an affiliate, or reducing the scope of the DBE contract) without the recipient’s prior written consent. Failure to obtain written consent is a material breach of contract.

Discussion: During this compliance review, a deficiency was found with this requirement. The GFE requirements in DBE Program Plan pages 17–20 also govern terminations, which the agency applies to the road and bridge construction program. See Attachment C. The procedures are also included in Iowa DOT’s Standard Specifications for Highway and Bridge Construction. See Attachment D. As with the GFE procedures, the limited number of transit contract documents available to the review team did not incorporate any requirements to prevent terminations for convenience.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must revise its subrecipient documents to incorporate the Part 26.53 and 26.13 requirements and revise its DBE Program Plan to apply these requirements to *all* Federally funded projects with DBE goals. Iowa DOT must provide copies of these documents to the FTA Office of Civil Rights.

G) Counting DBE Participation

Basic Requirement (49 CFR Part 26.55): The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidders are only counting work performed by the DBE's own forces in accordance with the DBE requirements.

Discussion: During this compliance review, deficiencies were found with how Iowa DOT counts DBE participation.

OPT tabulates the relatively few instances of subrecipient spending with DBE participation by requiring each subrecipient to complete semiannual uniform reports, which OPT then uploads to FTA's Transit Award Management System (TrAMS) every June and December. As discussed in Section 4.2, Iowa DOT reported DBE participation on two items (one contract and one purchase) for which DBE certification was subsequently deemed invalid. In the first instance, the contractor withdrew its DBE certification prior to contract issuance. In the second, the vendor was DBE certified in Wyoming, but not in Iowa.

Iowa DOT must verify its subrecipient and RPA/MPO DBE reporting before submitting its reports to FTA.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must revise its process for verifying subrecipient and RPA/MPO DBE spending. Iowa DOT must communicate this process to the FTA Office of Civil Rights.

H) Quotas

Basic Requirement (49 CFR Part 26.43): The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

Discussion: During this compliance review, no deficiencies were found with this requirement. Per the Program Plan (page 15), "The Iowa DOT does not use quotas or set-asides in any way in the administration of its DBE program. To ensure compliance with 49 CFR part 26, the Iowa DOT encourages the use of DBEs on Contracts with or without goals."

6.9 Shortfall Analysis and Corrective Action Plan

Basic Requirement (49 CFR Part 26.47): The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

Discussion: During this compliance review, no deficiencies were found with Iowa DOT's shortfall analysis and corrective action plan. An advisory comment is made regarding additional actions Iowa DOT may take to address future shortfalls and increase future DBE participation.

Table 6-2 summarizes Iowa DOT's FTA DBE goal attainment for the FY 2014–2016 period. As shown, Iowa DOT did not meet its goal in 2014, but met its goal in 2015 and 2016.

Table 6-2 Iowa DOT FTA DBE Goal (0.1 Percent) Attainment (FFY 2014–2016)

FFY	FTA Funds	DBE Spending	Percent
2014	\$17,235,502	\$3,561	0.02%
2015	\$16,206,991	\$18,968	0.12%
2016	\$14,769,658	\$25,587	0.17%
Total	\$48,212,151	\$48,116	

In response to FTA’s information request, Iowa DOT provided its corrective action plan to address its shortfall in FFY 2014, titled “Re: Disadvantaged Business Enterprise Shortfall Analysis.” Iowa DOT offered several reasons for the shortfall, including a small number of DBE vendors in functions that align with spending, and a funding program distributed across a relatively large number of subrecipients and RPA/MPO entities. The document outlines several steps to increase DBE participation on FTA-funded contracts, including:

- Inviting transit-related speakers to Iowa DOT’s annual DBE Workshop held in February
- Asking FTA to host an “Opening Doors” event
- Hosting the National Transit Institute (NTI) DBE course in Iowa

The Opening Doors event did not occur due to the program’s cancellation. However, OPT continues to use Iowa DOT’s annual February DBE workshop as an opportunity to increase FTA DBE opportunities and hosted the NTI DBE course in July 2015. In addition, OPT engaged a DBE consultant and held a two-day workshop for its subrecipients in February 2016.

OPT polled its subrecipients on how and whether they work with DBEs to identify barriers to DBE participation. The review team examined subrecipients’ responses and concluded OPT is working closely with subrecipients to increase DBE participation.

Subrecipients said they’re committed to identifying DBE procurement opportunities, but said the pool of DBE vendors that align with their needs is limited. They described challenges such as Iowa-certified firms not responding to RFP requests and qualified vendors reluctant to apply for DBE certification.

One corrective action strategy is to share this information with the Civil Rights section and the Supportive Services consultant to brainstorm how to overcome identified barriers. These brainstorming sessions could occur semi-annually in advance of the uniform report filing deadlines.

Advisory Comments: To increase DBE participation, an effective practice is to hold regular meetings with those most familiar with the DBE community to identify strategies to increase DBE participation. Another effective practice is to incorporate recognition ceremonies into DBE workshops and other subrecipient and RPA/MPO meetings. These may include awards for highest DBE utilization, most growth in DBE-related spending, or recruitment of DBE firms, all with the purpose of celebrating DBE participation.

6.10 Transit Vehicle Manufacturers (TVMs)

Basic Requirement (49 CFR Part 26.49): The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

Discussion: During this compliance review, deficiencies were found with this requirement.

Iowa DOT establishes omnibus contracts with TVMs for bus procurements using base vehicle specifications. One set of Iowa DOT's contracts covers heavy duty vehicles manufactured by Gillig, New Flyer, and El Dorado. Iowa DOT provided the review team with FTA TVM DBE approval documents for vehicles covered under this contract.

A second set of omnibus contracts covers smaller vehicles manufactured by Braun, Mobility Ventures (MV-1), Elkhart Coach, Glaval Bus, Turtle Top, El Dorado, Arboc, Winnebago (Metrolink), Champion, and Goshen Coach. All of these manufacturers are listed on the FTA website as having DBELOs. Iowa DOT provided the review team with copies of contracts for these manufacturers; however the staff didn't know about the requirement to furnish DBE certifications when it executed these contracts.

Iowa DOT tracks funding obligations and contract end dates for each funding contract it sends to subrecipients. It requires subrecipients to communicate their intent to purchase specific vehicles along with a copy of the purchase order prior to executing purchases. Iowa DOT also tracks subrecipient expenditures and provides this information to FTA as part of its semiannual reporting in TrAMS.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must submit to the FTA Office of Civil Rights a process for verifying TVM certification prior to award and notify FTA of the successful bidder(s) within 30 days of award.

6.11 Required Contract Provisions and Enforcement

A) Contract Assurance

Basic Requirement (49 CFR Part 26.13): Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include a nondiscrimination clause detailed by the DBE regulations.

Discussion: During this compliance review, deficiencies were found with this requirement. Page 7 of the DBE Program Plan and Page 31 of Iowa DOT's Standard Specifications for Highway and Bridge Construction contain the required nondiscrimination clause, which states:

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

Although Iowa DOT has mechanisms in place within its FHWA-funded program to ensure its contracts comply with this and other requirements, these mechanisms do not sufficiently extend to the FTA-funded program. According to the Transit Manager's Handbook (Chapter 13 – Civil Rights),

As the grantee for Section 5310, 5311, and statewide 5339 programs, the Iowa DOT is required to document that its subrecipients comply with all of the civil rights requirements in conducting their transit programs. Joint participation agreements contain assurance clauses that transit agencies' sign verifying compliance.

In signing joint participation agreements, each 5310, 5311, and statewide 5339 subrecipient provides the following assurance: no person, on the grounds of race, color, creed, national origin, sex, age or disability be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program or activity funded in whole or in part by the FTA. In

addition, the joint participation agreement contains the assurance that the sub-recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin.

During the 2014–2016 period, Iowa DOT directly engaged one consultant through a purchase order and its subrecipients that used DBEs primarily purchased goods, also through purchase orders. The review team examined files from two FTA-funded contracts for professional services that included DBE participation. Neither the RFP documents nor the contract documents contained the required contract assurance clause. See Section 6.14.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must establish procedures for ensuring all subrecipient contracts include the nondiscrimination clause. Iowa DOT must provide evidence that these procedures are being followed to the FTA Office of Civil Rights.

B) Prompt Payment

Basic Requirement (49 CFR Part 26.29): The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed. The recipient must provide appropriate means to enforce this requirement, which may include appropriate penalties for failure to comply.

Discussion: During this compliance review, deficiencies were found with this requirement. An advisory comment is made regarding withholding additional retainage from subcontractor progress payments.

Page 11 of the DBE Program Plan (see Attachment C) and Pages 119–120 of Iowa DOT's Standard Specifications for Highway and Bridge Construction (see Attachment D) contain the required language on prompt payments.

Iowa DOT requires contractors to promptly pay each subcontractor, and limits delay or postponement of payment only for good cause with written notification to the subcontractor. Iowa DOT requires prompt payment no later than 1) within seven calendar days after the contractor receives payment for the subcontractor's work or 2) seven calendar days after the contractor could have received payment for the subcontractor's work, if the reason for nonpayment is not the subcontractor's fault.

Iowa DOT's retainage policy withholds 3 percent of each progress estimate as retainage on the first \$1 million paid on a contract, with no additional retainage withheld on the remainder of the contract payment amount. The policy permits contractors to withhold up to 5 percent of each progress estimate on work performed by subcontractors.

The FTA-funded contracts the review team examined did not contain a prompt payment clause or any language on retainage. See Section 6.14. In addition, the two vendors on FTA-funded projects the review team interviewed did not experience any payment issues.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must revise its subrecipient documents to include prompt payment clauses in all contracts with DBE participation. Iowa DOT must submit a copy of the contract language to the FTA Office of Civil Rights.

Advisory Comment: Given the challenges Iowa DOT faces in attracting DBE subcontractors on FTA-funded projects, an effective practice is to remove any additional subcontractor withholding from FTA-funded contracts where prime contractor withholding is applied.

C) Legal Remedies

Basic Requirements (49 CFR Part 26.37): Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

Discussion: During this compliance review, no deficiencies were found with this requirement. An advisory comment is made regarding incorporating required contract provisions into subrecipient agreements and other contract documents.

Pages 14 and 22 of the DBE Program Plan contain language on monitoring and enforcement mechanisms including Commercially Useful Function (CUF) reviews. See Attachment C. Pages 32–34 of the Iowa DOT’s Standard Specifications for Highway and Bridge Construction contain procedures for ensuring contractor compliance. See Attachment D. Iowa DOT’s Transit Joint Participation Agreement (http://www.iowadot.gov/transit/joint_participation.html) contains legal remedies covering noncompliance and includes a section on DBE goal setting and cooperation. In addition, Page 6 of the Transit Manager’s Handbook states, “Transit systems must comply with all applicable federal and state regulations. See information supplied at the end of this chapter for state regulations and the Master Agreement for FTA requirements.” See Attachment E. As noted earlier in this section, these documents do not include the required contract provisions. However, OPT works closely with its subrecipients to ensure compliance, including triennial reviews of all subrecipients, and Iowa DOT has appropriate legal remedies to address noncompliance.

Advisory Comment: It is an effective practice to incorporate required DBE contract provisions into subrecipient guidance documents and agreements covering DBE programs and requirements.

6.12 Certification Standards

Basic Requirements (49 CFR Parts 26.67–26.71): The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required U.S. DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

Discussion: During this compliance review, no deficiencies were found with Iowa DOT’s DBE certification process or documentation requirements. Iowa DOT’s DBE webpage (http://www.iowadot.gov/civilrights/dbe_program.html) provides links to the U.S. DOT DBE Uniform Certification application, DBE Personal Net Worth Statement, and out-of-state application instructions. Civil Rights section staff members are well versed in the process.

6.13 Certification Procedures

A) Onsite Visits and Document Review

Basic Requirement (49 CFR Part 26.83): The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient’s review must include performing an on-site visit and analyzing the proper documentation.

Discussion: During this compliance review, no deficiencies were found with this requirement. The review team interviewed Mr. Hector Torres-Cacho, who explained Iowa DOT’s process for eligibility determination, including document reviews and site visits. The process is consistent with the Subpart D regulatory standards, requiring applicants to complete the Uniform Certification Application Form and the Personal Net Worth statement. Mr. Torres-Cacho reviews and verifies application documents and performs site visits for all in-state applicants.

B) Annual Affidavit

Basic Requirement (49 CFR Part 83): DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

Discussion: During this compliance review, no deficiencies were found with this requirement. Iowa DOT requires annual “no change” affidavits from all certified DBEs. Iowa DOT does not require DBE firms to reapply for certification. Mr. Torres-Cacho tracks renewal dates and sends renewal letters to DBEs two months prior to the renewal date, following up with reminders for those that do not submit affidavits on time (e.g., warning letter and notice of intent to decertify.) He maintains records of annual affidavits in a filing system and using a Microsoft Access database.

C) Interstate Certification

Basic Requirement (49 CFR 26.85): The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR 26.85(c)-(g).

Discussion: During this compliance review, no deficiencies were found with this requirement. Iowa DOT accepts out-of-state certifications and uses the simpler application process accepting DBE certifications from the firm’s state. It contacts the original certifying agency with any questions but has not denied interstate certification requests for valid DBEs.

D) Certification Appeals

Basic Requirement (49 CFR 26.86): The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the U.S. DOT.

Discussion: During this compliance review, no deficiencies were found with this requirement.

Iowa DOT follows the regulatory requirements governing denials and provides detailed reasons in denial letters. Iowa DOT permits reapplications within 12 months and oversees an appeals process through an appeals committee. The review team examined Iowa DOT’s application tracking spreadsheet, which showed four certification denials appealed over a three-year period. The appeals committee overturned two denials and upheld two, one of which appealed to U.S. DOT; that appeal was overturned.

6.14 Record Keeping and Enforcements

Basic Requirements (49 CFR Parts 26.11 and 26.37): The recipient must provide to FTA data about its DBE program on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA Transit Award Management System (TrAMS) (formerly TEAM), unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the U.S. DOT Office of Civil Rights by January 1st of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close out reviews for contracts. Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Discussion: During this compliance review, deficiencies were found with the bidders list requirements and monitoring. No deficiencies were found with semi-annual uniform reporting requirements. An advisory comment is made regarding updating uniform reports when errors are found.

Semi-Annual Uniform Reporting

Iowa DOT submitted all required reports covering FFY 2014–2016 DBE spending on time. For the June 1, 2015 submission, Iowa DOT reported \$44,724 DBE spending, which included a software vendor not DBE certified in Iowa at the time of the contract. The corrected amount is \$15,494. Iowa DOT realized its DBE goal in 2015, but did not update reports to reflect this correction. FTA recommends updating uniform reports upon discovering reporting errors.

Compliance Monitoring

Iowa DOT's Civil Rights section has well-established monitoring and enforcement procedures to ensure DBE compliance for the FHWA-funding program. As discussed in Section 4.1, OPT oversees subrecipients' compliance through regular interactions and triennial reviews. However, the review team identified deficiencies with the extent of OPT's oversight. For example, as part of its pre-visit information, OPT identified two procurements with DBE participation that subrecipients erroneously reported. In both instances, OPT did not confirm if the DBEs were Iowa-certified at the time of reporting. The two RPA/MPO contracts using FTA funding that the review team examined did not contain any DBE goals in the RFPs or any required provisions in the contracts. Iowa DOT did not note these issues when approving the use of FTA funds for these projects.

Bidders List

Iowa DOT does not maintain a single bidders list with all of the required information. Iowa DOT provides links to its DBE directory in bid documents and RFPs listing company name, address, phone, fax, email, website, owner name, NAICS codes, work type, date certified, ethnicity, and type (WBE/MBE). Its Civil Rights section annually asks firms to identify their gross receipts bracket and uses this information to set triennial goals. FTA requires recipients to maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

Corrective Actions and Schedule: Within 60 days of the issuance of the final report, Iowa DOT must implement appropriate monitoring and reporting mechanisms to ensure all FTA-funded subrecipient and RPA purchases and contracts comply with the U.S. DOT requirements. In addition, Iowa DOT must maintain a bidders list containing all of the required information. Iowa DOT must provide a copy of its revised monitoring procedures and a copy of its bidders list to the FTA Office of Civil Rights.

Advisory Comment: It is an effective practice to revise uniform reports to FTA when discovering errors in prior reports.

7 Summary Table of Compliance Review Findings

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	Deficiency	Program Plan is properly structured but does not contain sufficient references to FTA-funding program	60 days/Jul 2017
2.	Policy Statement	26.23	No deficiency		
3.	DBE Liaison Officer	26.25	Deficiencies	The named DBELO is incorrect. DBELO does not provide adequate FTA program oversight	60 days/Jul 2017
4.	Financial Institutions	26.27	Deficiency	Iowa DOT did not identify or meet with an Iowa-based Native-American-owned bank here in Iowa and does not have a process in place to encourage contractors to bank with such institutions.	60 days/Jul 2017
5.	DBE Directory	26.31	No deficiency		
6.	Overconcentration	26.33	No deficiency		
7.	Business Development Programs	26.35	Advisory comment		
8.	Determining / Meeting Goals	See 8a–8h below			

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
8a	Calculation	26.45	Advisory comment		
8b	Public Participation	26.45	Deficiency	Public participation was limited to advertisements and website postings (no emails) with no responses or meeting attendance.	
8c	Race-Neutral	26.51	No deficiency		
8d	Race-Conscious	26.51	No deficiency		
8e	Good Faith Efforts	26.53	Deficiency	Required language is not present in transit-funded RFPs or contracts.	60 days/Jul 2017
8f	Protecting Against Termination for Convenience	26.53 and 26.13	Deficiency	Required language is not present in transit-funded RFPs or contracts.	60 days/Jul 2017
8g	Counting DBE Participation	26.55	Deficiency	Subrecipient spending verification is not done.	60 days/Jul 2017
8h	Quotas	26.43	No deficiency		
9.	Shortfall Analysis and Corrective Action Plan	26.47	No deficiency		

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
10.	TVM	26.49	Deficiency	One of the two bus procurement contracts did not follow the TVM notification requirements.	60 days/Jul 2017
11.	Required Contract Provisions	See 11a-c below			
11a	Contract Assurance	26.13	Deficiency	Full language is not present in transit-funded RFPs or contracts.	
11b	Prompt Payment	26.29	Deficiency	Required language is not present in transit-funded RFPs or contracts.	60 days/Jul 2017
11c	Legal Remedies	26.37	Deficiency	Required language is not present in transit-funded RFPs or contracts.	60 days/Jul 2017
12.	Certification Standards	26.67-26.71	No deficiency		
13.	Certification Procedures	See 13a-d below			
13a.	Onsite Visit	26.83	No deficiency		
13b	Annual Affidavit	26.83	No deficiency		
13c	Interstate Certification	26.85	No deficiency		
13d	Certification Appeals	26.86	No deficiency		
14.	Record Keeping and Enforcements	26.11 and 26.37	Deficiencies	Subrecipient monitoring is not sufficient. No bidders list in use.	60 days/Jul 2017 60 days/Jul 2017

Attachment A
FTA Notification Letter to Iowa DOT



U.S. Department
Of Transportation
**Federal Transit
Administration**

Headquarters

East Building, 5th Floor, TCR
1200 New Jersey Ave., SE
Washington, D.C. 20590

October 25, 2016

Mr. Paul Trombino III, Director
Iowa Department of Transportation
102100 - Directors Office
6310 SE Convenience Blvd.
Ankeny, IA 50021

Dear Mr. Trombino:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Iowa Department of Transportation (Iowa DOT) has been selected for a review of its overall DBE program to take place in 2016-2017.

The purpose of this review will be to determine whether Iowa DOT is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of the Collaborative, Inc. of Boston, MA to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: William Schwartz. Please do not remove these individuals. FTA will do so at the close of the review. The Collaborative and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled for **Tuesday December 13, 2016**, at 10:00 a.m. Eastern to introduce the Collaborative team and FTA representatives to Iowa DOT. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents.

Please let us know if you will designate a member of your staff to serve as Iowa DOT liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward these materials to the following contact person:

Bill Schwartz
The Collaborative, Inc.
122 South Street Boston, MA 02111
617-306-9466
wschwartz@thecollaborative.com

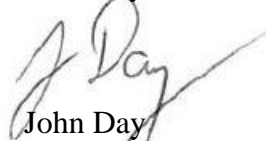
We request the exit conference be scheduled for **Friday December 16, 2016**, at 3:00 p.m. Eastern to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to Iowa DOT, will be considered public documents subject to release under the Freedom of Information Act, upon request.

Iowa DOT representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Britney Berry, Program Manager for this compliance review, at 202-366-1065 or via e-mail at *britney.berry@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day
Program Manager for Policy & Technical Assistance

cc: Marisol Simon, FTA Region V Administrator
Marjorie Hughes FTA Region V Civil Rights Officer
Sreeparna Mitra, Iowa DOT, TrAMS User Manager
Todd Sadler, Iowa DOT Civil Rights Office Director

Iowa Department of Transportation (Iowa DOT)
Disadvantaged Business Enterprise Program Compliance Review

Enclosure 1

You must submit the following information to Bill Schwartz at the Collaborative within 21 calendar days from the date of this letter.

1. Current DBE Program Plan (which should include Iowa DOT's organization chart).
2. Goal methodology submission for the submitted DBE Program Plan and for each of the past 3 Fiscal Years (FY)
3. Any ARRA reports for 2011. The reviewers are able to access Iowa DOT's other ARRA and DBE semi-annual reports through FTA's TrAMS system or as attachments to the TrAMS recipient screen.
4. Any additional certification criteria/guidelines used by Iowa DOT in determining DBE eligibility, if applicable
5. Provide the number of DBE applications Iowa DOT has reviewed, approved, and denied each year from FY2012 through FY2015. Include the number of DBE applications and the names of applicants that are currently pending review.
6. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts, and worksite locations, where applicable.
7. Provide contract records to include:
 - a) The last 15 FTA-assisted contracts awarded by Iowa DOT in FY 2016
 - b) The last 15 FTA-assisted contracts completed by Iowa DOT in FY 2016
 - c) The last 15 FTA-assisted contracts with DBE goals awarded by Iowa DOT in FY 2016
 - d) The last 15 FTA-assisted contracts with DBE goals completed by Iowa DOT in FY 2016
8. The identification of firms, if any, that have worked on Iowa DOT's projects and have graduated from Iowa DOT's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified
9. Information identifying FTA-funded contracts awarded during FYs 2012 to present by Iowa DOT and its subrecipients. The Federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
10. Good Faith Effort criteria established by Iowa DOT
11. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms)
12. Small Business element as implemented by Iowa DOT
13. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer
14. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years
15. List of all bids accepted for the RFPs provided in response to transit vehicle

Iowa Department of Transportation (Iowa DOT)
Disadvantaged Business Enterprise Program Compliance Review

procurements

16. Shortfall analysis and corrective action plan for the last three (3) years
17. List of any subrecipients and the amount of FTA funds allocated to each subrecipient from 2014 through present
18. Names of interested a party (external organizations) with which Iowa DOT has interacted on the DBE program issues
19. Any complaints received concerning Iowa DOT's DBE program over the past five (5) years
20. The DBELO official position description
21. Other pertinent information determined by Iowa DOT's staff to shed light on its DBE compliance efforts

Attachment B
Iowa DOT Response

P. 9

Organizational Structure- Office of Public Transit

The office organization structure section needs the following change for purposes of clarification:

The eight-person OPT is responsible for administering FTA funding programs, including the FTA DBE program. The Director of OPT (currently vacant), serves as the department's primary resource on transit policy.

Organizational Structure- Systems Planning: the draft report refers to the Office of Systems Planning's (OSP) work with 18 regional planning affiliations (RPAs). RPAs are mentioned frequently throughout the report. In addition to RPAs, OSP works with nine metropolitan planning organizations (MPOs), which also receive FTA and FHWA funding for planning. The report should be clarified to note this. Additionally, both types of agencies should be referenced throughout the report, not solely RPAs.

P. 10

Tables: Tables 4-1 and 4-2 should not have items labeled as "RPA". The contracts that are referenced here are from Ames and Cedar Rapids and were both for MPOs, not RPAs.

P. 11

Comment: that OPT and OSP employees are not sufficiently trained. Please provide recommendations for training that will bridge the gap noted by the Consultants.

General Comment: It would be helpful if Iowa DOT was consistently referred to as "Iowa DOT" and US DOT was consistently referred to as "US DOT". There are instances where solely "DOT" is used and it is unclear which entity is being referred to, such as the corrective action on page 34.

Attachment C
Iowa DOT DBE Program Plan

IOWA

DEPARTMENT OF TRANSPORTATION'S

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM

September 2, 1999
(REVISED June 19, 2000)
(REVISED September 24, 2004)
(REVISED April 1, 2006)
(REVISED February 1, 2012)
(REVISED January 2, 2014)
(REVISED December 19, 2014)

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

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

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

Note: February 1, 2012 revisions were made only to the areas impacted by the Revised DBE Rule effective February 28, 2011.

Note: January 2, 2014 revisions were made to reflect the required changes presented to Iowa DOT from Headquarters in the December 21, 2012 letter.

Note: December 19, 2014 Revisions were made as a general update to the Program.

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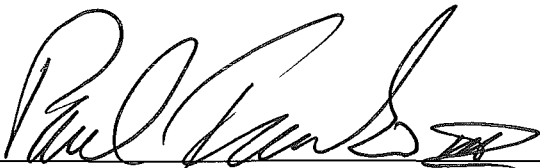
Policy Statement and Objective

The Iowa Department of Transportation (DOT) has prepared its disadvantaged business enterprise (DBE) program to meet Federal DBE regulations set forth in 49 CFR part 26. To continue receiving Federal financial assistance appropriated under MAP-21, Moving Ahead for Progress in the 21st Century Act, the Iowa DOT must comply with these regulations.

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

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

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



Paul Trombino III, Director
Iowa Department of Transportation

August 25, 2015

Date

IOWA DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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

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

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

SUBPART A: GENERAL INFORMATION (49 CFR § 26)

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

Definitions of Terms (49 CFR §26.5)

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

Nondiscrimination (49 CFR §26.7)

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

Contract Assurance of Nondiscrimination (49 CFR §26.13)

The Iowa DOT will include the following assurance in every U.S. DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Iowa DOT deems appropriate.

Federal Financial Assistance Agreement (49 CFR §26.13)

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

The Iowa DOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Iowa DOT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The Iowa DOT's DBE Program, as required by 49 CFR part 26 and as approved by the U.S. DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Iowa DOT of its failure to carry out its approved program, the U.S. DOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

**SUBPART B:
ADMINISTRATIVE REQUIREMENTS (49 CFR §26)**

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

DBE Program Compliance and Updates (49 CFR §26.21)

In order to continue receiving federal funds appropriated under the MAP 21, the Iowa DOT will remain in compliance with its DBE program and 49 CFR part 26. The Iowa DOT will provide the Federal Highway Administration (FHWA) with any updates representing significant changes in the program.

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

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

Director of the Office of Operations and Finance
Iowa DOT
800 Lincoln Way
Ames, Iowa 50010

The DBE Liaison Officer is responsible for implementing all aspects of the DBE program and for ensuring that the Iowa DOT complies with all provisions of 49 CFR part 26. This position has direct, independent access to the Director of Transportation concerning DBE program matters.

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

Director, Operations and Finance Bureau
Director, Office of Employee Services
Civil Rights Coordinator
External Civil Rights Administrator
Compliance Officer (DBE)
Compliance Officer (DBE)
Compliance Officer (Title VI)
Compliance Officer (Title VI)

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

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

DBE Financial Institutions (49 CFR §26.27)

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

West Bank of Des Moines, IA
Contact person: Ms: Jill Hansen, VP

Additional information regarding these institutions can be obtained from the Iowa DOT Civil Rights Team.

Prompt Payment Clause (49 CFR §26.29)

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

A. Progress Payments to Prime Contractors

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

B. Prompt Payment to Subcontractors.

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

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

C. Joint Checks

The use of joint checks is acceptable under the following conditions:

1. The request for a joint check from the prime contractor is made by the DBE.
2. The joint check issued by the prime contractor is for an amount not to exceed the cost of unpaid invoice(s) from the materials supplier to a subcontractor on that contract.
3. The joint check is given to the subcontractor and the subcontractor must release the joint check to the material supplier.
4. The use of joint check by the prime contractor is applicable to all their subcontractors.
5. The joint check usage will be monitored as part of the company's EEO Contractor Compliance Review.

D. Payment of Retainage.

Three percent (3%) of each progress estimate will be deducted and held as retainage on the first \$1,000,000 paid on a contract, with no additional retainage withheld on the remainder of the contract payment amount. This retainage is held exclusively for claims filed in accordance with Chapter 573 of the Code of Iowa and shall not be considered as an encumbrance on work performed by a subcontractor.

The Contractor may withhold up to five percent (5%) of each progress estimate on work performed by subcontractors. All retained funds due a subcontractor shall be payable by the Contractor within 30 calendar days after the date of satisfactory completion of the work by the subcontractor. The subcontractor's work is satisfactorily completed when all requirements called for in the subcontract have been accomplished and required documentation provided by the subcontractor. These payments will be documented and certified by the prime contractor at the completion of the project on form 518002 which shall be submitted with the final voucher. The form will be forwarded to the Office of Employee Services, Civil Rights Team. The Civil Rights Team will track each Prime Contractors performance. Any non-complying reports without acceptable documentation will be reviewed. Prime Contractors that develop a pattern of non-compliance without cause will be required to submit an action plan to correct the deficiencies and may result in price adjustment credits or suspension of bidding qualification in accord with Article 1102.03, A,2. Non-bonded subcontractors may be required to submit proof of payment for all material bills and wages to the Contractor before the Contractor is required to pay the retainage.

E. Posting of payment information

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

<https://secure.iowadot.gov/ContractorPay/>

F. Prompt Payment Complaint Process

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

If the initial attempt to resolve the issue does not result in satisfactory payment for completed work, the Contractor or subcontractor shall submit a written complaint to the Office of Employee Services, Civil Rights Team on Form 650197. The written complaint shall include copies of the correspondence with the Project Engineer or Contractor that provides the details stated above.

The Department will investigate and provide written response to the complainant with 15 business days of receipt of the complaint.
 (<https://forms.iowadot.gov/FormsMgt/External/650197.pdf>)

The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

DBE Directory (49 CFR §26.31)

The Iowa DOT maintains a directory identifying all firms eligible to participate as DBEs in its program.

The directory lists each firm’s name, address, phone number, fax number, e-mail, website and the type of work it has been certified to perform (NAICS Code) as a DBE. Multiple NAICS codes may be assigned where appropriate.

The directory is in real time with additions, removals and changes in information being made as they are approved.

Inclusion in this directory does not constitute an endorsement of the firms listed by the Iowa DOT.

Overconcentration of DBEs (49 CFR §26.33)

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

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

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

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

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

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

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

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

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

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

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

The following are the guidelines for overconcentration:

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

Business Development Programs (49 CFR §26.35)(49 CFR §26.39)

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

Monitoring and Enforcement Mechanisms (49 CFR §26.37)

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

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

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

Quotas (49 CFR §26.43)

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

Overall Goals (49 CFR §26.45)

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

Address of the Iowa DOT's Office of Employee Services:

Civil Rights Section
Office of Employee Services, Iowa DOT
800 Lincoln Way
Ames, Iowa 50010
Email: DOT.civilrights@dot.iowa.gov
Website: www.iowadot.gov

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

Federal Highway Administration-Iowa Division
105 Sixth Street
Ames, Iowa 50010

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

Race-Neutral and Race-Conscious Measures

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

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

To facilitate DBE participation through race-neutral measures, the Iowa DOT will offer outreach and technical assistance to DBEs. The Iowa DOT will also provide an annual DBE workshop.

Outreach and technical assistance will include assistance and training in areas such as the preparation and use of a business plan, contract administration, bonding assistance, CPA assistance, banking assistance and working with the Iowa DOT.

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

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

Establishing the Overall DBE Goal

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

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

The Iowa DOT DBE Goal Setting Methodology can be examined in Attachment C.

Good Faith Efforts (49 CFR §26.53)

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

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

Good Faith Effort Determination at the Letting

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

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

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

The percent of DBE participation of each bidder will be calculated by the Office of Contracts by dividing the sum of the commitments to each DBE firm by the total of the contract amount as defined by Article 1102.10. Each bidder's DBE participation commitment will be calculated to the nearest tenth of a percent. If two or more projects are combined on one proposal, the DBE commitment will be calculated using the sum of DBE commitments and the sum of the project totals. Only DBE firms listed in the Electronic Bidding System (EBS) for the current letting may be used.

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

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

1) Good Faith Effort Evaluation Committee

When the apparent low bidder does not meet the DBE goal with the commitment listed in their DBE Commitment Form their good faith effort to meet the goal will initially be determined by the Good Faith Effort Evaluation Committee.

This committee will be comprised of three members of the Department appointed by the Director. They will meet within one business day following the letting and will consider only the information provided on the bidders DBE Commitment Form.

In the event the committee determines that the bidder performed a good faith effort, their bid will be determined responsive for meeting the DBE goal and will be further considered for award. In the event the committee determines that the bidder did not perform a good faith effort, the bidder will be denied award. A written decision will be issued.

A bidder denied award by the GFE Evaluation Committee may appeal that decision to the GFE Administrative Review Committee by request to the Contracts Engineer. The bidder will be allowed one business day following the committee's written decision to request an appeal. If an appeal is not so requested, the GFE evaluation process starts over with the next lowest bidder.

2) Good Faith Effort Administrative Review Committee

The Department's GFE Administrative Review Committee will consist of three members of the Department appointed by the Director. The members will not have been involved in the original evaluation of GFE.

The bidder must request appeal from the Contracts Engineer within one business day of being notified of the decision made by the GFE Evaluation Committee. The bidder will have the opportunity for a face-to-face meeting with the committee and to provide written documentation of their efforts. The GFE Administrative Review Committee will meet within one business day of the request and will issue a written decision to the bidder.

Any bidder who has requested Administrative Reconsideration shall not adjust their DBE Commitment or provide any additional documentation of DBE firms contacted that were not listed on DBE Commitment Form. However, the bidder will be allowed to provide documentation on other Good Faith Efforts they did to utilize DBE firms that are listed on DBE Commitment Form. Only those efforts prior to the bid deadline will be considered. These efforts may include:

(1) Efforts to provide interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- (2) Written documentation of negotiation with certified DBE firms including the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (3) Written documentation of follow-ups made after the initial solicitations to encourage DBE firms to quote.
- (4) Written documentation that the DBE firm's quote was not reasonable or that the DBE firm was not capable of performing the work for which they quoted. The fact that there may be some additional costs involved in finding and using DBE firms is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.
- (5) Written documentation of efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the specifications.
- (6) Written documentation of efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services needed for the project.
- (7) Other activities of the bidder that by their quality, quantity and intensity demonstrate that the bidder took all necessary and reasonable steps to achieve the contract goal and could reasonably have expected to do so but were unsuccessful.
- (8) The determination made by the Administrative Reconsideration Committee shall be considered final.

In the event the bidder's appeal is denied by the GFE Administrative Review Committee, the GFE evaluation process starts over with the next lowest bidder.

- 3) The Department may perform validation of any GFE information submitted by any bidder.

Good Faith Efforts When a DBE is Replaced (in full or part) on a Contract (49 CFR §26.53(f))

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

- DBE fails or refuses to execute a written contract;
- DBE fails or refuses to perform the work of its subcontract consistent with normal industry standards. Good cause does not exist where failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime contractor;
- DBE fails to meet reasonable, nondiscriminatory bond requirements;
- DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;

- DBE is not a responsible contractor;
- DBE is ineligible to work on projects because of suspension and debarment proceedings;
- DBE voluntarily withdraws from the project and provides written notice;
- DBE is ineligible to receive DBE credit for the type of work required;
- DBE owner dies or becomes disabled and is unable to complete its work; or
- Other documented good cause that compels termination.

Before requesting the recipient's consent for the proposed replacement, the prime contractor must give written notice of the intent to request to replace, including the reason for the request to the DBE, with a copy to the External Civil Rights Administrator. The DBE must be given seven days to respond to the Prime contractor's notice and advise the Iowa DOT and the Prime of the reasons why it objects to the proposed replacement and why the Iowa DOT should not approve the Primes request. The notice period may be reduced if required by public necessity (e.g. safety).

When requesting approval of a replacement DBE, the Prime contractor must provide the Office of Contracts and the External Civil Rights Administrator with copies of new or amended subcontract requests, along with documentation of good faith efforts to continue meeting the original contract commitment. 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 replaced, to the extent needed to meet the DBE commitment. If the contractor fails or refuses to provide the required information, the contractor will be penalized, dollar for dollar, for any work committed to DBEs but performed by non-DBEs. Repeated violations may result in suspension of the contractor's bidding privileges per Standard Specification 1102.17 G.

Counting DBE Participation (49 CFR §26.55)

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

DBE Manufacturer

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

DBE Supplier

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

DBE Broker

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

DBE Trucker

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

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

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

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

DBE Contractor

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

Management

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

Employees

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

Materials, Supplies and Equipment

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

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

Monitoring and Enforcement

Commercially Useful Function (CUF) (49 CFR §26.55)(49 CFR §26.37)

A key requirement of the Federal DBE regulations is that DBEs perform a CUF, which means that DBEs must be responsible for executing a distinct portion of the work. To fulfill this responsibility, DBEs must meet certain requirements with regard to their management; employees; and materials, supplies and equipment. Compliance with these requirements will be monitored and enforced by the Iowa DOT by using Form 102166 Certification of DBE Accomplishments.

In addition to the documentation on Form 102116, the performance of a CUF by DBEs is monitored by Iowa DOT field personnel daily. Field personnel observe and document in the field diary at least one aspect of CUF; who owns the equipment used by DBEs, who supervises and pays DBE employees. All DBEs and employees are required to cooperate with personnel conducting the field audits and with staff from the Office of Employee Services, Civil Rights Team.

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

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

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

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

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

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

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

External Civil Rights Administrator
Iowa DOT
Office of Employee Services
800 Lincoln Way
Ames, Iowa 50010

Phone number: (515)-239-1422

Fax number: (515)-817-6502 or 515-239-1175

Applicants seeking DBE certification will be required to certify they do not exceed the Personal Net Worth of \$1.32 million. The Affidavit of Certification signed at the time of application will include the following statement: *“I further certify that my personal net worth does not exceed \$1,320,000 and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged”*.

“No Change” Affidavits (49 CFR §26.83)

All DBEs are required to submit the "AFFIDAVIT OF CONTINUED DBE CERTIFICATION ELIGIBILITY" form # 650044 that includes any change in circumstances affecting their ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR part 26. This notification must be provided within 30 days of the occurrence of the change. Changes in management responsibility among members of a limited liability company are covered by this requirement. Supporting documentation describing in detail the nature of such changes must be provided.

Confidentiality (49 CFR §26.83) & (49 CFR §26.109)

Consistent with Federal, State and local law, the Iowa DOT will safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information. Notwithstanding any contrary provisions of Federal, State, or local law, the Iowa DOT will not release personal financial information, submitted by a DBE applicant, to a third party (other than the U.S. DOT) without the written consent of the applicant. The Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a).

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

An applicant, who has been denied certification as a DBE, or whose certification has been removed, will be provided an opportunity to appeal the decision to the Iowa DOT DBE appeal committee. The committee is comprised of five Iowa DOT employees, from outside the Department's Office of Employee Services, who are appointed by the director of the Iowa DOT's Project Delivery Bureau. The committee will be chaired by the Civil Rights Administrator, although that individual will not vote nor be considered a member of the committee. The Civil Rights Administrator and each of the committee members understand the certification requirements and will review all evidence provided to the Iowa DOT's civil rights compliance officer, who made the initial determination.

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

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

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

A firm that either has had its eligibility removed or has been denied certification must wait 12 months before reapplying for certification. If an applicant for DBE certification withdraws its application before a decision on the application has been issued, the applicant can resubmit the application at any time. However, the reapplication may be placed in order of receipt and behind other applications that have been made since the firm's previous application was withdrawn. If a firm establishes a pattern of frequently withdrawing applications before a decision is made, a waiting period may be applied. In either action, however, a firm may appeal the Iowa DOT's decision to the U.S. DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, SE
Washington, DC 20590

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

Unified Certification Program (49 CFR §26.81)

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

Interstate Certification Process (49 CFR §26.85)

As per 49 CFR §26.85 (a)(b) When a firm is currently certified in its home state (State A) and applies with a written request to the Iowa DOT (State B) for DBE certification, the applicant firm must provide a copy of the certification notice (approval letter) from State A.

The Iowa DOT will go to the home state's electronic directory and print the screen shot reflecting the firm's DBE status. After Iowa DOT has verified that the home state's certification is current or in good standing, it must send the firm a written notice within 15 days and place the firm in the Iowa DBE directory.

If the firm fails to provide the certification notice (approval letter) or the home state's electronic directory does not show the firm as certified, Iowa DOT shall send the firm a notice within 15 days from receipt of the information stating Interstate DBE certification will not be accepted (or granted). The applicant must contact the home state to appeal this decision.

If there are any questions about the firm after receiving the information, the Iowa DOT will contact the applicant directly for clarification of the issues; and/or request the firm make application through the certification process per 49 CFR §26.85 (c). Should any third party raise concerns about the propriety of the certification, or have questions about the eligibility of the DBE firm for the program, those concerns will be referred to the DBE firm's home state for review and investigation, if deemed appropriate.

As per 49 CFR §26.85 (f) The Iowa DOT will enter into the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database the following information for all de-certifications or denials of a firm's application.

1. The name of the firm;
2. The name(s) of the firm's owner(s);
3. The type and date of the action; and
4. The reason for the action.

As a UCP, the Iowa DOT will check the DOCR website at least once every month to determine whether any firms that are applying for certification or that are already certified are on the list. For any such firm that is on the list, a request for a copy of the listed decision will be made directly to the UCP that made the decision. All information received as part of this request will be considered in the decision in determining what action, if any, to take with respect to the certified DBE firm or applicant. A copy of the decision will be provided to the requesting UCP within 7 days of receiving the request.

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

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

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

Subcontract Requests

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

The Iowa DOT encourages the use of DBEs on all of its projects, including those with work above and beyond an established contract goal and those with no goal at all. The use of DBEs on all projects is viewed as a good faith effort.

DBE Work Performance and Payment of DBEs

The work activities and work accomplishments of DBEs on all projects will be monitored and documented by the Iowa DOT to ensure that DBEs are performing work as contracted at the time of its award. Any concerns will be immediately reported to both the project engineer and the prime contractor.

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

Payments of less than the amount committed will require justification (i.e., item under-runs, item deletions, etc.) by the project engineer. The prime contractor can be penalized, dollar for dollar, for the shortage if it is not justified by the project engineer. Repeated shortages can result in suspension of the prime contractor's bidding privileges.

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

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

Assistance Offered to DBEs by Prime Contractors

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

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

Dispute Resolution

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

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

Reporting to the U.S. DOT

At the completion of each contract with DBE usage, the Iowa DOT will require prime contractors to submit a "Certification of Actual Dollars Paid to DBE Firms" (Form 102116). This form will include a written certification that the Iowa DOT has reviewed contracting records and monitored work sites in its state to verify the accuracy of subcontract information submitted prior to beginning work on a project.

Semi-Annually a report of "Uniform Report of DBE Awards or Commitments and Payments Form DBE Awards and Commitments and Payments" is completed and forwarded to FHWA. The report covering the first half of the federal fiscal year is due June 1, the report covering the entire year is due December 1. The first part of this report provides information on actual dollars awarded and committed during the reporting period to DBE's, the second part breaks those dollars down into ethnic groups receiving the dollars. The third and final part shows the total original committed dollars to DBE's on contracts completed over the six month reporting period. The actual dollars paid to DBE's after the contracts were completed is then entered, the actual dollars paid should meet or exceed the dollars committed.

If the Iowa DOT fails to meet its overall DBE goal at the end of the fiscal year, an analysis of the reasons for the shortfall will be performed and establish specific steps and milestones to correct any problems identified in the analysis that will enable the Iowa DOT to

meet its goal in the new fiscal year. The analysis and corrective actions will be submitted for approval by FHWA within 90 days of the end of the fiscal year.

Small Business Development Contracts

The Iowa Department of Transportation recognizes the benefits of having many contractors and suppliers available to perform work on highway construction projects. As a result we have assembled the attached packet of information to assist the Small Business firms who are interested in beginning work with us.

Small Business – A firm which meets the requirements of Iowa Code 314.14 which defines a "*Small business*" as any enterprise which is operated for profit, under a single management, and which has either fewer than twenty employees or an annual gross income of less than four million dollars computed as the average of the three preceding fiscal years.

Developmental Specifications for Small Business Development Contracts

DS-09036 provides a Description of the program, definitions, prequalification and necessary information to assist the Small Business Contractor in working with the Iowa Department of Transportation.

Small Business Certification Form 650064

A self-certification form must be completed and returned to the Office of Employee Services, Civil Rights team by noon the day before the letting and allows the contractor to self-certify that their company meets the requirements of a Small Business as defined by Iowa Code section 314.14. See Attachment I- Forms for a copy of the Small Business Certification Form 650064.

Small Business Development Contracts Q & A

An overview of information is provided on common questions and areas of interest about the Small Business Development Contracts on the Iowa DOT Office of Employee Services' Website. In addition, the document contains links to the Specification requirements, electronic BidExpress website, and provides contact information.

Iowa DOT Letting Process

The Office of Contracts conducts lettings for all highway construction work on the primary and interstate systems as well as many secondary projects throughout the state. This brochure provides an overview of the entire letting process, including prequalification of bidders, advertising, bidding proposals and other information. Pay particular attention to Section C, Advertising for Bids. This describes the Electronic Weekly Letting Report, which is a primary method for learning about upcoming work and ordering letting documents. These small business contracts are represented by a special group in our Bid Order categories (980, 981, etc.) so they would be easily identified in the Electronic Weekly Letting Report.

SUPPORTIVE SERVICE PROGRAMS OFFERED BY THE IOWA DOT

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

Provide technical assistance and answers to questions about projects to be bid.

1. After award of contracts, provide by mail to each DBE, a list of those projects that they were used to fulfill a commitment.
2. Verify that each and every DBE subcontract request form meets or exceeds the amount committed at the time of bid
3. Provide technical assistance during the construction phase of a project.
4. Provide technical assistance to help DBEs secure bonding and bank financing.
5. Provide workshops and seminars in locations throughout the state, topics to include but not limited to:
 - plan reading, estimating, cost accounting, business plans, insurance, financing, equipment and other requested topics.
6. If necessary, provide referrals to U. S. DOT bond and loan programs, all SBA programs and services and local resources.
7. Provide information and technical assistance, including alternate dispute resolution, to DBEs who are having a problem with a prime contractor or with Iowa DOT.
8. Provide a list of prime bidders on upcoming Iowa DOT projects.
9. Provide business counseling and technical assistance to DBEs through the use of our DBE Consultant, EEO Section supportive services, or Senior Engineering Technicians.
10. Provide financial assistance totaling up to fifty percent (50%) of the initial cost of services for certified DBEs, requiring a Certified Public Accountant (CPA) to a reviewed Financial-Experience-Equipment Statement to become prequalified to bid as prime contractors on Iowa DOT projects.
11. Provide technical assistance and support to DBEs with the possible assistance of a Business consultant. Services shall include but not be limited to: office visits, site visits, seeking out new DBEs to enter the program and attending meetings with DBEs if requested.

12. Provide assistance, when requested by DBEs, concerning prompt payment on projects let by Iowa DOT.
13. Provide self-study plan reading courses used by Iowa DOT inspectors at no cost to DBEs.
14. Provide financial assistance totaling up to fifty percent (50%) of the cost of securing bonding.



Iowa Department of Transportation

FY 2012-2014 DBE Goals

July 28, 2011

Methodology

To comply with 49 CFR Part 26.45, the Iowa Department of Transportation (DOT) established its Disadvantaged Business Enterprise (DBE) goal based on availability of ready, willing and able DBEs within the Iowa highway construction industry, relative to the availability of all ready, willing and able businesses within the same industry (hereafter, this proportion is referred to as "the relative availability of DBEs").

Establishing the DBE goal involves two primary steps:

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

The Iowa DOT used this methodology to determine its FY2012 DBE goal, as well as all prior annual goals starting in FY2000. Comparisons to previous goals are shown in Attachment A. A timeline of events for the annual DBE goal-setting methodology process is provided in Attachment B.

Step one: Determining a base figure for the relative availability of DBEs

The Iowa DOT has used various comparative methods to determine the availability of ready, willing and able DBEs within the Iowa highway construction industry, relative to the availability of all ready, willing, and able businesses within the same industry.

In 1999, the Iowa DOT established a plan-holders database that identifies each project let for bid, and the firms whom have requested a plan (or bid proposal document) for that project. The assumption is any ready, willing and able firm would need the details of the project to submit a bid.

Since the Iowa DOT is the only source of these documents, the plan-holders list is considered a statistically representative list of the universe of ready, willing and able firms, including both DBE and nonDBE contractors and subcontractors.

From the database, a plan-holders list covering a three-year period for all contracts, including suppliers, manufacturers, truckers, and consultants was compiled. The resulting list was used to determine the percentage of DBE firms among all firms requesting a plan or proposal, which was calculated to be 4.5 percent.

(Notes: Information on a business' current operating status is not collected for nonDBE firms; therefore, the information could not be used to screen both lists equally of ready, willing and able firms. The market area identified in the database encompasses all firms who requested either a plan or proposal regardless of their business' location. Thus, surrounding states are represented in this calculation.)

48 DBE firms requested a plan or proposal = 4.5%
1058 total firms requested a plan or proposal

(Note: Suppliers, manufacturers and consultants were not included in this calculation.)

37 different DBE firms receiving contracts or subcontracts = 5.1%
719 different firms, in industry, receiving contracts or subcontracts

- The data representing the 2008-2010 Planholders' list is screened manually to remove any duplicate names, name changes, internal state DOT requests, joint ventures, material quarries and mock bidding by area colleges. This process is performed to both non-DBEs and DBEs.
- The data collected in Planholders' list represents all ready, willing and able contractors for both federally and non-federally assisted projects. The participation of DBEs occurs on both types of projects and the data should be inclusive of both funding options to represent all ready, willing and able participants.
- The IA DOT supplies free plans and proposals to all interested contractors. The simplified request process along with technological advances would provide suppliers, consultants, truckers, haulers, subcontractors and manufactures the opportunity to request a plan for their own entity and be represented in the Planholders' list.
- The five year median shows that consultant firm participation has been 2 percent of the total federal funds. The IA DOT has not weighted the Planholders' list for consultant participation due to the insignificant representation of this group.
- The decision to utilize data representing a three year collection of Planholders, rather than a five year period, has been consistently used since 2000. The timeframe represents in a shortened duration that would remove contractors who may have gone out of business while still including those who may have not requested plans during the first year of interest in working with the IA DOT. In addition, calculating the Annual DBE goal once every three years will reflect the most recent three years of data and represent the ready, willing and able contractors for a period consistent with the term it is being calculated for.
- The period of time for which the data is collected is reported in the table on Attachment A. This table provided the calendar year for the period of data and now includes an additional row for clarification on the Fiscal Year as well.
- Data collection to represent the potential DBE firms is provided in the Planholders' list of ready, willing and able contractors. A contractor would be deemed ready, willing and able if they have completed the DBE certification process. Outside data sources, such as the census data list contains many firms who have no desire to work on DOT highway projects or who are coded as something other than a highway contractors. Additionally, women and minority owned companies might not demonstrate the necessary size or control requirements of DBE certification. Including this entire population would not represent the true potential highway contractors.

- The method of obtaining data on potential DBE firms could be collected from the census data however was not utilized due to the list containing many firms who have no desire to work on DOT highway projects or who have been coded as something other than a highway contractor. As stated above, women and minority owned companies might not demonstrate the necessary size or control requirements of DBE certification.
- A five-year median of federally assisted consultant and local contracts account for 2 percent. A step II adjustment was not warranted based on the minuscule representation of these funds.
- The Iowa DOT believes the planholders list is a better source of data than either the bidders list or census data for the following distinctions. The planholders list is a comprehensive list of contractors who have expressed interest in working on DOT let contracts. A bidders list provides an incomplete list because the information is collected from the contractors and the contractor submittals frequently misses firms who actually provided a quote to the contractor but the contractor failed to report them. The census data list contains many firms who have no desire to work on DOT highway projects or who have been coded as something other than a highway contractor.

Step two: Examining available evidence to make adjustments, if necessary

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

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

$$\frac{63 \text{ DBE prime contract awards}}{1960 \text{ all prime contract awards}} = 3.2\%$$

Factor 2 - The percentage of all Iowa DOT subcontracts received by DBEs, for both federal-aid and nonfederal-aid projects, was examined, because this percentage represents the ability of DBEs to compete and obtain subcontracts through both race-neutral and race-conscious measures. Suppliers, manufacturers, truckers and consultants were not included in the calculation.

$$\frac{793 \text{ DBE subcontracts awarded}}{7007 \text{ all subcontracts awarded}} = 11.3\%$$

Factor 3 - The percentage of all Iowa DOT contracts and subcontracts awarded to DBEs, according to total dollar value, for both federal-aid and nonfederal-aid projects, was examined. The resulting percentage determined the amount of work received by DBEs relative to the maximum total work capacity of all firms. The following formula was used to obtain this percentage:

$$\frac{\$93.7 \text{ million of all DBE contracts and subcontracts}}{\$2,327.9 \text{ million of all contracts (to all firms in the industry)}} = 4.0\%$$

Factor 4 - The percentage of all Iowa DOT contracts awarded to DBEs, according to total dollar value, for both federal-aid and nonfederal-aid projects, was examined. The resulting percentage determined the amount of work received by DBEs by the low bid process, which is race neutral. The following formula was used to obtain this percentage.

$$\frac{\$26.0 \text{ million of all DBE contracts}}{\$2,327.9 \text{ million dollars of all contracts}} = 1.1\%$$

Factor 5 - The percentage of all Iowa DOT subcontracts, by total dollar value, received by DBEs was examined in three categories:

1. The percentage of all contract dollars received by DBEs, for both federal-aid and nonfederal-aid projects

$$\frac{\$67.7 \text{ million of DBE subcontracts on all contract}}{\$2,327.9 \text{ million on all contracts}} = 2.9\%$$

2. The percentage of contract dollars subcontracted to DBEs on contracts with DBE goals. The resulting percentage determines the amount of subcontract work received by DBEs through race-conscience efforts.

$$\frac{\$55.9 \text{ million of DBE subcontracts}}{\$1,485.2 \text{ million on contracts with DBE goals}} = 3.8\%$$

3. The percentage of contract dollars subcontracted to DBEs on contracts without goals. The resulting percentage determines the amount of subcontract work received by DBEs through race-neutral subcontract efforts.

$$\frac{\$8.6 \text{ million of DBE subcontracts}}{\$842.6 \text{ million of all contracts without of goals}} = 1.0\%$$

○ Attachment A is a table of historical data representing the capacity of DBEs to perform work from 2002-2010 calendar years. Updates to Attachment A includes three additional rows; Federal Fiscal Year, Race Neutral DBE Accomplishment and Race Conscious DBE accomplishment. The reported total Fiscal Year DBE Accomplishment has been expanded to report the last five years of data instead only the previous year. The analysis of federal dollars contracted for consultants and local projects represent 2 percent over a five-year median. This minuscule representation does not warrant a step II adjustment.

○ The information at the top of Attachment A indicated these contracts represent about 98 percent of the dollars contracted through the DOT and its subrecipients. Modifying this data, to report a five-year median does not require the document to change. The number remains at 98 percent, even though it now represents a five-year median.

	2006	2007	2008	2009	2010	5 Year Median
DOT LET	97%	98%	99%	99%	92%	98%
Consultant	3%	2%	1%	1%	8%	2%
Local Projects	0%	0%	0%	0%	0%	0%

- An internet search was performed to ascertain that no disparity studies related to federally-assisted highway construction projects were conducted within the State of Iowa. In 2007 the City of Davenport performed an Availability Study and not a true disparity study on their local market area.
- The Iowa DOT did not consider the City of Davenport’s Availability Study as necessary information to consider in a Step II Adjustment because it was not a true disparity study.

Proposed overall FHWA FY 2012-2014 DBE goal

Step 1: Determining the annual DBE goal based on the relative availability of DBE firms. Iowa has been making the Step 1 determination of ready, willing and able based on three calendar years total of plan-holders data. Based on the data, the FY2012-2014 DBE goal should be 4.5%. (Last year’s calculations showed 4.6% based on similar procedures and the requirement to utilize FY 2010’s annual DBE goal.)

Step 2: Once the base figure for the annual goal has been determined, the recipient must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. Suggested evidence in the federal regulations that the Iowa DOT considered are:

1. Current capacity of DBE firms to perform the work – The data shows that minority and female contractors and suppliers have been, on a percentage basis, more successful at getting contracts than the male nonminority contractors and suppliers. The DOT contends the participation percentage may be exceeding the availability percentage due to the race-conscious measures used by the department.
2. Evidence of disparity studies –The Iowa DOT has not conducted any disparity studies. The department is also unaware of any current disparity studies related to federally-assisted projects within the state and/or the market area. Should a disparity study to determine the existence of discrimination and its effects in the state marketplace specific to it federal-aid assisted projects become available, the Iowa DOT would be willing to actively participate and/or provide relevant information for a study.
3. Using the base figure of another recipient – Not applicable since the Iowa DOT has computed its own base figure.
4. Statistical disparities in the ability of DBE firms to get financing, bonding and insurance – The Iowa DOT has not been able to identify any such disparities.
5. Data on employment and training opportunities for DBE firms to perform in the Iowa DOT’s contracting program – The Iowa DOT has not been able to identify any available data on such opportunities.

6. Adjustment to take into account continuing effects of past discrimination – The Iowa DOT has no evidence of past discrimination.

No Step 2 adjustments made a result of these issues. Therefore, the Iowa DOT proposes to set the FY2012-2014 DBE goal at 4.5 percent, based on Step 1, the availability of ready, willing and able DBE firms as a percentage of all firms that are ready, willing and able, without a Step 2 adjustment.

Race- and gender- neutral and conscious measures section 26.51

Race-neutral and race-conscious division: Based on historical data, the Iowa DOT contends it can achieve approximately 2.1 percent through race-neutral methods since DBE firms historically receive prime contracts representing approximately 1.1 percent of available federal funds; and are used for about 1.0 percent on projects without DBE goals. Therefore, the Iowa DOT proposes to accomplish 47 percent of its goal (2.1 percent) through race-neutral measures and 53 percent (2.4 percent) of its goal through race-conscious measures.

Attachment A, provided a table of additional supporting data. This table has been updated to include additional rows of information on the Race Neutral and Race Conscious DBE Accomplishment for the last five years.

- A. Description of information relied upon:** The Iowa DOT uses the Transport software, as supported by other data compiled and maintained by the Iowa DOT Office of Contracts, to manage and report its awards/commitments and payments. The Iowa DOT analyzed past DBE participation using payment information for the three-year period from 2008 to 2010. This data was based on prime contracts awarded to DBEs, the extent of DBE participation on contracts without goals and DBE participation in contracts with goals. The Iowa DOT's estimate of the maximum feasible portion of the goal (2.1 percent) achievable through race-neutral participation is based on past participation and supported by race-neutral measures noted in the following paragraph.
- B. Description of the types of race-neutral measures implemented by the state:** A good-faith effort point system, encouraging the continual usage of DBE's on all contracts (nonfederal and federal) throughout the entire year. Total dollars subcontracted to DBEs compared to all dollars earned over the most recent 24 month period, on contracts let by the Iowa DOT, is used monthly to calculate a contractor's good-faith effort of DBE participation. Participation must equal or exceed 67 percent of the department's annual DBE goal.

Public participation section 26.45 (g)

- A. Consultation:** On May 3, 2011, the Iowa DOT conducted a public information meeting to explain its goal-setting methodology and solicit feedback from program stakeholders. Representatives from the following groups were present: material suppliers, professional services providers, disadvantaged business enterprises, prime contractors and members of the Associated General Contractors of Iowa. During this meeting, further discussion was held regarding the use of a bidder's list method and prospect of applying another method

that may yield higher relative availability. Further discussion led to inquiries regarding the availability of supportive services offerings to DBEs. The Iowa DOT responded to these concerns by explaining the reliability and specific nature of its data, as well as the supportive services currently offered that potentially affect the goal.

On July 5, 2011, the Iowa DOT conducted the second of two public meetings to explain and solicit feedback from program stakeholders on the process and proposed FY 2012-2014 annual DBE goal. Professional service providers, disadvantaged business enterprises, prime contractors and members of the Associated General Contractors of Iowa attended the meeting. During this meeting, explanation was provided on the chosen method, option 5 (Alternative Method), to identify the ready, willing and able population of Iowa DBE's in comparison to all contractors. The calculation method was shown and potential step 2 calculations were reviewed. No Step 2 adjustments were taken on the proposed calculated goal.

- B. Published notice:** The Iowa DOT published notice of the proposed goal and availability of its methodology in the *Des Moines Register* June 10, 2011. This notice was also posted on the Bidx website for all contractors and Office of Contract's website. The notice was also posted in the following newspapers and publications: The Des Moines Register (04/01/2011)(06/10/2011), EL Comunicador and Iowa Fronteras Newspapers (04/29/2011) (06/09/2011) and Iowa Bystander (04/01/2011)(06/10/2011). The Iowa DOT sent personal invitations (03/28/2011) to the May 3 and July 5 meeting to the following: all certified Iowa Highway Construction DBEs and AGC/IDOT/DBE Task Force Committee Members. The Iowa DOT sent an email notice (04/01/2011) with both meeting dates to the following distribution list: *Asian Contacts*; *Latino Contacts*; okodomoi@msn.com; *SiouxCityAAContacts*; *StateAAContacts*; *WlooAAClergy*; *DSMAAAContacts*; *CedarRapidsAAContacts*; *QuadCitiesAAContacts*; *WlooAAContacts*; mwalton@asac.us; *Miller, Helen [LEGIS]*; *Abdul-Samad, Ako [LEGIS]*; *Alba Perez*; *Alfred Ramirez (alfred@gqchcc.com)*; *City Human/Civil Rights Contacts*; *Commission on the Status of Asian and Pacific Islanders*; *Division of Deaf Services*; *Division of Persons with Disabilities*; *Division on the Status of African Americans*; *Division on the Status of Women*; *Iowa Division of Latino Affairs*; *IVRS*; *Japanese Association of Iowa (info@japaniowa.org)*; *Kevin Clark*; *Latinos Unidos (latinosunidosofiowa@gmail.com)*; *Ohr, Henny [DHR]*; *Pastor Isaac Oyibo*; *Plander, Lynette [DVRs]*; *Reed, Walter [DOT]*; *Women and Minorities in Construction Program Grant Coordinator (Thea Holmon-Ellis)*; *Zalaznik, Scott [DOT]*. The Iowa DOT sent an email notice to the DBE Goal Setting Distribution list on (04/05/2011) to the following: (breilly@reilly-construction.com); (creilly@reilly-construction.com); (jlechtenberg@reilly-construction.com); (lance.thompson@reilly-construction.com); (lthompson@reilly-construction.com); (Mary.Prescott@state.mn.us); (mary.walker@dot.gov); (tomm@mccrossan.com); (vglass@reilly-construction.com); *Anderson, Kimberly*; *AndraySwift@yahoo.com*; *Asphalt Paving Assoc. of Iowa (apai@apai.net)*; *Belzung, Steven [DOT]*; *Bierbaum, Roger [DOT]*; *Cain, Suezet [DOT]*; *Charlie Bailey (jumpme4307@sbcglobal.net)*; *Chris Swalla (cswalla@netins.net)*; *Cork Peterson (cork@petersoncontractors.com)*; dale_bragg@hotmail.com; *Dan Graves*; dturner@dstcompanies.com; ebbe@mail.com; *Hanson, Scott [DOT]*; hizone@core.com;

Hobbs, Maria [DOT]; Iowa Concrete Paving Assoc. (icpa@iowaconcretepaving.org); Jack, Krandel [DOT]; Kardell, Sheldon [DOT]; Kasper, Edward [DOT]; Kent Austin (skaustin@mac.com); Krista Taylor (ktaylor@taylorconstr.com); ladym58@sbcglobal.net; LeeLeenMart@aol.com; Nate Lawrence (nlaw10000@aol.com); pburnett44@gmail.com; Robert Cramer (rcramer@cramerandassociatesinc.com); Terry M Grabosch; Theo Holmon-Ellis (tholmon-ellis@eicc.edu); Theo McElhose (tmcelhose@sioux-city.org)

On June 10, 2011, the Iowa DOT sent personal invitations to a July 5 meeting to the following: all certified Iowa Highway Construction DBEs and AGC/IDOT/DBE Task Force Committee Members. The Iowa DOT sent an email notice (06/09/2011) with the July 5 meeting date to the following distribution list: Asian Contacts; Latino Contacts; okodomoi@msn.com; SiouxCityAAContacts; StateAAContacts; WlooAAClergy; DSMAAContacts; CedarRapidsAAContacts; QuadCitiesAAContacts; WlooAAContacts; mwalton@asac.us; Miller, Helen [LEGIS]; Abdul-Samad, Ako [LEGIS]; Alba Perez; Alfred Ramirez (alfred@gqchcc.com); City Human/Civil Rights Contacts; Commission on the Status of Asian and Pacific Islanders; Division of Deaf Services; Division of Persons with Disabilities; Division on the Status of African Americans; Division on the Status of Women; Iowa Division of Latino Affairs; IVRS; Japanese Association of Iowa (info@japaniowa.org); Kevin Clark; Latinos Unidos (latinosunidosofiowa@gmail.com); Ohr, Henny [DHR]; Pastor Isaac Oyibo; Plander, Lynette [DVRs]; Reed, Walter [DOT]; Women and Minorities in Construction

Program Grant Coordinator (Thea Holmon-Ellis); Zalaznik, Scott [DOT]; Plogmann, Danielle [DHR]; McGee, Isaiah [ED]; Denita Gadson; Paula Kelley (pkelley@southslope.net); Sydni Fenner; (breilly@reilly-construction.com); (creilly@reilly-construction.com); (jlechtenberg@reilly-construction.com); (lance.thompson@reilly-construction.com); (lthompson@reilly-construction.com); (Mary.Prescott@state.mn.us); (mary.walker@dot.gov); (tomm@mccrossan.com); (vglass@reilly-construction.com); Anderson, Kimberly; AndraySwift@yahoo.com; AsphaltPaving Assoc. of Iowa (apai@apai.net); Belzung, Steven [DOT]; Bierbaum, Roger [DOT]; blackwellci@yahoo.com; Cain, Suezet [DOT]; Charlie Bailey (jumpme4307@sbcglobal.net); Chris Swalla (cswalla@netins.net); Cork Peterson (cork@petersoncontractors.com); dale_bragg@hotmail.com; Dan Graves; dturner@dstcompanies.com; ebbe@mail.com; Hanson, Scott [DOT]; hizone@core.com; Hobbs, Maria [DOT]; Iowa Concrete Paving Assoc. (icpa@iowaconcretepaving.org); Jack, Krandel [DOT]; Kardell, Sheldon [DOT]; Kasper, Edward [DOT]; Kent Austin (skaustin@mac.com); Krista Taylor (ktaylor@taylorconstr.com); ladym58@sbcglobal.net; LeeLeenMart@aol.com; Nate Lawrence (nlaw10000@aol.com); pburnett44@gmail.com; Robert Cramer (rcramer@cramerandassociatesinc.com); Smith, Larry [DOT]; Steve Sandquist (uci@unitedcontractors.net); Terry M Grabosch; Theo Holmon-Ellis (tholmon-ellis@eicc.edu); Theo McElhose (tmcelhose@sioux-city.org)

C. Comments: On April 1, 2011 the 45-day public comment period began on the Iowa DBE goal-setting methodology. The comment period ended on May 27, 2011 (based on date of

the last published notice). Discussions during the public meeting on the availability and reliability of the use of a bidder's list took place. No additional comments were received. Meeting minutes, attendance and handouts were made available on the Office of Contracts website May 11, 2011.

On June 10, 2011, the 45-day public comment period began on the proposed annual DBE goal. Iowa DOT's 45-day comment period ended on July 25, 2011 (based on date of the last published notice). One additional request to review the goal-setting methodology was received via E-mail; however, no comments were received. Meeting minutes, attendance and handouts were made available on the Office of Contracts' Website July 8, 2011.

Public Meeting Summaries

On May 3, 2011, the Iowa DOT conducted a public information meeting to explain its goal-setting methodology and solicit feedback from program stakeholders. Representatives from the following groups were present: material suppliers, professional services providers, disadvantaged business enterprises, prime contractors and members of the Associated General Contractors of Iowa.

The meeting began with an overview of the Federal Regulations of the 3-Year Cycle for setting the Annual DBE Goal by representatives from the FHWA Division Office and IA DOT Office of Contracts. The policy statements and objectives of the program to ensure nondiscrimination in the award and administration of US DOT assisted contracts was included in the power point presentation utilized. This tool also explained the Annual Goal Setting Process, the current stage of the process and the five optional methods that can be utilized to establish an annual DBE goal.

During this meeting, further discussion was held regarding the use of a bidder's list method and prospect of applying another method that may yield higher relative availability. IA DOT representative addressed these questions and clarified the differences between the Planholders' list, as well as the data necessary to create each type of list.

Further discussion led to inquiries regarding the availability of supportive services offerings to DBEs, the monthly goal setting process, spreading the goals throughout the year rather than concentrating on the earlier months, setting bigger goals on the larger projects and no goals on smaller projects. Additional topics included tracking of monthly goals in comparison to dollars awarded, setting separate goals for women and minorities, reporting the accomplishment by race and gender and performing a CUF when materials are provided by a DBE. The Iowa DOT responded to these concerns by explaining the reliability and specific nature of its data, as well as the supportive services currently offered that potentially affect the goal.

On July 5, 2011, the Iowa DOT conducted the second of two public meetings to explain and solicit feedback from program stakeholders on the process and proposed FY 2012-2014 annual DBE goal. Professional service providers, disadvantaged business enterprises, prime contractors and members of the Associated General Contractors of Iowa attended the meeting. During this meeting, explanation was provided on the chosen method, option 5 (Alternative Method), to identify the ready, willing and able population of Iowa DBE's in comparison to all contractors.

The calculation method was shown and potential step 2 calculations were reviewed. A discussion with the assistance of a power point presentation covered in detail how to determine the step I figure of ready, willing and able contractors, implementation of the federal regulations and race neutral vs. race conscious measures as they relate to the achievement of the annual DBE goal and monthly goal setting process.

Questions centered on the availability of data from a disparity study and were responded to with information on the need to update the data every 3-4 years, cost associated with them and the nonexistence of a true disparity study at this time. Off topic discussions included providing an update to the request that came from the May 3 meeting on reporting by ethnicity and gender and the current resources and tools used to solicit firms to become DBEs.

Proposed overall FTA 2012 DBE goal

The Iowa DOT's Modal Division has submitted a proposed FFY 2011-2013 DBE goal of 0.37 percent. Approximately 0.29 percent will be achieved through race-conscious means and 0.08 percent through race-neutral means

Proposed overall FAA FY2012 DBE goal

The Iowa DOT's Modal Division has submitted a proposed FAA 2012 DBE goal of 1.2 percent. This will be obtained through 0.55 percent race-neutral means and 0.65 percent through race-conscious means.

Local Market Area:

- The local market area encompasses all contractors interested in working on Iowa DOT let contracts. When using planholders' data we have an actual representation of the contractors who are interested in Iowa DOT let contracts regardless of their geographical location. All contracts dollars let by the Iowa DOT during the Fiscal Years 2007-2011 was analyzed. The geographic distribution of contracting dollars and areas included all 99 counties within the State of Iowa. During state fiscal years 2006-2011 the top five counties where total dollars were let represented twenty-five percent of the total dollars and were located in Polk, Pottawattamie, Woodbury, Johnson and Scott Counties. During this same five-year period, the greatest DBE subcontract participation was located in Van Buren, Jefferson, Benton, Louisa and Winneshiek Counties, which only accounted for 3.3 percent of the total funds let.

Data reported in the Five-Year Highway Program 2012-2016 indicates the geographic distribution of contract dollars will include 87 of the 99 counties and all areas of the State of Iowa. The top five counties where total dollars are programmed to be let represent 41.3 percent of the total dollars and will be located in Woodbury, Pottawattamie, Polk, Scott and Warren Counties.

The comparison between five-year historical data and five year programmed funds illustrates that Iowa DOT has allocated total funds to all 99 counties and will continue to distribute contracting dollars to all areas of the State of Iowa and 87 of the 99 counties. Although DBE participation historically occurred in all of these counties, the greatest DBE participation has come from counties located in the eastern side of the state.

Historically the top five counties only accounted for 25.2 percent of the total dollars let and there is a shift in the five-year program that will increase the top five counties allocation of funds to 41.3 percent of the total dollars to be let. Geographically two counties located in the western side of the State of Iowa will increase in contracting dollars let by 16.5 percent. A Step II adjustment to decrease the Annual DBE Goal based on this information due to the historical data indicating the majority of DBE firms and participation has taken place in the eastern side of the state was considered. However, historically DBE participation has occurred in every county and no adjustment will be made based on the Local market Area.

Tables and supporting documentation is provided at the end of this response.

Top Five Counties of funds let 2006-2011 by the DOT

COUNTY	Funds Let by DOT 2006-2011	% Funds Let by DOT	Dollars Subcontracted to DBEs	% Co. DBE Subcontract Awards	DOT Five Year Program 2011-2016	% Funds Five Year Program
POLK	\$332,712,904	9.4%	\$13,900,681	4.2%	\$193,934,000	7.0%
POTTAWATTAMIE	\$184,304,563	5.2%	\$7,679,768	4.2%	\$345,523,000	12.5%
WOODBURY	\$142,437,363	4.0%	\$4,321,167	3.0%	\$364,999,000	13.2%
JOHNSON	\$127,807,525	3.6%	\$3,792,820	3.0%	\$17,934,000	0.7%
SCOTT	\$100,671,680	2.9%	\$3,585,192	3.6%	\$152,586,000	5.5%
Totals	\$ 887,934,035	25.2%	\$ 623,137,737		\$ 1,074,976,000	39.0%

Top Five Counties with DBE participation with funds let 2006-2011 by the IA DOT

COUNTY	Funds Let by DOT 2006-2011	% Funds Let by DOT	Dollars Subcontracted to DBEs	% Co. DBE Subcontract Awards	DOT Five Year Program 2011-2016	% Funds Five Year Program
VAN BUREN	\$11,723,067	0.3%	\$13,900,681	46.4%	\$9,027,000	0.3%
JEFFERSON	\$51,983,746	1.5%	\$7,679,768	23.8%	\$1,820,000	0.1%
BENTON	\$21,856,653	0.6%	\$4,321,167	22.6%	\$17,895,000	0.6%
LOUISA	\$9,901,936	0.3%	\$3,792,820	21.1%	\$19,564,000	0.7%
WINNESHIEK	\$20,714,703	0.6%	\$3,585,192	15.8%	\$7,549,000	0.3%
Totals	\$ 116,180,105	3.3%	\$ 623,137,737		\$ 55,855,000	2.0%

Top Five Counties programmed for funds let 2012-2016 by the IA DOT

COUNTY	Funds Let by DOT 2006-2011	% Funds Let by DOT	Dollars Subcontracted to DBEs	% Co. DBE Subcontract Awards	DOT Five Year Program 2011-2016	% Funds Five Year Program
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WOODBURY	\$142,437,363	4.0%	\$4,321,167	3.0%	\$364,999,000	13.2%
POTTAWATTA MIE	\$184,304,563	5.2%	\$7,679,768	4.2%	\$345,523,000	12.5%
POLK	\$332,712,904	9.4%	\$13,900,681	4.2%	\$193,934,000	7.0%
SCOTT	\$100,671,680	2.9%	\$3,585,192	3.6%	\$152,586,000	5.5%
WARREN	\$56,904,445	1.6%	\$1,607,577	2.8%	\$82,963,000	3.0%
Totals	\$ 817,030,955	23.2%	\$ 31,094,385		\$ 1,140,005,00 0	41.3%

DBE Availability and Usage

Based on computation of existing data (2002-2010 calendar years)

Includes the following data:

- Calendar year data based on the contract letting date
- Subcontracts based on the date they were let, not the date they were awarded
- This includes all contracts (federal-aid and nonfederal-aid) let through the Iowa DOT's Office of Contracts. A five-year median indicates these contracts represent about 98 percent of the dollars contracted through the DOT and its subrecipients. Data from locally let contracts and consultant contracts have not been included since that data is not readily available. However, it is assumed this contract data would be similar to the data on contracts let by the Iowa DOT.

Fiscal Year	2006	2007	2008	2009	2010	2011	2012
Calendar Year Data used	2002-2004	2003-2005	2004-2006	2005-2007	2006-2008	2006-2008	2008-2010
STEP 1							
Availability based on expressed interest *	3.4%	4.5%	4.6%	4.4%	4.6%	4.6%	4.5%
Availability on participation	5.6%	6.2%	6.4%	6.8%	7.8%	7.8%	5.1%
STEP 2							
Factor 1 – DBE% of Prime contracts by number	5.6%	4.5%	6.0%	5.0%	4.8%	4.8%	3.2%
Factor 2 – DBE% of Subcontracts by number	13.2%	11.5%	11.5%	10.9%	10.3%	10.3%	11.3%
Factor 3 – DBE% of Primes/subcontracts by dollars	6.3%	5.6%	5.9%	5.6%	5.1%	5.1%	4.0%
Factor 4 - DBE% of Prime contracts by dollars	2.8%	2.4%	3.0%	2.9%	2.7%	2.7%	1.1%
Factor 5a – DBE% of Subcontracts for all contracts by dollars	3.5%	3.2%	2.9%	2.7%	2.4%	2.4%	2.9%
Factor 5b –DBE% of Subcontracts on projects with goals by dollars	4.8%	4.4%	4.1%	4.0%	4.0%	4.0%	3.8%
Factor 5c – DBE% of Subcontracts on projects without goals by dollars	1.5%	1.7%	1.6%	1.5%	1.1%	1.1%	1.0%

Annual FY DBE Goal	5.0%	4.5%	4.6%	4.4%	4.6%	4.6%	4.5%
FY DBE Accomplishment	5.4%	5.9%	5.2%	5.1%	5.7%		
FY RN Accomplishment	2.3%	3.7%	2.6%	1.1%	2.6%		
FY RC Accomplishment	3.1%	2.2%	2.6%	4.0%	3.1%		

* Beginning in FY 2003, Method 1 was based on plan-holder data. Prior to FY 2002, data was based on the list of prequalified contractors, since plan-holder data is not available prior to Jan. 1, 1999.

Calculations with 2008-2010 Data
June 6, 2011

Step 1, Method 1

- Availability based on expressed interest
63DBEs currently certified in highway areas
48 DBEs requested letting documents/1058 total contractors = 4.5%

Step 1, Method 2

- Availability based on participation
 $37/719=5.1\%$

Step 2, Factor 1

- DBE percentage of prime contracts by number
 $63/1960=3.2\%$

Step 2, Factor 2

- DBE percentage of subcontracts by number
 $793/7007=11.3\%$

Step 2, Factor 3

- DBE percentage of prime contracts/subcontracts by dollar value
 $(37.7m+26.0m)/2327.9m = 4.0\%$

Step 2, Factor 4

- DBE percentage of prime contracts by dollar value
 $26.0m/2327.9m = 1.1\%$

Step 2, Factor 5a

- DBE percentage of subcontractors on projects, all contracts
 $67.7m/2327.9m = 2.9\%$

Step 2, Factor 5b

- DBE percentage of subcontracts on projects, with goals by dollar value
 $255.9m/1485.2m = 3.8\%$

Step 2, Factor 5c

- DBE percentage of subcontractors on projects, without goals by dollars
 $8.6\text{m}/(403.2\text{m}+439.4\text{m}) = 1.0\%$

Setting Contract Goals

DBE Goal Setting Meeting

Seven weeks prior to the letting, a goal setting meeting is held. Those persons attending the goal setting may include the Civil Rights Coordinator, External Civil Rights Administrator, the Proposal Engineers, DBE contractors, Prime Contractors, Sub Contractors and members of the Associated General Contractors. Representatives from FHWA and Materials Suppliers may also attend. Participation by telephone conference is available for each meeting.

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

Criteria for Setting Highway Construction Contract Goals

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

- Set only on US DOT-assisted proposals.
- Try to attain the dollar amount of DBE usage represented by the overall goal on all contracts let by the Iowa DOT. The percentage of DBE accomplishments, tracked year-to-date from prime contracts awarded to DBE contractors and subcontract request forms, will be used to adjust the total amount of DBE goal set per letting. Contract goals will be set to make up the difference in the amount of DBE usage that can be obtained through race neutral means and the overall goal.
- Balance DBE goals work between industries such as structures, paving, asphalt and grading.
- Balance DBE goals work between county, city and state projects.
- Maintain a balance of DBE goal work across the state so all-geographical locations share in the DBE Program.
- Identify individual items that are normally subcontracted. Iowa DOT staff will share the approximate percentage of the overall contract estimate for the Committee to review.
- Consider availability of DBE contractors who are ready, willing and able to quote the work available to subcontract.
- Assure at least 3 ways to make a DBE goal. This may be three or more items that can be subcontracted to DBE contractors to meet the goal or three or more DBE contractors ready, willing and able to quote on the available subcontract work. A goal should never be set on a proposal so that there is only one way available for bidders to meet that goal.
- Set DBE goals for individual proposals from 1.0% to 15.0%, in 1.0% increments.
- Evaluate Major Change Orders on existing Contracts to determine potential DBE usage.

DBE CERTIFICATION STANDARDS**Burden of Proof**

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

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

Eligibility Standards

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

Business Size (§26.65): An applicant firm including all affiliates must meet SBA standards of 13 CFR Part 121 appropriate to the type of work the firm seeks to perform. In any federal fiscal year, if the firm and all affiliates have average annual gross receipts over the firm's previous three fiscal years, in excess of the current SBA Standard of \$22.41 million, the firm is not eligible to be a DBE. A congratulatory letter of completion will be sent to the firm.

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

Economic Disadvantage (§26.67): Each qualifying applicant must have personal net worth (PNW) of less than \$1.32 million, excluding the value of the primary residence and the value of their ownership in the applicant company. Applicants seeking DBE certification will be required to certify they do not exceed the Personal Net Worth of \$1.32 million. The Affidavit of Certification signed at the time of application will include the following statement: *"I further certify that my personal net worth does not exceed \$1,320,000 and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged"*. The PNW statement must

have a signed, notarized affidavit swearing to the truth of the figures submitted. If the qualifying applicant's personal net worth exceeds \$1.32 million, the owner is no longer disadvantaged and the firm is not eligible to be a DBE. A congratulatory letter of completion will be sent to the firm.

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

Examples of unqualified contributions are:

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

Examples of qualified contributions are:

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

Control (§26.71): The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. The owner must hold the highest office, must control the board of directors or be the controlling partner. The socially and economically disadvantaged owners must have an overall understanding of and managerial and technical competence and experience directly related to the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control. A franchise is eligible so long as there is no affiliation, restrictions or common management.

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

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

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

Iowa DOT Procedures

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

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

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

An economically disadvantaged person is one who is a member of one of the above protected groups and who has a personal net worth of less than \$1.32 million excluding the value of one personal residence and the value of the ownership in the applicant firm. See Appendix D of 49 CFR Part 26.

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

Application: An applicant must complete Iowa DOT Form 650194, Uniform Certification Application and enclose all required documents on the checklist. All incoming applications are checked for completeness and compliance with business size and ownership. Complete applications will receive a decision letter within 90 calendar days. The Iowa DOT will advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional action is required. Incomplete applications may be returned.

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

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

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

Evaluation: At the completion of the review, the DBE specialist will evaluate all information and conduct any final verification. The initial recommendation of the specialist is the first step in the team process. The file then goes to the certification team, which is comprised of the Office Director, Civil Rights Coordinator, and External Civil Rights Administrator of the Office of Employee Services. If there are any questions, uncertain issues, a denial, or removal of eligibility, the team meets to discuss and perhaps request further investigation. If all concur, a denial letter is sent. If necessary, the file may be returned to the specialist for further work.

Certification: When a firm is certified, they will be notified in writing, added to the DBE directory and mail list and be given an opportunity to request specific support services to meet their needs. Every 3 years the firm will undergo a three-year review and may be required to submit supporting documentation including, but not limited, to a Personal-Net Worth statement.

Annual affidavit: Each year by an assigned date (the 15th of the month in which they were certified by Iowa DOT) every certified DBE firm must submit a signed, sworn notarized statement that the firm meets the size standard and has no changes in ownership or control that would affect eligibility. The statement must be accompanied by supporting documentation, which may include personal tax return, personal financial statement, the company tax return and the company financial statement. Failure to do so by the assigned date will result in an intent to decertify the firm for failure to cooperate. At least one extension may be granted before the deadlines, upon request.

Decertification Process

The following dates and corresponding lengths of time in days shall apply to all forms of Decertification. A DBE firm can voluntarily withdraw from the DBE program by sending a letter to the certifying agency and saying that it wants to cease participation in the program. An acknowledgement letter will be sent to the firm saying that the firm's DBE certification will be terminated effective the date of the letter. The firm will be removed from the Directory and the firm would not, in the future, be eligible to participate as a DBE unless it later applied for certification through an initial application.

Warning Notice

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

Notice of intent to Decertify

Firms that have not sent in the required documentation or been granted an extension will be sent notice of the Department's intent to remove DBE certification for "failure to cooperate". As required by 49 CFR, Part 26.87 (d), this notice must inform the DBE of the opportunity to request an appeal hearing with the Department's DBE Appeal Committee. As provided by the Department's Policies and Procedures Manual (PPM No. 300.18), the DBE firm has fifteen (15) calendar days from the date this notice is received to request the hearing - Certified Mail.

Notice of Decision

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

Denials

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

A denied firm may not reapply for a period of 12 months from the date of the denial letter. The firm may appeal in writing to Iowa DOT DBE Appeal Committee and if the denial is upheld by the Committee the applicant can appeal to the U. S. Department of Transportation. As a UCP, when the Iowa DOT denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, the Iowa DOT will make entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. The following information will be entered:

1. The name of the firm;
2. The names(s) of the firm's owner(s);
3. The type and date of the action;
4. The reason for the action.

As a UCP, the Iowa DOT will check the DOCR Website at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

For any such firm that is on the list, the Iowa DOT will promptly request a copy of the listed decision from the UCP that made it. Once this information is received it will be considered in the decision and determine what, if any, action to take with respect to the certified DBE firm or applicant.

If the Iowa DOT receives such a request, a copy of the decision to the requesting UCP will be provided within 7 days of receiving the request.

Removal of Eligibility

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

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

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

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

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

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

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

US DOT Appeals

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

Where: Send appeals to:

Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue SE
Washington D. C. 20590

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

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

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

Record Keeping Requirements

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

DBE Guidelines for Local Public Agency (LPA) Consultant and Locally Let Federal-aid Contracts

Local Public Agencies are required to consider DBE participation in Federally funded contracts, as outlined in [I.M. 3.710](#), DBE Guidelines.

http://www.iowadot.gov/local_systems/publications/im/3710.pdf

DBE CERTIFICATION ON-SITE REVIEW FORM

I. GENERAL INFORMATION

1. Authorized Name of Firm _____

2. Street Address of Firm _____

3. Address _____ City _____ State _____ Zip Code _____

4. Contact Person _____ Phone No. _____

FAX No. _____ Cell Phone No. _____

5. Person(s) Being Interviewed

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

6. Type of Firm

___ Sole Proprietorship ___ Partnership ___ Corporation ___ LLC

7. Description of Work Performed

8. (a) Date Business was Established _____

(b) List Other Business Names Previously Used

9. Identification Numbers and Certification

(a) Federal Identification Number _____

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

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

_____ Yes _____ No

(If yes, attach a copy of current certification)

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

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

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

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

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

II. FINANCIAL INFORMATION

12. (a) Provide the following banking information:

Name of Financial Institution _____

Officers _____

Address and Phone _____

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

Name _____

Address _____

Phone _____

Bonding Limit: Aggregate _____ Project _____

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

(1) _____ Personal Savings

(2) _____ Joint Savings - Identify joint account holders

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

(4) _____ Gift

(5) _____ Personal Loan

(6) _____ Jointly owned property used to collateralize loans

(7) _____ Other (specify)

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

Name of Source(s) _____

Date of Gift(s) _____

If gift is conditional, state conditions _____

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

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

Name of Owner or Prime Contractor

Dollar amount of contract

Type of work involved in contract

(a) _____

(b) _____

(c) _____

III. PERSONNEL/MANAGEMENT

ETHNIC CODES

Woman

W

Disadvantaged:

D

Black American	B
Hispanic American	H
Native American	N
Asian-Pacific American	P
Asian-Indian American	I

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

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

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

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

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

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

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

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

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

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

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

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

_____ Yes _____ No

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

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

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

_____ Yes _____ No

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

21. (TO BE COMPLETED FOR A SOLE PROPRIETORSHIP)

(a) Date established _____

(b) Is business registered? _____ Yes _____ No

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

Date of registration _____

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

Date title was transferred to present owner _____

Name of previous owners:

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

(a) Indicate type of supplier

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

Address	General Description	Square Feet	Current Value/ Amount of Rental

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

If yes, list name of company _____

Name of principal owner(s) _____



CERTIFICATION OF DBE ACCOMPLISHMENT

(To be completed by the Prime Contractor and submitted with the final documents, for all Federal-Aid contracts.)

County: _____ Letting Date: _____

Contract I.D.: _____

Prime Contractor: _____

Total DBE Commitment Listed on Form 102115: _____

**For Suppliers Only*

DBE Companies	Dollars Committed (102115 Form) (1)	Dollar Amount Paid	% For Goal (100% or *60%)	Dollars Credit To DBE Goal
	\$	\$	%	\$
	\$	\$	%	\$
	\$	\$	%	\$
	\$	\$	%	\$
	\$	\$	%	\$
	\$	\$	%	\$
	\$	\$	%	\$
TOTAL				\$

(1) If no DBE goal was established for the contract, enter \$0

I, _____ the _____
(Name) (Corporate Officer)

of _____ Certify the DBE accomplishment to be
(Prime Contractor)

true and accurate.

It is understood that the accomplishment will be compared to the commitment and may result in a penalty in accordance with Article 1102.17 of the Standard Specifications.

(Signature)

(Date)

Form 102115 Commitment (1)	_____
Approved Adjustments	_____
Revised 102115 Commitment	_____
Contractor Accomplishment	_____
** Reduction in Prime Contractor Payment	_____
* Locally Paid Projects Only*	_____
Federal Dollars in Contract:	_____

** Please include a copy of change order for any reduction in Prime Contractor Payment.

I have monitored the work performed by the DBE and certify that the work performed was done by the DBE listed above as required by Article 1102.17 F and G of the Standard Specifications.

(Project Engineer)

(Office)



Iowa Department of Transportation

SMALL BUSINESS CERTIFICATION

In order to bid on Small Business Development Contracts let by the Iowa DOT, this form must be submitted ten days prior to the next letting and allows a contractor to self certify that their company meets the requirements of a Small Business as defined by U.S. Small Business Administration (SBA) regulations at 13 CFR Part 121, as amended. Size standards for each applicant shall be determined by identifying the firm's primary area(s) of work, locating the related North American Industry Classification System (NAICS) code(s) and applying the corresponding SBA size standard.

_____	_____
Company Name	Contact Name
_____	_____
Company Address	Company Phone
_____	_____
City, State, and ZIP Code	Company FAX
_____	_____
Type of work company performs/NAICS code	e-Mail Address

Please answer the following four questions:

Is the primary owner of the above-listed business a U.S. citizen? YES NO

Is this business independently owned and operated, organized for profit, and is not dominant in its field? YES NO

What are the gross annual receipts for the business above? _____

How many employees work for this business? _____

I, _____, give this unsworn declaration executed under penalty of perjury of the laws of the United States and the State of Iowa that all the statements provided in this Small Business Certification application are true and correct. Any false or misrepresentation of information shall result in denial or revocation of certification; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

Dated _____

State of _____ County of _____

Signed and sworn to (or affirmed) before me on _____
Date

By _____
Name(s) of individual(s) making statement

Signature of Notarial Officer Stamp

Title of Office _____

My commission expires _____

Attachment D
Excerpts from Iowa DOT Standard Specifications



**STANDARD SPECIFICATIONS
FOR
HIGHWAY AND BRIDGE
CONSTRUCTION**

SERIES 2012



**STANDARD SPECIFICATIONS
FOR
HIGHWAY AND BRIDGE
CONSTRUCTION**

SERIES 2012

This book was prepared by:

Iowa Department of Transportation
Highway Division
Specification Section
800 Lincoln Way
Ames, IA 50010

For questions or comments, call 515.239.1566.

This book and several other Department manuals are available on compact disk. For a copy of the Department's Electronic Reference Library (ERL), call 515.239.1742, or access the ERL by visiting our website at: www.iowadot.gov/specifications/index.htm.



Copies of this book may be purchased at the following location:

Iowa Department of Transportation
Office Supply Department
800 Lincoln Way
Ames, IA 50010

Copies of this book may be mail ordered by sending a check payable to "Iowa DOT" (call 515.239.1588 for price information) at the following address:

Iowa Department of Transportation
Office of Accounting
Attn: Cashier
800 Lincoln Way
Ames, IA 50010

PREFACE

When referenced, the 2012 edition of the Iowa Department of Transportation's (Iowa DOT) Standard Specifications for Highway and Bridge Construction shall be used for contract work awarded by the Iowa DOT. They may also be incorporated by reference in other contract work on secondary, urban, local systems, or other contract work in which the Iowa DOT has an interest. As modified by the General Supplemental Specifications, these Standard Specifications represent the minimum requirements and may be modified by Supplemental Specifications, Developmental Specifications, and Special Provisions on specific contracts.

These Standard Specifications have been written so the Contractor's responsibilities are indicated by plain language using the Imperative Mood and Active Voice form. Sentences are of the form:

Construct isolation joints at all points where driveways meet other walks, curbs, or fixtures in the surface.

Ensure finished members are true to detailed dimensions and free from twists, bends, open joints, or other defects resulting from faulty fabrication or defective work.

Personnel preparing the JMF shall be Iowa DOT certified in bituminous mix design.

The Contracting Authority's responsibilities are (with some exceptions) indicated by the use of the modal verb "will". Sentences are of the form:

The Engineer will obtain and test density samples for each lot according to Materials I.M. 204.

Payment will be the contract unit price for Fabric Reinforcement per square yard (square meter).

These standard specifications contain dual units of measure: the United States Standard measure (English units) and the International System of Units (SI or "metric" units). The English units are expressed first then followed by the metric units in parentheses. The measurements expressed in the two systems are not necessarily equal. In some cases the measurements in metric units is a "hard" conversion of the English measurement; i.e. the metric unit has been approximated with a rounded, rationalized metric measurement that is easy to work with and remember.

The proposal form will identify whether the work was designed and shall be constructed in English or metric units.

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DIVISION 11. GENERAL REQUIREMENTS AND COVENANTS

This part consists of the general provisions applying to all types of construction and maintenance as set forth in the following sections:

- 1101. Definitions.**
- 1102. Proposal Requirements and Conditions.**
- 1103. Approval for Award and Award of Contract.**
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- 1109. Measurement and Payment and Metric Conversion.**
- 1110. Progress Scheduling.**
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Section 1101. Definitions

1101.01 GENERAL.

- A.** Wherever in these specifications or other contract documents the following definitions terms, or both, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

In order to avoid cumbersome and confusing repetition of expressions in these specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer."

- B.** The titles or headings of the sections and articles herein or referred to on the plans are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.
- C.** The contract documents may reference specifications or standards that have been issued by organizations such as AASHTO, ASTM, ANSI, etc. In such instances the reference being made is to the specification or standard that is in effect four weeks prior to letting unless a specific date or year of issue is provided.

1101.02 DEFINITIONS OF ABBREVIATIONS.

Wherever the following abbreviations are used in these specifications or in the contract documents, they are to be construed the same as the respective expressions represented:

AA - Affirmative Action
AAN - American Association of Nurserymen
AAR - Association of American Railroads
AASHTO (or AASHO) - American Association of State Highway and Transportation Officials
ABI - Average Base Index
ABS - Acrylonitrile-Butadiene-Styrene
ACI - American Concrete Institute
AGC - Associated General Contractors of America
AIA - American Institute of Architects
AISC - American Institute of Steel Construction
ALS - American Lumber Standards
ANSI - American National Standards Institute
APA - American Plywood Association
API - American Petroleum Institute
APWA - American Public Works Association
ATSSA - American Traffic Safety Services Association
ARA - American Railway Association
AREA - American Railway Engineering Association
ARI - Air-Conditioning and Refrigeration Institute
ASA - American Standards Association
ASCE - American Society of Civil Engineers
ASLA - American Society of Landscape Architects
ASTM - American Society for Testing and Materials
AWPA - American Wood Preservers Association
AWS - American Welding Society
AWWA - American Water Works Association
BSC - Bituminous Seal Coat
CFR - Code of Federal Regulations
CLSM - Controlled Low Strength Material
CMP - Corrugated Metal Pipe
CPM - Critical Path Method
CRSI - Concrete Reinforcing Steel Institute
DBE - Disadvantaged Business Enterprise
DFT - Dry Film Thickness
DIP - Ductile Iron Pipe
DNR - Department of Natural Resources
DOT - Department of Transportation
EEI - Edison Electric Institute
EEO - Equal Employment Opportunity
EPA - Environmental Protection Agency
FHWA - Federal Highway Administration
FR - Federal Register
ESAL - Equivalent Single Axle Load
FSS - Federal Specifications and Standards

GGBFS - Ground Granulated Blast Furnace Slag
GRI - Geosynthetic Research Institute
GSA - General Services Administration
HDPE - High Density Polyethylene Pipe
HMA - Hot Mix Asphalt
IAC - Iowa Administrative Code
IMSA - International Municipal Signal Association
ID - Identification
I/D - Incentive/Disincentive
IMSA - International Municipal Signal Association
IEEE - Institute of Electrical and Electronics Engineers
IES - Illuminating Engineering Society
ICEA (or IPCEA) - Insulated Cable Engineers Association
IMSA - International Municipal Signal Association
ITE - Institute of Transportation Engineers
Materials I.M. - Materials Instructional Memorandum
MSDS - Material Safety Data Sheets
MUTCD - Manual on Uniform Traffic Control Devices
NCHRP - National Cooperative Highway Research Program
NEC - National Electrical Code
NEMA - National Electrical Manufacturers Association
NFPA - National Fire Protection Association
NSF - National Sanitation Foundation
OSHA - Occupational Safety and Health Administration
PE - Polyethylene Pipe
PCC - Portland Cement Concrete
PLS - Pure Live Seed
PVC - Polyvinyl Chloride Pipe
RAP - Recycled Asphalt Pavement
RCAP - Reinforced Concrete Arch Pipe
RCP - Reinforced Concrete Pipe
SAE - Society of Automotive Engineers
SDR - Standard Dimension Ratio
SSPC - Steel Structures Painting Council
SUDAS - Statewide Urban Design and Specifications
UL - Underwriters' Laboratories, Inc.
US - United States
USC - United States Code
VCP - Vitrified Clay Pipe
VE - Value Engineering
VOC - Volatile Organic Compound

1101.03 DEFINITION OF TERMS.

Acceptable Work.

Work in reasonably close conformance with the contract requirements.

Addendum.

A revision to the contract documents written and issued after the notice to bidders, and prior to the advertised time for receipt of proposals. Changes reflected in the Addendum shall govern over all other contract documents.

Advertisement.

The public announcement, publication, or solicitation, as required by the Contracting Authority, inviting bids for work to be performed or materials to be furnished.

Affiliates.

Affiliate companies that have any individual who is an officer, director, or partner in both companies, or if one or more persons or entities own or control 20% or more of the stock of both companies.

Approval for Award.

The acceptance by the Contracting Authority of a bid.

Approved Equal (Equivalent).

A product or material that, upon review of the Engineer, is determined to meet or exceed the requirements called for by the specifications. Upon approval, the item will be allowed in lieu of the specified material or product.

Approximate Start Date.

A calendar day shown on the proposal on which it is anticipated, at the time of letting, that conditions will be such as to permit the Contractor to commence work.

Assignment of Contract.

The written agreement whereby the Contractor sells, assigns, or transfers rights in the contract to any person, firm, or corporation.

Award.

The execution of the contract.

Backslope.

The sloping surface of a cut, borrow pit, or ditch of which the downward inclination is toward the traveled way.

Bid Amount.

The aggregate sum obtained by totaling the amounts arrived at by multiplying the number of units of each class of work, as shown in the proposal form, by the unit price specified in the proposal form for that class of work.

Bid Bond.

See Proposal Guaranty.

Bidder.

An individual, firm, corporation, or joint venture submitting a bid for the advertised work.

Bid Item.

See Contract Item (Pay Item).

Board or County Board.

The County Board of Supervisors as constituted under Chapters 39 and 331, Code of Iowa.

Bridge.

Any structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railroad, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than 20 feet (6.1 m) between undercopings of abutments or extreme ends of openings for multiple boxes.

Length. The length of a bridge structure is the overall length measured along the line of survey stationing back-to-back of backwall of abutments, if present, or otherwise end to end of the bridge floor, but in no case is less than the total clear opening of the structure.

Roadway Width. The clear width measured at right angles to the longitudinal center line of the bridge between the bottom of curbs or guard timbers or in the case of multiple height of curbs, between the bottoms of the lower risers.

Calendar Day.

Every day shown on the calendar.

Change Order.

A written order to the Contractor, signed by the Engineer, ordering a change in the performance of work or furnishing of materials, from that originally shown by the contract documents. Change orders duly signed and executed by the Contractor constitute authorized modifications of the contract, and may be performed at contract unit prices, agreed prices, or on a force account basis, as provided elsewhere in these specifications.

Channel.

A natural or artificial water course.

Chief Engineer.

A Professional Engineer licensed in the State of Iowa and appointed by the Director of the Department of Transportation.

Classes of Work.

The divisions made for the purpose of measuring and paying for labor to be performed or materials to be furnished according to the methods of construction involved, as indicated by the items for which bids have been received for each specific contract.

Commencement of Work.

Work will be considered commenced when the Contractor's operations are started on items of work covered by the contract documents and which require inspection within

the right-of-way; or when the Contractor notifies the Engineer, and the Engineer agrees, that the Contractor's equipment and personnel are available to the site, but the operations are prevented by weather or soil conditions.

Commission.

The State Transportation Commission as constituted under the laws of the State of Iowa (which is the party of the first part in the contracts let in behalf of the State, of which these specifications are a part).

Commissioner.

A member of the State Transportation Commission.

Completion Date.

The Date on which all work specified in the contract is completed.

Contract (Also Contract Documents).

The written agreement between the Contracting Authority and Contractor setting forth obligations of the parties thereunder, including but not limited to, performance of the work, furnishing of labor and materials, and basis of payment. The contract includes the following:

- Addendum,
- Contract bond,
- Contract form,
- Materials Instructional Memorandums,
- Notice to Bidders,
- Notice to Proceed,
- Plans,
- Proposal,
- Special Provisions,
- Standard Specifications, including General Supplemental Specifications,
- Developmental Specifications,
- Supplemental Specifications, and
- Any change orders and agreements which are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

Contract Bond.

The bond executed by the Contractor and the Contractor's surety in favor of the party of the first part, guaranteeing the faithful performance of the obligation assumed by the contract and the payment of all debts pertaining to the work.

Contract Item (Pay Item).

A specifically described unit of work for which a price (either unit or lump sum) is provided in the contract.

Contract Period (Also Contract Time).

The number of working days allowed for completion of the contract, including authorized time extensions.

Contract Sum.

The aggregate sum obtained by totaling the amounts arrived at by multiplying the number of units of each class of work, as shown in the contract, by the unit price specified in the contract for that class of work.

Contract Unit Price.

The price bid by the Contractor for one unit of work, as defined by the specifications.

Contracting Authority.

The governmental body, board, commission, or officer having authority to award a contract.

Contractor.

The individual, firm, corporation, or joint venture contracting with the Contracting Authority for performance of prescribed work.

Contractor's Financial Statement.

The specified forms on which a contractor shall furnish required information as to the Contractor's ability to perform and finance the work.

Controlling Item of Work.

The Controlling Item of Work is the unique activity of a contract that will determine the duration of the construction period. The character of this work may change during the construction period. It is the work that could be in progress at any time that would have the greatest influence on the duration of the construction period.

County.

Party of the first part in the contract, let by a County Board of Supervisors, of which these specifications are a part.

County Auditor.

The auditor of the contracting county duly elected under Chapter 39, Code of Iowa.

County Engineer.

A Professional Engineer licensed in the State of Iowa and appointed by the County Board of Supervisors.

Culvert.

A structure not classified as a bridge or storm sewer which provides an opening under a roadway or embankment, except that such term shall not include tiles crossing the road, or intakes thereto, where such tiles are part of a tile line or system designed to aid subsurface drainage.

Deficient Work.

Work not in reasonably close conformance with the contract requirements, or otherwise inferior, but in the opinion of the Engineer, reasonably acceptable for its intended use and allowed to remain in place.

Department of Transportation (the Department).

The Department of Transportation, as defined in Iowa Code 307.

Developmental Specifications.

Additions and revisions to the standard, general supplemental, and supplemental specifications covering the development of new construction items or changes to a process. They only apply to a project when noted in the proposal form.

Divided Highway.

A highway with separate roadways for traffic in opposite directions.

Drainage Ditch.

An artificially constructed open depression, other than a road ditch, which is constructed for the purpose of carrying off surface water.

Employee.

Any person working on the project mentioned in the contract of which these specifications are a part, and who is under the direction or control, or receives compensation from, the Contractor or subcontractor.

Engineer.

For the Department, the Engineer is the Chief Engineer. For publicly owned projects, the Engineer is a Professional Engineer licensed in the State of Iowa and authorized representative of the Contracting Authority. For privately contracted projects, with improvements that will become publicly owned, the Engineer is the authorized representative of the public entity ultimately accepting ownership of the improvements. For all other projects, the Engineer is the owner's authorized representative.

The Engineer may act directly or through duly authorized representatives, acting within the scope of the duties assigned to the Engineer, or the authority given the Engineer.

Equipment.

All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for proper construction and acceptable completion of the work.

Extra Work.

Work not provided for in the contract, as awarded, but deemed essential to the satisfactory completion of the contract within its intended scope and authorized by the Engineer.

Extra work shall not include additional materials, equipment, and labor used due to natural variations in surface and subsurface conditions, except as specifically provided for elsewhere in the contract documents.

Foreslope.

The sloping surface of an embankment, ditch, or borrow pit of which the downward inclination is away from the traveled way.

General Supplemental Specifications.

Specifications adopted by the Department's Specification Committee subsequent to the publication of this book. They contain changes to the Standard Specifications and apply to all contracts. Published in April and October each year.

Grade Separation.

A structure, with its approaches, which provides for highway or pedestrian traffic to pass without interruption over or under a railway, another highway, road, or street.

Haul Road.

A corridor of land, when so designated in the contract documents, either private or public, of which the right to use is acquired by the Contracting Authority for the purpose of hauling equipment, materials, or machinery either as vehicles or vehicles with loads, where these vehicles or vehicles with loads exceed the provisions of Iowa Code 321, governing size, weight, and load. (Not to be confused with temporary Primary Road haul road.)

Independent Contractor.

Any person, firm, or corporation who contracts with the Contractor to perform a service for which the basis of payment is in terms of units of service rather than salary or wages.

Inspector.

The authorized representative of the Engineer assigned to make a detailed inspection of any or all portions of the work, or materials.

Institutional Road Project.

A project on the institutional road system of highways at any state institution.

Instruction to Bidders.

See Notice to Bidders.

Intermediate Contract Period.

A period of working days shown on the proposal form specifying the time of completion for a specific item or portion of work on a contract.

Interstate Project.

A Primary project on the Federal System of Interstate and Defense Highways. Includes projects on county and city road bridges over the Interstate.

Item.

See Contract Item.

Joint Bid.

A firm proposal submitted by two or more qualified bidders who have been authorized to bid jointly by the Contracting Authority on a specific proposal, in which case bidders will be held individually and collectively responsible for completion of the work involved in any contract resulting from such proposal.

Joint Venture.

The joining of two or more qualified contractors for the purpose of combining equipment, personnel, and finances in order to submit a bid on a single proposal.

Jurisdiction.

Political subdivision acting through its governing body or through the authorized representatives of such governing body when so authorized.

Jurisdictional Engineer.

See Engineer.

Laboratory.

The testing laboratory of the Contracting Authority or any other testing laboratory which may be designated in the contact documents.

Late Start Date.

A calendar day shown on the proposal form specifying the latest date on a contract that the Contractor is to commence work.

Legal Axle Load.

A maximum axle load of 20,000 pounds, as defined in Iowa Code 321.

Liquidated Damages.

The dollar amount, determined by the Department and set forth in the contract documents, as an estimate of the damage to the Contracting Authority or the public for delay in completion of the work.

Lump Sum.

The contract amount is complete payment for all work described in the contract documents and necessary to complete the work for that item. Changes in payment will be made for obvious errors or authorized additional work that was not included in the work to be bid by lump sum.

Major Item of Work.

Any contract item (pay item) for which the original contract amount plus authorized additions is more than 10% of the total original contract sum or \$50,000, whichever is less.

Manhole.

See Utility Access.

Materials.

Any substances specified for use in the construction of the project and its appurtenances.

Materials Instructional Memorandum (Materials I.M.).

This is an instruction prepared by the Office of Materials. These may identify approved sources of various qualities or types of materials, sampling, testing, and approval procedures, and conditions for acceptance and use.

Maximum Density and Optimum Moisture Content.

The term maximum density and optimum moisture content as applied to soil, aggregate, and similar materials shall be construed as the maximum density described in AASHTO T 99, T 134, or T 180, as specified, and the corresponding optimum moisture as defined therein. The test methods will normally be AASHTO T 99, Method C; AASHTO T 134, Method B; and AASHTO T 180, Method C, as modified by the Materials I.M.s.

Median.

The portion of a divided highway separating the traveled ways for traffic.

Mobilization.

Preparatory work and operations for all items under the contract documents, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the project site; for the establishment of all offices, buildings, and other facilities necessary for work on the projects; and for all other work or operations which must be performed or costs incurred prior to beginning work on the various items on the project site. Mobilization may include bonding, permit, and demobilization costs.

Need Line.

A line or lines within the right-of-way, as shown on the plans or set by the Engineer, to define an area inside which disturbance is expected to complete work on the project and outside which permanent disturbance should be avoided.

Notice to Bidders.

That portion of the contract documents prepared and furnished by the Contracting Authority for the information of bidders submitting proposals, which notice specifies the provisions, requirements, and instructions pertaining to the method, manner, and time of submitting bids.

Notice to Proceed.

Written notice to the Contractor to proceed with the contract work including, when applicable, the date of beginning of contract time.

Optionally Combined Proposal.

The projects from two or more proposals combined by the Contracting Authority to allow the Contractor to bid all the projects as one contract.

Park Road Project.

A project on the park road system of highways and roads at any state park.

Pavement or Paving.

The pavement structure, or the upper surface of a pavement structure, or the materials of which the pavement structure is constructed.

Pavement Structure.

The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

Plans.

The final plan, authorized for letting, which includes approved plans, profiles, cross sections, typical cross sections, working drawings, plan notes, standard plans, and supplemental drawings, or exact reproductions thereof, including modifications, altered plans, revisions, and amendments, which show the location, character, dimensions, and details of the work to be done.

Precast Concrete Units.

Conventionally reinforced (not prestressed) concrete structural units, formed, cast, and cured presumably in a central casting yard and later moved and incorporated into the finished structure.

Prestressed Concrete.

Concrete which is subjected to compressive stresses, after hardening, by means of high strength steel tendons, for the purpose of eliminating or minimizing tensile stresses in the concrete due to applied loads. Prestressed concrete may be prefabricated in a permanent plant or at the site, or it may be designed to be cast in place. Prestressed concrete may be either pretensioned, in which case the concrete is cast to engage the steel tendons which have been prestressed between fixed anchorages and released after the concrete has hardened, or post tensioned, in which case the steel tendons are cased in the concrete in suitable enclosures to prevent bond and are stressed by jacking and anchoring against the concrete after it has hardened.

Primary Project.

A project on the Primary Road System of Iowa and extensions thereof in cities and towns. Includes projects on county and city road bridges within an interchange of a Primary road with a county road or city road.

Profile Grade.

The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal center line of the roadbed. Profile grade means either elevation or gradient of such trace, according to the context.

Project.

The specific section of the highway together with all appurtenances and construction to be performed under a contract. A contract may involve the work covered by one or more projects.

Project Area.

The right-of-way between the project limits shown in the contract documents, and additional area which is necessary for the Contractor to place traffic control devices required by the contract documents or necessary to protect the work.

Proposal.

The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

Proposal Form.

The form showing the location and description of the proposed work, the approximate quantities of work to be performed or materials to be furnished, the form and amount of the required proposal guaranty, and the contract period. The proposal form will also contain a reference to any special provisions or requirements which are supplemental to the standard specifications.

Proposal Guaranty.

The security furnished by the bidder with the proposal for a project(s), as guaranty the bidder will execute the contract for the work if the proposal is accepted.

Reasonably Acceptable.

Reasonably acceptable means acceptance with price adjustment of material or finished work that is incorporated and is not within reasonably close conformity with the contract documents, but at the discretion of the Engineer, it is determined that acceptable work has been produced. This is material or work for which a determination has been made to be accepted and remain in place.

Reasonably Close Conformity.

Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such working tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the work and the interests of the State.

Resident Bidder.

A person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement.

Responsive Bid.

A bid submitted by a Contractor which is determined not to be an irregular proposal as defined by Article 1102.10 and fulfills the good faith effort recruitment requirements in Article 1102.17.

Right-of-Way.

The land area of which the right to possession is secured or reserved by the Contracting Authority for road purposes.

Road.

A general term denoting a public way for vehicular travel, including the entire area within the right-of-way.

Roadbed.

The area of the roadway between the tops of foreslopes.

Roadside.

The area within the right-of-way and outside the shoulder lines of a roadbed.

Roadway.

That portion of the right-of-way designed or ordinarily used for vehicular traffic.

Secondary Project (Secondary Road Construction Project).

A project on the Secondary Road System of Iowa and extensions thereof in cities and towns.

Shoulder.

That portion of the road bed contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Sidewalk.

That portion of the roadway primarily constructed for the use of pedestrians.

Skew or Skew Angle.

The complement of the acute angle between two center lines which cross. The angular deviation of the axis of a culvert or bridge from a true right angular crossing of a road.

Slope.

The inclination of a line or surface expressed as a ratio of horizontal distance to vertical distance.

Special Provisions.

Additions and revisions to the Standard, General Supplemental, Developmental, and Supplemental Specifications covering conditions particular to an individual project. They only apply to a project when noted in the proposal form.

Specialty Items.

Pay items designated in the contract documents as specialty items; usually minor items requiring equipment, skills, or crafts not ordinarily associated with the major types of work covered by the contract.

Specifications.

The general term comprising all the written documents, provisions, and requirements to which may be added or adopted Supplemental Specifications, Developmental Specifications, or Special Provisions, all of which are necessary for the proper performance of the contract documents.

Specified Starting Date.

A calendar day shown on the proposal on which date commencement of work is expected.

Speed Limit.

Refers to the legally established speed limit before construction and not the advisory speed during construction.

Standard Road Plans.

A manual of detailed drawings showing standardized design features, construction methods, and approved materials for repetitive use on Interstate, Primary, and Secondary road construction.

Standard Specifications.

The requirements contained herein applying to all contracts, and pertaining to the method and manner of performing the work, or to the quantity and quality of the materials to be furnished under the contract.

State.

The State of Iowa acting through its authorized representative.

Station (Metric Station).

One hundred linear feet (one hundred meters).

Street.

See Road.

Structures.

All objects constructed of materials other than earth, required by the contract documents to be built, or to be removed, but not including pavement, surfacings, base courses, and subbases. Includes bridges, culverts, intakes, drop inlets, retaining walls, cribbing, utility accesses, end walls, buildings, sewers, service pipes, subdrains, foundation drains, and other features which require engineering analysis.

Subbase.

The layer or layers of specified or selected material of designed thickness upon which a base course or pavement is constructed.

Subcontractor.

Any individual, firm, or corporation to whom the Contractor, with the written consent of the Contracting Authority, sublets any part of the contract.

Subgrade.

The top surface of a roadbed upon which the pavement structure and shoulders are constructed.

Substructure.

All of that part of the structure below the bearings of simple and continuous spans, and tops of footings of rigid frames, together with the backwalls, wingwalls, and wing protection railings.

SUDAS Standard Specifications.

Refers to specifications developed by the Iowa Statewide Urban Design and Specifications Program.

Superintendent.

The Contractor's authorized representative in responsible charge of the work.

Superstructure.

The entire structure except the substructure.

Supplemental Agreement.

Written agreement between the Contractor and Contracting Authority modifying the original contract.

Supplemental Specifications.

Specifications adopted subsequent to the publication of this book. They involve new construction items or changes to Standard Specifications. They only apply to a project when noted in the proposal form.

Surety.

The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

Target or Target Value.

When a target or target value is specified, a continuous and determined effort is expected to reach and maintain that value, as a goal.

Temporary Primary Road Haul Road.

Any Secondary public road or city street so designated by the Department in accordance with Iowa Code 313.

Temporary Structure.

Any structure required to maintain traffic during construction of the work and which will be dismantled when the work is completed. The temporary structure shall include the earth approaches thereto.

Traffic Control Device.

As defined in the MUTCD.

Traffic Control Zone.

The distance between the first advance warning sign and the point beyond the work area where traffic is no longer affected. This does not include work more than 12 feet (3.6 m) from the outside edge of the traveled way.

Traveled Way.

The portion of the roadway for the movement of vehicles, exclusive of shoulders.

Unacceptable Work (Also Defective Work).

Work not in reasonably close conformance with the contract requirements and ordered to be removed and replaced.

Unauthorized Work.

Work neither contemplated by the contract documents nor authorized by the Engineer, and work done contrary to the instructions of the Engineer.

Unit Price.

See Contract Unit Price.

Utility.

Includes all privately, publicly, municipally, or co-operatively owned structures and systems for supplying water, sewer, electric lights, street lights and traffic lights, gas power, telegraph, telephone, communications, transit, pipelines, and the like.

Utility Access.

An inline structure to allow personnel access and maintenance of underground utilities.

Utility Agency.

Means and includes: 1) all franchised utilities having utility system facilities with State or local jurisdiction right-of-way, including but not limited to gas electric, telephone, cable television, and communications; 2) communications systems allow by the State or local jurisdiction; and 3) all governmental agencies owning or operating governmental utility systems, including but not limited to water, sewer, traffic control, and communications.

Waters of the United States.

All waters, impoundments of waters, or tributaries of waters, including but not limited to lakes, rivers, streams, intermittent streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, or natural ponds.

Work.

Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of the contract and the carrying out of all the duties and obligations imposed by that contract.

Work Area.

That portion of the project area in which construction activity is ongoing.

Working Day.

Any calendar day, exclusive of Saturdays, Sundays, or a recognized legal holiday, on which weather or other conditions (not under control of the Contractor) will permit construction operations to proceed for not less than 3/4 of a normal work day in the performance of a controlling item of work.

Working Drawings.

Stress sheets, shop drawings, erection plans, false work plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Engineer for approval.

Section 1102. Proposal Requirements and Conditions**1102.01 COMPETENCY AND QUALIFICATION OF BIDDERS.**

- A. Prospective bidders shall meet the Department's requirements for prequalification. To prequalify, a prospective bidder shall complete the required sections of the "Contractor's Financial - Experience - Equipment

Statement" (Form 650004) and submit it to the Department. The filing of this statement does not in itself constitute qualification. A prospective bidder shall receive definite approval of this statement to be placed on the qualified list before the bidder's proposals will be considered. The statement shall be filed with the Contracting Authority at least 5 calendar days before the date on which proposals are to be received.

- B. In order to continuously remain on the qualified list, a prospective bidder must file Form 650004 with the Department for approval once each year and at such other times as the Department may request. Unless otherwise notified, the previously approved statement will expire 18 calendar months from the date of that statement. The prospective bidder will be dropped from the qualified list if a new statement has not been filed and approved by the expiration date.
- C. The Contracting Authority will compute the Contractor's maximum prequalification amount based on the following prequalification formula:

$$\text{MAXPREQ} = [\text{CURRENT} + \text{NONCURRENT} + \text{LL}] \times \text{F}$$

Where:

MAXPREQ = maximum prequalification amount

CURRENT = current assets minus current liabilities

NONCURRENT = (non-current assets minus non-current liabilities)/2 if > 0

NONCURRENT = (non-current assets minus non-current liabilities) if < 0

LL = approved authorization to loan letter

F = experience factor

- D. The Contracting Authority will qualify Contractors into three categories:
 1. **Individually Prepared Statement.**
 - a. An Individually Prepared Statement is a "Contractor's Financial - Experience - Equipment Statement" that has been completed by the prospective bidder. If the statement has been compiled by a CPA, but does not contain a CPA review or audit of the financial portion of the statement, it is still considered an Individually Prepared Statement.
 - b. When an Individually Prepared Statement is submitted to the Department, the maximum prequalification amount will be \$200,000.
 2. **CPA Reviewed Statement.**
 - a. A CPA Reviewed Statement is a "Contractor's Financial - Experience - Equipment Statement" that includes a current CPA review of the financial portion of the statement. The review must be completed by a CPA who is either registered to practice in Iowa or

registered in another state having reciprocal arrangements with Iowa.

- b. When a CPA Reviewed Statement is submitted to the Department, an experience factor (F) ranging from 0.0 to 12.5, depending on the prospective bidder's past performance with projects let by the Department, will be used in the prequalification formula. A prospective bidder, who has been qualified to submit proposals with this type of statement, shall be limited to individual proposal sizes that do not exceed the lesser of \$1 million or the maximum prequalification amount minus the bidder's amount of uncompleted work currently under contract. Any combination of proposals, however, may total more than \$1million - as long as that total does not exceed the maximum prequalification amount minus the currently uncompleted work.

3. CPA Audited Statement.

- a. A CPA Audited Statement is a "Contractor's Financial - Experience - Equipment Statement" that includes a current CPA audit of the financial portion of the statement. The audit must be completed by a CPA who is either registered to practice in Iowa or registered in another state having reciprocal arrangements with Iowa.
- b. When a CPA Audited Statement is submitted to the Department, an experience factor (F) ranging from 0.0 to 12.5, depending on the prospective bidder's past performance with projects let by the Department, will be used in the prequalification formula. A prospective bidder, who has been qualified to submit proposals with this type of statement, shall be limited to work that does not exceed the maximum prequalification amount minus the bidder's amount of uncompleted work currently under contract. However, a prospective bidder shall be considered to have an "Unlimited" bidding capacity with the Department if they were awarded over \$50 million of work (including that from other Contracting Authorities) during their past fiscal year and have a prequalification limit, by the formula, over \$100 million.

- E. A prospective bidder must complete contract work in the following categories in excess of the quantities listed below before qualification to submit proposals or receive awards for projects involving larger quantities than those listed. The contract work may be done as a contractor or subcontractor. All such completed contract work will be combined into one total for each category to determine the bidder's qualifications.

PCC Pavement	Square Yards (Square Meters) 100,000 (100,000)
Grading	Cubic Yards (Cubic Meters) 500,000 (400,000)
Bituminous Pavement	Tons (Megagrams) 50,000 (50,000)

Bridges	\$200,000
Culverts	\$100,000
Other classes of work	No Fixed Maximum

- F. In all cases a bidder will be restricted to a specific dollar volume of contracts within reasonable limits of the bidder's ability to properly finance, equip, and perform the work within the specified contract period.
- G. The necessary forms and instructions for furnishing the "Contractor's Financial - Experience - Equipment Statement" will be supplied by the Contracting Authority upon application.
- H. For proposals involving only the furnishing of materials, granular surfacing, lighting, buildings, asbestos removal, salvage and removal, wells, traffic signals, pavement marking, or mowing, the following shall apply in lieu of the above requirements of this article:

Bidders submitting proposals must be recognized contractors engaged in the class of work provided for in the contract documents, and must possess all necessary licenses, certificates and resources to complete the work. Before the contract is awarded to a bidder, the bidder may be required to furnish evidence to the satisfaction of the Contracting Authority of the bidder's ability to perform and complete the contract.

1102.02 REDUCTION IN BIDDER QUALIFICATION RESTRICTIONS.

- A. The requirements and conditions for bidder qualification as contained in Article 1102.01 may be reduced by the Contracting Authority either for contractors who have well established performance records in other fields or for contractors having adequate financial responsibility and experienced supervisory personnel available for the work that is under consideration or for both the above reasons.
- B. Likewise, the requirements may be modified by the Contracting Authority for newly formed or reorganized firms or corporations whose basic organization is composed of individuals who are veterans of the construction industry, with proven records of satisfactory performance in the field in which they have elected to bid, provided, however, that they have adequate financial responsibility, equipment, and available experienced supervisory personnel.

1102.03 IMPOSITION OF INCREASE IN BIDDER QUALIFICATION REQUIREMENTS, SUSPENSION, AND DISQUALIFICATION.

- A. The requirements and conditions for bidder qualification in Article 1102.01 may be imposed, reimposed, or increased, or a contractor may be suspended or disqualified.

1. The requirements and conditions for bidder qualification of a contractor may be imposed, reimposed, or increased if or when:
 - a. The Contractor seriously delays commencement or completion of any work within the contract period or any extension thereof under circumstances that would normally give rise to a right in the Contracting Authority for liquidated damages or declaration of default, or
 - b. The Contractor does any act or omits doing or performing any act which, in the judgment of the Contracts Engineer, evidences a material change in the Contractor's financial responsibility or work capability where, in the judgment of the Contracts Engineer, the same will materially prejudice the Contractor's ability to successfully prosecute such public improvement contracts, or the Contractor knowingly submits false information on the "Contractor's Financial - Experience - Equipment Statement" (Form 650004) or "Certification of Uncompleted Work Under Contract" (Form 650022) or other information concerning prequalification, or
 - c. The Contractor takes or fails to take any action which the Contracts Engineer deems to warrant an imposition of increase in bidder qualification requirements.

2. A contractor may be suspended from bidder qualification if or when:
 - a. The Contractor continually fails or refuses to remove and replace materials or work found by the Engineer not to be in reasonably close conformity with the contract documents or to correct such material or work so as to cause such materials or finished product to be reasonably acceptable work, or
 - b. The Contractor continually and, in the judgment of the Contracts Engineer, without good cause therefore, fails to carry on the work in an acceptable manner or refuses to comply with a written order of the Engineer within a reasonable time, or
 - c. The Contractor fails to perform with its own organization the work as required in Article 1108.01, or otherwise assigns or disposes of work or the contract or any part thereof without approval of the Contracting Authority, or
 - d. The Contractor forfeits a proposal guaranty and fails to enter into the contract upon an offer of award by the Contracting Authority in response to a prior advertisement for bids for the same project or any combination of projects involving the project for which award is currently being considered, or
 - e. The Contractor fails to comply with Equal Employment Opportunity/Affirmative Action requirements of the contract, or
 - f. The Contractor fails to pay the subcontractor progress payments and retainage as required by Article 1109.05, or
 - g. The Contractor continually takes actions, or continually fails to take actions, which present safety concerns for the Contracting Authority or the general public, or
 - h. The Contracts Engineer deems a suspension is appropriate for reasons stated in Paragraph 1 above.

A suspension is intended to be for an indefinite period of time or, in the case of Paragraph d, for a specific project. A suspension shall continue until the Contractor resolves, to the satisfaction of the Contracts Engineer, the problem for which the suspension was made.

3. A contractor may be disqualified from bidder qualification if or when:
 - a. The Contractor is currently debarred by some other state or Federal agency, or
 - b. The Contractor subcontracts, employs, or otherwise uses services, for work of the Contracting Authority, of one who is debarred by the Contracting Authority or disqualified according to Article 1102.03, A, 3, a, except to fulfill agreements for work on existing contracts, or
 - c. The Contractor is convicted of or pleads guilty or nolo contendere (no contest) to a charge of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any Federal court or a court of this or any other state, or
 - d. The Contractor has offered or given gifts or gratuities to employees of the Contracting Authority in violation of State law or has had as an employee a person who was at that time also an employee of the Contracting Authority, or
 - e. The Contractor has falsified documents or certifications, or has knowingly provided false information to the Department or the Contracting Authority, or
 - f. The Contracts Engineer deems a disqualification is appropriate for reasons stated in Paragraph 1 or 2 above.

- B. A disqualification is intended to be for a specified time. A disqualification will not exceed 36 months.

- C. The Contracts Engineer will issue a written notice of any intent to disqualify or suspend a contractor, except when suspended for a specific project according to Article 1102.03, A, 2, d.

- D. Should the Contractor believe that the increase in bidder qualification requirements, intended suspension, or intended disqualification is based on false, biased, or incomplete information or that the increase or intended action is severe or unwarranted, the Contractor may make a written request to the Contracts Engineer for an opportunity to be heard in a contested case pursuant to Chapter 17A, Code of Iowa, and 761 IAC, Ch. 13. If notice is given, the written request for a hearing shall be filed with the Contracts Engineer within 10 calendar days of receipt of the notice of intended agency action. If the basis of the intended disqualification is a criminal violation which is reasonably related to bidding and contracting procedures, the intended disqualification may be applied to the organization, including a person, firm, association, partnership, or corporation, to an affiliate, officer, representative, or employee thereof, and to any other such organization in which the organization or affiliate or the officer, representative, or employee has an interest as either officer or owner.

- E. When a notice is given or when any action is contested, the Contracts Engineer will issue a notice of the final action taken.

1102.04 CONTENTS OF PROPOSAL FORMS.

- A. Bidders will be furnished with proposal forms showing the location and description of the proposed work, the approximate quantities of work to be performed or materials to be furnished, the form and amount of the required proposal guaranty, and the contract period. The proposal form will also contain a reference to any special provisions or requirements which are supplemental to the standard specifications.
- B. The statement, "By virtue of statutory authority preference will be given to products and provisions grown and coal produced within the State of Iowa where applicable," which is on the bidding document shall not be applicable to contracts involving Federal-aid participation in construction.
- C. If a predetermined wage is shown on the proposal form, it will apply to all labor used on the project. This will include labor used in the production of aggregate, HMA, and ready mix PCC which is not produced in a commercial plant. The rulings of the U.S. Department of Labor will be used in determining what is a "roadside plant" where the predetermined wage will apply and a commercial plant where the predetermined wage will not apply.

Do not use composite crews for bridge and culvert work. Pay applicable prevailing wage rate for the classification which the employee is performing work.

- D. The following bidding and letting regulations shall apply to all proposals for which the Department receives bids (includes projects on Interstate, Primary, urban, park and institutional roads, farm-to-market, and local county systems).
 - 1. Contractors will be permitted to bid on proposals amounting in total to three times their adjusted prequalification rating (prequalification rating minus uncompleted contracts).

The adjusted prequalification rating will be determined at each letting, taking into consideration the amount of work under contract, equipment and personnel available, and construction periods, etc.

Approvals for award of contracts will not exceed any contractor's actual adjusted prequalification rating.

- 2. Contracts will be recommended for approval for award on the basis of the greatest total savings in the public interest. The determination of which proposals to be awarded will be based on the approval by the Department and even if the selected bids are later rejected by other contracting agencies, other projects will not be substituted.

3. Contractors will not be permitted to tie proposals or to designate on the bidding proposal the limit of the amount they will accept. Contractors may voluntarily lower their prequalification rating provided written request is on file at the Office of Contracts, Iowa Department of Transportation, Ames, Iowa, by noon of the working day prior to the letting.

1102.05 ISSUANCE OF PROPOSALS.

Requests for proposal forms to bid construction and maintenance contracts must be filed by noon of the working day prior to the letting. These requests should be on the request form provided by the Department. Unless otherwise specified, proposal forms will be furnished to qualified bidders who have filed properly completed "Certification of Uncompleted Work Under Contract" forms (Form 650022) with their request. Any contractor knowingly submitting any false information required by Form 650022 may be suspended from bidding as provided in Article 1102.03.

1102.06 NONSEGREGATED FACILITIES NOTICE TO PROSPECTIVE FEDERAL-AID SUBCONTRACTORS AND MATERIAL SUPPLIERS.

Certain requirements concerning nonsegregated facilities may be applicable to prospective subcontractors and material suppliers for Federal-aid projects. These are in the contract documents.

1102.07 ESTIMATE OF QUANTITIES.

- A. The Proposal form will contain a Schedule of Prices that lists the items of work on the project(s). The Schedule of Prices, which shall be completed and submitted by each bidder, will be used for comparing bids for award of the contract.
- B. Contract items listed in the Schedule of Prices will be either Unit Price or Lump Sum.
- C. The contract documents may also include a list of items that are noted as incidental. Incidental work is normally minor in scope and is clearly described in the contract documents. The cost to complete incidental items shall be included in the contract unit price bid for the item to which they are listed as incidental. Additional payment will not be made for incidental items unless there are obvious errors or changes to the quantity of the incidental item. An item of work, normally paid for separately, and not listed in the contract documents as incidental, will be paid for in accordance with Article 1109.03, B.

1102.08 EXAMINATION OF PLANS, PROPOSAL FORM, SPECIFICATIONS, AND SITE OF WORK.

It is the responsibility of the bidder to examine the plans, proposal form, Specifications, Supplemental Specifications, Developmental Specifications, Special Provisions, the site of the work, and the state of the work of other contractors on the project to assure that all requirements of the proposal form and the plans are fully understood. It is the bidder's responsibility to understand the nature of the work and all reasonably ascertainable conditions which may affect performance under the

contract. The Contracting Authority does not warrant, implicitly or explicitly, the nature of the work, the conditions that will be encountered by the bidder, or the adequacy of the contract documents for the Contractor to perform the work.

1102.09 PREPARATION OF PROPOSALS.

- A.** Only contractors who have been authorized to bid a proposal may submit a bid for a contract. For bids submitted to the Department that exceed \$1 million, the bidder shall use subparagraph 2 or subparagraph 3 below. The Department may waive this requirement for unique or isolated situations.
 - 1.** Submit the signed, original Bidding Document furnished by the Contracting Authority with a Schedule of Prices from the Estimating Proposal.
 - 2.** Submit the signed, original Bidding Document furnished by the Contracting Authority with the computer printout and diskette of the Schedule of Prices from the bidding software furnished by the Department.
 - 3.** Submit an electronic bid with digital signature using the bidding software furnished by the Department and the electronic bid submittal procedures of the Department.
- B.** The bidder shall be familiar with the requirements of the applicable specifications. The bidder shall specify a unit price in figures of dollars and cents for all pay items, except for Lump Sum items where the proposal line item bid amount must be shown. All the unit price figures shall be in ink, typed, or computer printed. The bidder may also specify the extension for each proposal line item and or the total amount of the bid. However, if there is a discrepancy between the unit bid prices, extensions, or total amount of bid, the unit prices shall govern. The bidder shall not alter the quantity, unit price, or the extension which has been provided for items which have been predetermined by the Contracting Authority.
- C.** If the proposal is made by a partnership or corporation, the name of the partnership or corporation, its agent, and its principal place of business shall be shown. The proposal shall be signed by an authorized agent of the partnership or corporation.
- D.** If the proposal is made on the basis of a joint bid, the proposal shall be signed by each of the joint bidders, unless the firms submitting the joint venture have a written request on file with the Department signed by each of the bidders which states the individual(s) who are authorized to sign the bidding documents for the joint venture.
- E.** By signing and submitting the proposal, the bidder:
 - 1.** Acknowledges the bidding requirements included in the bidding documents,

2. Agrees to perform all work that is necessary to complete the proposed work in the time specified. Work not covered by proposal will be paid for according to Article 1109.03,
 3. Certifies compliance with the provision of the Code of Iowa listed in the bidding documents,
 4. Gives an unsworn declaration on behalf of each person, firm, association, partnership, or corporation submitting a proposal, certifying that such person, firm, association, partnership, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, and is not under debarment currently by the Federal government for a criminal violation which is reasonably related to bidding and contracting procedures,
 5. For Federal-aid contracts, certifies acknowledgment of the limitations of lobby activities shown in the bidding documents, and
 6. For Federal-aid contracts, certifies the bidder does not maintain segregated facilities.
- F. Cooperation and coordination will be required of all contractors and other agencies authorized to do work in the project area.
- G. The attention of the bidder, for the work covered by a proposal and referred to as this work, is directed to the fact that contracts for work other than the work covered in this proposal may have been awarded, are being advertised for letting on the same date as this work, or may be awarded in the future.
- H. Completion of work covered by this proposal may be contingent upon certain work covered by other contracts being performed on the project in advance of this work; likewise, completion of work covered by other contracts may be dependent upon completion of work covered by this proposal.
- I. The proposal will list types of work involving other contracts anticipated to be let on the same letting date or sometime within the contract period anticipated for this work. The contract documents will also list other governmental agencies, railroads, utilities, or other parties who will have work with which it is known that this work must be coordinated.
- J. The bidder is expected to become familiar with work already in progress or previously let on this project, the contract periods, the progress being made, and any other conditions regarding that work which may affect the bid or the bidder's performance under this contract.
- K. The bidder on this work acknowledges these facts and agrees that it is in the public interest to have the work of certain contracts and agencies performed concurrently rather than consecutively. The bidder further agrees to cooperate and coordinate the work with that of other contractors or agencies

to the mutual interest of all parties doing work in the project area, whether by contract with the State, County, or City or necessary work being done by governmental agency or utility force.

- L. By the submission of a bid on this work, the bidder acknowledges and agrees that investigation and inquiry has been made regarding the contracts for work with which this work must be coordinated.
- M. In the event disputes arise between contractors or other agencies, or both, doing work on the project as to their mutual rights or obligations, the Contracting Authority or its authorized representative will, when requested to do so or the Contracting Authority's own motion, act as referee and define the rights of all interested parties with regard to the conduct of the work, which decision shall be final as provided in Article 1105.01.
- N. If a prospective bidder, for a proposal for which the Department is accepting bids, is in doubt as to the true meaning of any part of the contract documents, the bidder may submit to the Contracts Engineer a request for additional information, explanations, or interpretations. Interpretations may be in the form of an addendum to the contract documents. The Contracting Authority will not be responsible for any information, explanation, or interpretation from any other source.

1102.10 IRREGULAR PROPOSALS.

Proposals will be considered irregular and may be rejected for any unauthorized changes in the proposal form or for any of the following reasons:

- A. If on a form other than that furnished by the Contracting Authority, or if the form is altered or any part thereof is detached,
- B. If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning,
- C. If the bidder adds any provisions reserving the right to accept or reject an award because of being low bidder on another proposal in the same letting,
- D. If the bidder adds any provisions reserving the right to accept or reject an award or to enter into contract pursuant to an award,
- E. If a bid on one proposal is tied to a bid on any other proposal, except as specifically authorized on the proposal form by the Contracting Authority,
- F. If the proposal does not contain a unit price for each pay item listed, except in the case of authorized alternate pay items.

1102.11 PROPOSAL GUARANTY.

- A.** Each proposal shall be supported by a proposal guaranty in the form and amount prescribed in the proposal. Bids not so supported will not be read.
- B.** The proposal guaranty shall be in the form of a certified check or credit union certified share draft, cashier's check, money order, or bank draft drawn on a solvent bank or credit union. Certified checks or credit union certified share drafts shall bear an endorsement signed by a responsible official of such bank or credit union as to the amount certified. Cashier's checks, money orders, or bank drafts shall be made payable either to the Contracting Authority or to the bidder and, where made payable to the bidder, shall contain an unqualified endorsement to the Contracting Authority signed by the bidder or the bidder's authorized agent. Certified checks and credit union share drafts shall be certified, or the cashier's check shall be drawn and endorsed, in an amount not less than prescribed in the proposal.
- C.** A Proposal Guaranty/Bid Bond (Form 131084) may be used for the proposal guaranty in lieu of that specified above. Bid bonds will be declared invalid and bid proposals will not be considered if any of the following items are omitted or incorrect:
- Date of Letting
 - Bid Order Number
 - Name of Contractor
 - Original Signature of Contractor: In case of joint venture bid, all contractors must sign.
 - Name of the Surety Company
 - Original Signature of Surety (if Surety's limitation is less than the amount of the bid bond, a certificate of reinsurance must be attached).
- D.** A Contractor's Annual Bid Bond (Form 650043) may also be used for the proposal guaranty in lieu of that specified above. The Annual Bid Bond shall contain the following items:
- Name of Contractor
 - Original signature of the Contractor
 - Date of signature
 - Name of Surety Company
 - Original signature of the Surety

1102.12 FILING OF PROPOSAL.

- A.** The proposal, proposal guaranty, and other supporting documents for each proposal shall be filed in an envelope, which is marked to indicate its contents. All proposals shall be filed with the Contracting Authority at the place designated in the notice to bidders, prior to the time advertised for opening of bids. Proposals received after the time of opening bids will be returned to the bidder.
- B.** The Contracting Authority may take bids on the same project as an individual proposal or part of an Optionally Combined Proposal. When an

Optionally Combined Proposal is designated, the consideration for award of contracts will be based on which of the following gives the lowest total cost:

1. The sum of the lowest responsible bid on each of the individual proposals.
2. The lowest responsible bid on the Optionally Combined Proposal.

1102.13 WITHDRAWAL OF PROPOSAL.

The bidder will be permitted to withdraw their proposal under one of the following three conditions:

- A. The bidder may withdraw a proposal unopened if such a request is made in writing and received at the Department prior to the time specified in the advertisement for receiving bids. A proposal so withdrawn may be resubmitted as long as it is resubmitted prior to the deadline for receipt of bids.
- B. If, after bids are open, the low bidder should claim a serious error in the preparation of the bid, and can support such a claim with evidence satisfactory to the Department, the bidder may be permitted to withdraw the bid and the bid guarantee may be returned. In such an event, action on the remaining bids will be considered as if the withdrawn bid had not been received. Under no circumstances will the bidder be permitted to alter the bid after the bids have been opened.

The Department will keep the bidder's proposal guarantee unless the bidder satisfies all four of the following conditions:

1. The mistake must be a clerical mistake as opposed to a mistake involving poor judgment concerning a construction process. The bidder must be able to produce bid preparation documentation to show how the clerical error occurred.
 2. The bidder must immediately notify the Department as soon as the error is observed.
 3. The scope of the mistake must be significant. The size of the mistake when compared to the overall project must be significant enough to cause major financial difficulties if the bidder is forced to complete the project at the price quoted.
 4. The Department should not be placed in a worse position than if the bid had never been submitted.
- C. The bidder may withdraw their bid from consideration if a contract has not been offered them within 30 calendar days after the letting and the bidder has not requested approval for award be deferred.

1102.14 PUBLIC OPENING OF PROPOSALS.

Proposals will be publicly opened and read at the time and place stipulated in the notice to bidders.

1102.15 FOREIGN CORPORATIONS.

- A. Before entering into a contract involving construction or maintenance work, corporations organized under the laws of any other state shall file with the Contracting Authority a certificate from the Secretary of State of the State of Iowa showing that they have complied with all of the provisions of Code of Iowa 490, governing foreign corporations. For contracts involving only the furnishing of materials, the foregoing requirement does not apply.
- B. When a contract not involving Federal-aid participation for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident.
- C. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.
- D. Any joint venture that includes a nonresident bidder will be considered nonresident, and the preference rule will be used.

1102.16 INCOME TAX DEDUCTION ON NONRESIDENT CONTRACTORS.

Each nonresident person or firm doing business as an individual and each nonresident co-partnership will be required, as precedent to receiving an award, to file a certificate issued by the State Tax Commission, as provided in Iowa Code 422.17, releasing the Contracting Authority from withholding any and all sums required by the provisions of Iowa Code 422.17.

1102.17 DISADVANTAGED BUSINESS ENTERPRISES.**A. General.**

- 1. All contractors shall pursue affirmative action requirements to encourage and increase participation of disadvantaged individuals in business enterprises in all Federal-aid projects let by the Department, as set forth in this specification which is imposed pursuant to 49 CFR Part 26 Subpart A through F and Public Law 105-178, 112 Stat. 107 which supersedes all existing minority business enterprise regulations, orders, circulars, and administrative requirements concerning financial assistance programs that the United States Department of Transportation has issued.

2. The requirements set forth in this specification shall constitute the specific affirmative action requirements for project activities under this contract insofar as DBEs are concerned.

B. Disadvantaged Business Enterprise Policy.

The Contractor shall accept as operating policy and include in all subcontract agreements the following statement which is designed to promote full participation of DBEs as suppliers and subcontractors through a continuous, positive result-oriented program on contracts let by the Department:

"The Contractor, subrecipient, 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 Department assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Contracting Authority deems appropriate."

C. Contractor's Affirmative Action Responsibilities.

The Contractor shall designate a responsible person or company official to serve as its DBE Liaison Officer. The DBE Liaison Officer shall:

1. Have the necessary statistics, funding, authority, and responsibility to carry out and enforce the intent of the firm's DBE policy and shall be responsible for developing, managing, and implementing the program on a day-to-day basis.
2. Use the current Directory of Certified DBEs to identify potential material suppliers and contractors.
3. Make every reasonable effort to involve DBEs in the performance of contracts, as suppliers and subcontractors, by soliciting quotations from the DBEs and incorporating them into the firm's bid.
4. Advise the Office of Employee Services, Civil Rights Team (OES-Civil Rights), of any known DBE not included in the current Directory of Certified DBEs.
5. Make every reasonable effort, at least 2 weeks prior to the time prices and quotations are to be submitted, to establish systematic written and/or oral contact with those DBEs that have been determined to have necessary potentials and capabilities to furnish needed materials and perform necessary work to be subcontracted.
6. Provide or arrange to assist certified DBEs with obtaining necessary bonding, analyzing plans and specifications, planning and managing work, and by providing other technical assistance.

7. Maintain complete records of negotiations with DBEs to reach agreeable prices, quotations, and work schedules.
8. Ensure that regularly scheduled progress payments are made to DBEs as required by the Iowa Code and the Standard Specifications.
9. Report to the Department all suspected instances of firms fraudulently claiming to be DBEs.

D. Counting DBE Participation Toward Meeting Goals.

1. The Contractor may count toward the goals only expenditures to DBEs that perform a commercially useful function towards the completion of a contract, including those functions as a subcontractor. Work performed by a DBE firm in a particular transaction may be counted toward the goal only if the Department determines that it involves a commercially useful function. The work performed by the DBE firm shall be necessary and useful to the completion of the contract, and consistent with normal highway construction industry practices in Iowa.
2. The bidder may count the following DBE expenditures towards the DBE commitment:
 - a. **Projects where the DBE is the Prime Contractor** - The portions of the contract to be completed by certified DBE firms will be counted toward meeting the goal. Items of the contract subcontracted to non-DBE firms will not be counted in the commitment.
 - b. **Portions of a bid from a Joint Venture** - A bid from a joint venture, between a DBE and non-DBE Contractor shall include a "Statement of DBE Commitments" (Form 102115), which is included in the bidding documents and in the computer software provided by the Department, listing the dollar value of the contract which will be completed by the DBE partner.
 - c. **DBE Subcontractors** - The DBE subcontractor shall assume actual and contractual responsibility for provision of materials and supplies, subcontracted work, or other commercially useful functions of the items of work subcontracted to them. Cost of materials purchased from or the cost of equipment leased from the Contractor will not count toward the project DBE commitment.
 - d. **Manufacturers** - The Contractor may count toward the DBE commitment 100% of its expenditures for materials and supplies required under a contract and obtained from a DBE manufacturer only if the DBE firm produces and supplies goods manufactured from raw materials or substantially alters them before resale.
 - e. **Regular Dealers (e.g. Material Suppliers)** - The Contractor may count toward the DBE goal 60% of its expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer only if the DBE firm performs a commercially useful function in the supply process. For purposes of this section, a regular dealer is a firm that owns; operates; or maintains a store,

warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates the distribution equipment. If the DBE supplier does not own the distribution equipment, an acceptable lease containing the terms of the agreement shall be available. The Department may request a copy of this lease.

- f. **Brokers and Packagers** - Brokers and packagers will not be regarded as regular dealers within the meaning of this section. Only the cost of the service performed may be used towards meeting the DBE commitment.
- g. **Transportation or Hauling of Materials** - If a DBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor, the commercially useful function performed is not that of a supplier, but that of a transporter of goods. Unless the DBE company is itself the manufacturer or a regular dealer in the product, credit only will be allowed for the cost of the transportation service. For transportation of materials by truck to be used toward meeting the DBE commitment, the following shall apply:
 - 1) The DBE shall be responsible for management and supervision of the entire trucking operation that is to count toward the commitment. The DBE shall maintain strict records to verify the amount of hauling done by each trucker. These records shall be available to the Engineer, upon request.
 - 2) OES-Civil Rights will maintain a truck roster for each DBE that performs trucking. Each truck on the truck roster shall be either owned by the DBE or controlled by the DBE under a lease. Trucks that are leased shall be from a firm that is in the commercial leasing business; the owner of the commercial leasing business cannot be a heavy-highway contractor. The DBE firm shall make available to the Department the lease agreement if requested.
 - 3) To meet the DBE commitment, the following conditions shall be used:
 - a) At least one fully licensed, insured, and operational truck, listed on the truck roster under the DBE trucking company shown on the Form 102115, shall be hauling on the project at all times. The Contractor will receive credit for the fee paid to the DBE for these trucks.
 - b) Any truck on the truck roster of another DBE may be used. There is no limitation to the number of these trucks that can be used. The Contractor will receive credit for the fee paid to the DBE for these trucks.

- c) A DBE trucker may also use trucks from a non-DBE firm, including an owner operator. The Contractor will receive credit toward the DBE commitment only for the fee or commission retained by the DBE trucker. The Contractor will not receive credit for the total amount paid for the truck because the DBE was a lessee rather than the actual provider of transportation services.

h. Commercially Useful Function.

- A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The DBE must perform a commercially useful function consistent with common Iowa highway construction industry practices and the amount the firm is to be paid under the contract must be commensurate with the work it is actually performing by the DBE.
- DBE participation will not be counted if the DBE firm does not perform a commercially useful function (e.g. its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation).

Interpretations by the Department regarding Commercially Useful Function participation by a DBE firm will be in accordance with 49 CFR, Part 26 Public Law 105-178, 112 Stat.107.

E. Contract Award Procedures.

The proposal will specify if the proposed contract has an established DBE goal or has no established DBE goal. The established DBE goal will be shown on the proposal as a percent of the total amount bid. The bidder may only use work on the federal aid projects on the proposal to achieve the DBE goal. The proposal may also designate the items of the federal aid project that are over utilized by DBE firms and cannot be used for DBE commitments.

1. Bidder's Responsibility.

It is the bidder's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The bidder shall ascertain that the proposed DBE subcontractor has suitable experience and equipment to perform a commercially useful function for work that is common industry practice in the Iowa highway construction industry. Subcontractor expenditures, which may be counted towards the DBE commitment, will include DBE

trucking, purchase of materials from a DBE manufacturer or supplier, or off-site services provided by a certified DBE firm.

2. Proposals with Established Project DBE Goals.

- a. For proposals with established project goals the bidder will be required to complete Form 102115.
- b. The bidder shall list the following information on Form 102115 that is submitted with their bid:
 - 1) Certified DBE firms contacted,
 - 2) Date that each DBE firm was first contacted concerning quoting on the proposal to be bid,
 - 3) Whether each DBE firm submitted a quote on the proposal to be bid,
 - 4) If the DBE firm is being used as part of the bidder's DBE commitment,
 - 5) If used as part of the bidder's DBE commitment, the work items on the contract for which the DBE will be used,
 - 6) If used as part of the bidder's DBE commitment, the "Amount To DBE" which has been committed to each DBE firm which will be used on the contract,
 - 7) If the DBE firm is being used as a supplier (in which case, only 60% of the dollars paid to the DBE firm will count toward the DBE commitment), and
 - 8) The "DBE Commitment" of each DBE firm which will be counted towards the total DBE commitment for the contract.
- c. In cases where the required information is included on the form, but where discrepancies occur, the Office of Contracts will make the following calculations to determine the Contractor's DBE commitment. The DBE dollar commitment will be the sum of the amounts listed in the "Amount to DBE" column, adjusted for suppliers as provided in the specifications. The percent of DBE participation will be the DBE dollar commitment as determined above, divided by the total contract amount as defined by Article 1102.09. Each bidder's DBE participation commitment will be calculated to the nearest 0.1%. If two or more projects are combined on one proposal, the DBE commitment will be calculated using the sum of the DBE dollar commitments and the sum of the project totals.
- d. The completed form shall be filled out in ink or be computer generated and submitted with the bidding documents. Failure to attach this completed form or submitting incomplete forms will cause the bid to be rejected as irregular, in accordance with Article 1102.10. Only DBE firms listed in the Directory for the current letting may be used.

3. Bidder Selection.

- a. The successful bidder will be selected on the basis of having submitted the lowest responsive bid. Bidders shall make a Good Faith Effort to achieve the DBE goal in order to be responsive. Contractors who meet or exceed the proposed contract goal will be

assumed to have made Good Faith Effort to utilize DBE firms. DBE firms who bid as prime contractors will be considered to have met the goal.

- b. The Department's process used to judge the Good Faith Effort of a bidder who has not met the established DBE goal is as follows:

1) 80% of the Goal.

A bidder who has achieved 80% of the established goal will be assumed to have made Good Faith Effort to achieve the goal.

2) 80% of the Average Commitment.

The Department has established the following objective measurement of Good Faith Effort. Good Faith Effort will be determined by calculating 80% of the average of the percentages of the goal and the DBE commitments submitted by all bidders satisfying Article 1103.01, and comparing the percent of DBE commitment of each bidder to that percentage average. The following example shows how the Department will compute the average DBE participation:

- a) Only that amount of a bidder's DBE commitment that does not exceed the established goal will be used.
- b) The amount of the goal will be used as the DBE commitment amount from DBE bidders who are bidding the project as the prime contractor.
- c) The commitments to DBE firms who are affiliates of the bidder will not be included in the calculation.
- d) The project DBE Goal will be included in the computation.

Example:

80% of the Average Good Faith Effort calculation

Project Proposal has a 10% Goal for DBE participation = 10.0%

Contractor "A" submits a commitment of 11.8% = 10.0%

Contractor "B" submits a commitment of 7.0% = 7.0%

Contractor "C" submits a commitment of 11.4%
(of which 4.0% was committed to a DBE affiliate) = 7.4%

Contractor "D" submits a commitment of 3.6% = 3.6%

Contractor "E" is a DBE = 10.0%

Sum of Commitments = 48.0%

Average DBE Commitment = 48.0 / 6
= 8.0%

80% of the Average Commitment = 80% of 8.0 = 6.4%

Contractors "A", "C", and "E" would all be responsive for meeting the DBE goal. Contractor "B" would be responsive for meeting 80% of the Average DBE Commitment. Contractor "D" would not be responsive for meeting 80% of the Average DBE Commitment. Should the low bidder's DBE commitment be lower than 80% of the average, with the contract goal included

in the calculation, that bidder will be considered non-responsive for Good Faith Effort to meet the project DBE goal. If the lowest bid is non-responsive due to lack of Good Faith Effort, the next bidder is compared to this 80% of the average commitment until a bidder is identified as having made a Good Faith Effort to achieve the DBE goal.

3) Contractors with History of Utilizing DBEs.

- a) A bidder who has demonstrated their ability to utilize DBE firms on both Federal-aid and non-Federal-aid projects let by the Department in the 24 months prior to the letting will be assumed to have made a Good Faith Effort to achieve the project goal.
- b) The Department's objective evaluation of prior usage of DBE firms will include all contracts let by the Department that were awarded to the Contractor during the 24 months prior to the letting. The calculation will include one point for each percentage of average DBE subcontracted dollars for the 24 months prior to the letting (e.g. an average 7.5% dollars subcontracted to DBE equals 7.5 points)

A contractor under consideration for having a history of utilizing DBE firms must have been awarded at least two contracts during the period being reviewed.

A contractor under consideration for having a history of utilizing DBE firms must have been awarded a dollar amount of contracts that exceed at least twice the dollar amount of the contract under consideration. For example, to be awarded a \$1,000,000 contract, the contractor under review would have to have been awarded \$2,000,000 in the Annual Good Faith Effort calculation.

The Annual Good Faith Effort points used for a letting would be based on the signed contractors and Request for Subcontract forms submitted by 5 calendar days before the letting. The number of points a contractor will need to be considered to demonstrate a history of utilizing DBE firms must exceed 67% of the Department's Annual DBE Goal (e.g. if the Department's annual DBE Goal is 7.8%, the contractor must have over 5.2 points). It is assumed that 67% of the DBE usage will be subcontract work and 33% of the dollars paid to DBE firms will be to DBE firms who have been awarded prime contracts.

4) Administrative Reconsideration of Project Specific Good Faith Effort.

- a) Contractors who have not met the specified DBE goal or have not been determined to have demonstrated Good Faith Effort by the above methods can request administrative reconsideration of their Good Faith Effort.

- b)** Within 2 business days after the deadline for bid submittal, the Department will use the three Good Faith Effort methods to determine which bidders have made a Good Faith Effort to meet the DBE goal on each proposal for which bids were received. The Department will contact all otherwise lowest responsive bidders who have not met any of the Good Faith Effort criteria and offer that bidder an opportunity for an Administrative Reconsideration meeting with the Department's Administrative Reconsideration Committee. This committee consists of representatives from the Department's Offices of Contracts, Construction, and Employee Services. The bidder shall request the Administrative Reconsideration meeting within 1 business day of the Department's offer of an Administrative Reconsideration meeting.
- c)** Any bidder who has requested Administrative Reconsideration shall not adjust their DBE Commitment or provide any additional documentation of DBE firms contacted that were not listed on Form 102115. However, the bidder will be allowed to provide documentation on other Good Faith Efforts they did to utilize DBE firms that are listed on Form 102115. These efforts may include:
- (1)** Efforts to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - (2)** Written documentation of negotiation with certified DBE firms including the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (3)** Written documentation of follow-ups made after the initial solicitations to encourage DBE firms to quote.
 - (4)** Written documentation that the DBE firm's quote was not reasonable or that the DBE firm was not capable of performing the work for which they quoted. The fact that there may be some additional costs involved in finding and using DBE firms is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts.
 - (5)** Written documentation of efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the specifications.

- (6) Written documentation of efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services needed for the project.
- d) The determination made by the Administrative Reconsideration Committee shall be considered final.

F. Construction Period Requirements.

1. The Contractor shall use those DBEs for the amounts listed on Form 102115 as submitted with their bid. The Contractor shall give the DBE five calendar days to respond to any notice from the Contractor. The Contractor shall inform the Engineer of the reasons why a DBE will be unable to complete the work for which they were committed. The Contractor shall document their efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. Any request for substitution of a DBE subcontractor shall be made to the Engineer and approved by OES-Civil Rights.
2. The Contractor is allowed to offer construction assistance to DBE subcontractors, but only in areas where DBEs can benefit from their expertise or in situations arising from unforeseen emergencies or natural disasters. The assistance shall be short-term and involve only equipment, or workers that function as trainers. Before offering the assistance, the Contractor shall notify the Engineer and obtain the written approval of OES-Civil Rights.
3. Brokering of work by DBEs is not allowed and is a contract violation. A DBE firm involved in brokering of work may be decertified. Any firm involved in brokering of work, that engages in willful falsification, distortion, or misrepresentation with respect to any facts related to the project shall be referred to the U. S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U. S. Code, Section 100.20.

G. Post Construction Requirements.

1. Prior to receiving final payment, the Contractor shall provide to the Engineer certification of the dollars paid to each DBE firm, using Form 102116, Certification Of DBE Accomplishment. This certificate shall be submitted on all Federal-aid contracts and shall list the dollar amounts paid to all DBE firms on the contract. The certification shall be dated and signed by a responsible official legally representing the Contractor. Falsification of this certification will result in suspension of bidder qualifications according to Article 1102.03.
2. If the contract contained a DBE commitment, the Engineer will verify that the Contractor has attained the DBE commitment specified on Form 102115. If the commitment is not met and was less than the goal, the

price adjustment is the difference between the actual dollars paid and the commitment. If the commitment is not met and was greater than the goal the price adjustment is the difference between the actual dollars paid and the goal.

3. The penalty for failure to meet DBE commitments will then be reduced by the following amount:
 - a. Underruns or deletion of contract items which were subcontracted to DBE firms.
 - b. Designated work that the DBE failed to perform and concurrence to waive this work was received from the Department.
4. Failure to meet the specified DBE commitment to each DBE firm will result in a price adjustment of an amount equal to the difference between the actual DBE dollars paid and the Contractor's adjusted DBE commitment to that DBE firm.

H. Required Records.

The Contractor and subcontractors shall retain, for a period of not less than 3 years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and Federal Agencies.

I. Sanctions for Failing to Comply with the Intent of the DBE Regulations.

1. DBE Firms.

The ability to be eligible to receive DBE goal work is a privilege made available to a select group of firms. Firms that abuse this privilege may have their ability to be counted towards the DBE goal restricted if the firm fails to perform their work consistent with common industry practices. Examples of not performing work consistent with common industry practice include, but are not limited to:

- a. Patterns of failing to perform a commercially useful function for work quoted to meet a DBE goal.
- b. Patterns of failing to complete the work with their own organization for work quoted to meet a DBE goal.
- c. Patterns of failing to pay for all labor and materials for the work they have subcontracted to meet a DBE goal.
- d. Patterns of failing to perform the work they have subcontracted.
- e. Patterns of failing to notify the prime contractor in a timely manner when their work schedule makes it impossible for them to begin subcontract work at the requested time.
- f. Patterns of failure to furnish documents (e.g. certified payrolls, material test reports, etc.) within the timeframes allowed by the specifications.

The Department will provide written notice to the DBE firm, informing them of any proposed sanction. The DBE firm will have 14 calendar days, from the receipt of the certified notification, to make a written

request for a hearing. The appeal hearing will be held with a three-person committee consisting of representatives from the Offices of Contracts, Construction, and Employee Services. If the Department does not receive a written request for a hearing, or if the DBE firm does not provide sufficient evidence at the hearing to refute the violations, the Department may suspend the DBE firm from the ability to be counted towards the commitment on projects with DBE goals. The duration of the suspension will be determined based on the severity of the violation and the number of prior suspensions of the DBE firm.

2. Prime Contractors.

Contractors who show a pattern of non-compliance with the DBE requirements of the contract may be suspended from bidding on contracts that have DBE goals. Examples that would indicate a lack of good faith effort to comply with the DBE requirements include, but are not limited, to:

- a.** Patterns of performing work with their own organization, or having another company perform work, which was committed to a DBE firm to meet a DBE goal.
- b.** Patterns of not keeping the DBE firms posted on the status of their projects, and not providing advance notification to the DBE when their subcontract work will be available to the DBE firm.
- c.** Patterns of not promptly paying DBE firms for completed work in accord with Article 1109.05.
- d.** Not treating DBE firms as they would any other subcontractor on the project.

The Department will provide written notice to the Contractor, informing them of any proposed sanction for failure to comply in good faith with the intent of the DBE regulations. The Contractor will have 14 calendar days, from the receipt of the certified notification, to make a written request for a hearing. The appeal hearing will be held with a three-person committee consisting of representatives from the Offices of Contracts, Construction, and Employee Services. If the Department does not receive a written request for a hearing, or if the contractor does not provide sufficient evidence at the hearing to refute the violations, the Department may suspend the Contractor from bidding on projects that have DBE goals. The duration of the suspension will be determined based on the severity of the violation and the number of prior suspensions of the Contractor for DBE sanctions. The sanctions may be extended beyond contracts with DBE goals if the Contractor's treatment of DBE firms has extended beyond contracts assigned DBE goals.

1102.18 SPECIFIC AFFIRMATIVE ACTION RESPONSIBILITIES ON NON-FEDERAL-AID PROJECTS (TARGETED SMALL BUSINESS PROJECT PARTICIPATION).

A. General.

1. AA requirements are to encourage and increase participation of disadvantaged individuals in business enterprises in all state projects involving funds made available through the Department. This is required by Iowa Code Section 19B.7 and 541 Iowa Administrative Code Chapter 4. On projects let by the Department, funded in whole or in part by state funds, these requirements supersede all existing TSB enterprise regulations, orders, circulars, and administrative requirements.
2. TSB Directory information is available from:
Office of Employee Services, Civil Rights Team
Iowa Department of Transportation
800 Lincoln Way
Ames, IA 50010
Telephone 515.239.1422

B. Targeted Small Business.

A TSB is a small business, defined by Iowa Code 15.102(4), which is 51% or more owned, operated, and actively managed by one or more women or minority persons. Generally this is a for-profit small business enterprise under single management, which is located in Iowa.

C. Contractor's TSB Policy.

The Contractor is expected to promote participation of disadvantaged individuals in business enterprises as suppliers, manufacturers, and subcontractors through a continuous, positive result oriented program. The following statement should be included in the Contractor's operating policy:

It is the policy of this firm that TSB concerns, as defined in Iowa Code 19B.7 and 541 Iowa Administrative Code Chapter 4, shall have the maximum practical opportunity to participate in contracts funded in whole or in part by state funds through this firm (e.g. suppliers, manufacturers, and subcontractors).

The purpose of the Contractor's policy is to encourage and increase participation by TSBs in contracting opportunities made available by this firm in the performance of contracts let by the Department.

D. Positive TSB Effort Documentation.

1. Contractors are required to make positive efforts in utilizing TSBs on all non-Federal-aid projects let by the Department. The Contractor shall document all efforts made to include TSB participation in these projects. The documentation shall remain in the Contractor's project files for a

period of 3 years after the completion of the project and be available, upon request, for examination by the Department.

2. On proposals where a specific TSB goal has been established, the Contractor will be required to submit the TSB form with their bid. The TSB form will be provided by the Contracting Authority and used to document the TSB participation that shall be attained. The Contracting Authority will determine if the bidder has made adequate Good Faith Effort to meet the established goal. Bidders who fail to make such Good Faith Effort may have their bid rejected on the basis of being non-responsive to meeting the established TSB goal.

1102.19 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS.

A. General.

1. EEO and AA requirements will apply to all contracts let by the Department that equal or exceed \$10,000.00. The requirements will also apply to any subcontracts that equal or exceed \$10,000 if the subcontract involves a contract let by the Department.
2. On Federal-aid projects laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, and 41 CFR 60), and orders of the Secretary of Labor, as modified by this specification and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO/AA standards for the Contractor's company-wide activities for contracts let by the Department and for subcontracts involved in such contracts. The Equal Opportunity Construction Contract Specifications, set forth under 41 CFR 60-4.3, and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630, are both incorporated by reference in contracts and subcontracts utilized by the Department.
3. On non-Federal-aid projects the Iowa Civil Rights Act of 1965, as amended; current Iowa Administrative Rules; and Iowa Executive Order 15 shall constitute the specific EEO/AA standards for the Contractor's company-wide activities for contracts let by the Department and for subcontracts involved in such contracts.

B. Definitions.

1. Affirmative Action.

- a. The efforts exerted toward achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training.

- b. Women and minorities are both considered disadvantaged persons. They are however considered distinct and separate groups in regard to employer's good faith recruitment efforts.

2. Equal Employment Opportunity.

In hiring and employment practices, the absence of discrimination on the basis of race, religion, sex, color, national origin, age, disability, or other protected classification under Federal, state, or local law.

3. Journey-Worker.

A trained worker who is capable of performing all duties within a given job classification or craft.

4. Minority.

A citizen or lawful permanent resident of the United States and who is a member of one of the following racial groups:

- a. **Black:** All persons having origins in any of the Black racial groups not of Hispanic origin.
- b. **Hispanic:** All persons of Mexican, Puerto Rican, Cuban, Central or South American, or any other Spanish culture or origin, regardless of race.
- c. **Asian or Pacific Islanders:** All persons having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.
- d. **American Indian or Alaskan Native:** All persons having origins in any of the original peoples of North America.

5. New Hire.

A new hire is not a recall or a rehire, and was originally hired within the previous 12 months. It is not required that the new hire was originally hired for a contract let by the Department, but they shall have worked on a contract let by the Department within the previous 12 months.

6. Recall.

A person who, after being involuntarily laid off by a contractor, is re-employed by that same contractor when the layoff is no longer necessary. In addition, to be defined as a recall, at least one of the following two criteria must have been met during the layoff period:

- a. The former employee must have had no employment with other heavy highway contractors.
- b. The former employee's health insurance or pension plan must have been maintained by the re-employing contractor.

7. Rehire.

A person who, after voluntarily terminating employment with a contractor because of a change in working conditions or circumstances, returns to employment with the same contractor. In addition, to be defined as a rehire, at least one of the following two criteria must have been met during the period of severed employment:

- a. The former employee must have had no employment with other heavy highway contractors.
- b. The former employee's health insurance or pension plan must have been maintained by the re-employing contractor.

8. Segregated Facilities.

Employee facilities that are separated on the basis of race, religion, color, national origin, age, or disability either by explicit directive or by fact because of habit, local custom, or any other reason. Examples of such facilities include, but are not limited to, the following: waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities. The only exception to this definition is the provision of special accommodations, such as handicapped parking spaces, to make the workplace more accessible for those who are disabled.

9. Trainee/Apprentice.

A person receiving on-the-job training through a program approved or accepted by the United States Department of Labor, the FHWA, or the Department.

C. Contractor's/Subcontractor's EEO/AA Policy.

The Contractor/subcontractor, with the exception of manufacturers, suppliers, and hauling firms, shall have an EEO/AA policy approved by the Department prior to being awarded a contract or subcontract that equals or exceeds \$10,000.00. The Contractor's/subcontractor's EEO/AA policy shall be re-approved on an annual basis through either the preparation or completion of a new EEO/AA policy or the review of an existing policy. When requesting re-approval under the latter option, the Contractor/subcontractor shall submit a written statement indicating that the existing policy has been reviewed. It shall further state that the policy is current with no revisions or, if revisions have been made, the revisions shall be signed and dated by their EEO/AA Officer and another company officer. The Contractor's/subcontractor's EEO/AA policy shall also include the following items:

1. The EEO/AA Operating Statement.

"It is the policy of this Company to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. Designation and Job Responsibilities of the Company's EEO/AA Officer.

The Contractor/subcontractor shall designate an EEO/AA Officer to be responsible for and capable of effectively administering and promoting the Contractor's/subcontractor's EEO/AA program. Adequate authority and responsibility shall also be assigned to the EEO/AA Officer in order to perform these duties.

3. Affirmative Action Recruitment Plan.

The Contractor's/subcontractor's Affirmative Action Recruitment Plan shall be designed to seek out and obtain applications from women and minorities for all job openings and promotions. The plan shall also include the following provisions:

- a. At a minimum, the Contractor/subcontractor shall utilize one or more Iowa Workforce Development Centers or the AGC of Iowa Career Center website. When feasible, the Contractor/subcontractor shall commence a recruitment effort no later than 1 month prior to the date on which a hiring decision will be made.
- b. All solicitations and advertisements for employees, placed by or on behalf of the Contractor/subcontractor, shall include the notation: "An Equal Opportunity Employer."

4. Identification of Recruitment Methods.

When the Contractor/subcontractor is unable to obtain a reasonable flow of applications from women and minorities, the Affirmative Action Recruitment Plan shall identify specific methods used to exhaust all possible avenues of recruitment. Such methods may include:

- a. Maintaining a list of the names and locations of publications that have a large circulation among minority groups in the area from which the workforce would normally be derived, and placing recruiting advertisements in these publications.
- b. Utilizing public and private employee referral sources likely to yield applications from qualified women and minorities.
- c. If unionized, a strategy for obtaining union referrals of women and minorities through the Contractor's/subcontractor's collective bargaining agreement. If the union is unable to provide the Contractor/subcontractor with a reasonable flow of referrals of women and minorities within the time limit set forth in the collective bargaining agreement or other contract or understanding, the Contractor/subcontractor will go through independent recruitment efforts. As part of those efforts, the Contractor/subcontractor will attempt to obtain qualified, qualifiable, and/or trainable women and minorities, and will fill employment vacancies without regard to race, religion, sex, color, national origin, age, or disability.
- d. A plan for encouraging present employees to recruit women and minorities.
- e. Other specific actions the Contractor/subcontractor will take to ensure that a pool of woman and minority candidates is available from which to hire.

5. Facility Certification.

The Contractor/subcontractor shall certify that nonsegregated facilities are provided for their employees. In addition, certification shall state that no employee will be denied access to adequate facilities on the basis of sex or disability. If the Contractor/subcontractor provides employees with any facility that is segregated, work at the site with the segregated facility may be suspended.

D. Training and Promotion Plan.

1. General.

If the Contractor/subcontractor is planning to provide any training, the Contractor/subcontractor shall have a training and promotion plan. If the Contractor/subcontractor does not have a training and promotion plan, the Contractor's/subcontractor's EEO/AA policy shall state there is no plan. The Contractor/subcontractor shall have a plan, however, if they later decide to provide training for new or existing employees. Any training and promotion plan that is required shall include the following:

- a. This training specification supplements subparagraph 7e of the Contract Provision entitled "Standard Federal Equal Opportunity Construction Contract Specification (Executive Order 11246)" and is in implementation of 23 U.S.C. 140(a).
- b. The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.
- c. As part of the Contractor's EEO/AA program, the Contractor shall provide training to a prescribed number of trainees. Training new and existing employees for the purpose of promotion is to be considered a part of doing business with the Department. No reimbursement payment will be made to the Contractor.
- d. The number of trainees required shall be determined by the Contractor. The number of trainees will be determined by using the previous 3 year average of work actually performed by the Contractor including all prime and sub contract work with the Department. The Contractor shall provide the following number of trainees while under contract with the Department:

Under \$4,999,999	No trainee requirement
\$5,000,000 to \$9,999,999	1 trainee
\$10,000,000 to \$19,999,999	2 trainees
\$20,000,000 to \$29,999,999	3 trainees
\$30,000,000 or more	4 trainees
- e. These training requirements are minimums and the Contractor is encouraged to have more than the minimum.
- f. Completion of this required training shall be the responsibility of the Contractor and shall not be assigned to a Subcontractor.
- g. This information may be verified by the Department.

2. Work Classifications.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. The Contractor will be credited for each trainee employed on the contract work who is currently enrolled or becomes enrolled in an approved program.

3. Minorities and Women.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this training specification. Accordingly, the Contractor shall make every effort to enroll minority trainees and women by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that these persons are available within a reasonable area of recruitment. The Contractor shall be responsible for demonstrating the steps taken in pursuance of recruitment, prior to a determination of the Contractor being in compliance with this training specification.

4. Training.

- a. An employee shall not be employed as a trainee in any classification in which an employee has successfully completed a training course leading to journeyman status or in which an employee has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.
- b. The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the Department. The Department will approve a program, if it is determined to meet the equal employment opportunity and affirmative action obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, or Bureau of Apprenticeship and Training, will also be considered acceptable provided it is being administered in a manner consistent with the equal employment and affirmative action obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the Department prior to commencing work on the classification covered by the program.
- c. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions, such as office engineers, estimators, etc., where the

training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and is approved by the division office of the Federal Highway Administration. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

5. Payment of Trainees.

On contracts with a predetermined wage rate, trainees must be paid at least the journeyman's wage unless the trainee is enrolled in an approved U.S. Department of Labor (DOL) training program. Trainees in approved U.S. DOL training programs shall be paid the appropriate rates approved by the U. S. DOL or Iowa DOT.

6. Compliance.

- a. A Contractor's compliance will be based on the number of trainees completing a training program during the construction season.
- b. A Contractor that fails to meet the determined number of trainees will be allowed the opportunity to show that a Good Faith Effort was made trying to meet the training requirement. If the Contractor fails to show that a Good Faith Effort was made in meeting the training requirement, the Contractor may be suspended from bidding projects with the Department.

7. Records.

a. General.

- 1) The Contractor shall furnish the trainee a copy of the program the trainee will follow during the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
- 2) The Contractor shall provide for the maintenance of records and furnish a report once per construction year documenting their performance under this training specification. The report shall be submitted to the Office of Employee Services with the Annual Company Wide Report of Total Employment on All Federal and Non-Federal Projects Let By the Iowa Department of Transportation. This report shall include but is not limited to, names of trainees, job classifications, gender, ethnic background, future status with the company and hours of training received. The Office of Employee Services may verify this information with the trainee.

b. Designation of Trainee and Promotional Job Classifications.

For each designated classification, the plan shall identify benchmarks specifying the types of work an employee will be doing after various intervals of time. For example, the plan might describe increasingly skilled levels of work to be performed after every 100 hours of training.

c. Notice of On-the-Job Training Programs and Training Entrance Requirements.

Methods to advise employees and job applicants of training programs and training entrance requirements.

d. Review of Training and Promotion Potential.

Methods to periodically review the training and promotion potential of women and minority employees, thus ensuring they have the opportunity to be upgraded.

e. Training Progress Review.

A method to routinely review the progress of each employee enrolled in training.

f. Maximum Trainee/Journey-Worker Ratio.

The maximum trainee/journey-worker ratio, by craft, that the Contractor/subcontractor intends to utilize; a maximum ratio of 1:3 is suggested.

E. Dissemination of Policy.

All members of the Contractor's/subcontractor's staff who are involved in the hiring, supervision, promotion, and discharge of employees shall be made knowledgeable of the Contractor's/subcontractor's EEO/AA policy. The following actions shall be taken as a minimum:

1. Periodic Review of Contractor's/Subcontractor's EEO/AA Policy.

Periodic meetings of supervisory and personnel office employees shall be conducted at least once every 6 months, at which time the Contractor's/subcontractor's EEO/AA policy and its implementation will be reviewed and explained. The meetings shall be conducted by the EEO/AA Officer.

2. Instruction of New Supervisory and Personnel Office Employees.

The EEO/AA Officer shall provide all new supervisory and personnel office employees with thorough instruction, covering all major aspects of the Contractor's/subcontractor's EEO/AA obligations, within 30 calendar days following the date they first reported for duty with the Contractor/subcontractor.

3. Instruction in Recruitment Procedures.

All personnel directly engaged in recruiting shall be instructed, by the EEO/AA Officer, in the Contractor's/subcontractor's procedures for locating and hiring women and minorities.

4. Employee Notification of EEO/AA Policies and Procedures.

The Contractor's/subcontractor's EEO/AA policy, as well as the procedures for its implementation, shall be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Placement of EEO/AA Notices and Posters.

- a. The Contractor shall place the following notices and posters on a bulletin board at the project site in areas readily accessible to employees and potential employees.
 - 1) Notice provided by the Iowa DOT listing the names, addresses, and phone numbers of the Contractor and all approved subcontractors.
 - 2) Publication OFCCP 1420, stating "Equal Employment Opportunity is THE LAW".
 - 3) Form FHWA-1022, regarding any false statement, false representation, false report, or false claim made in connection with any Federal or Federal-aid highway or related project.
 - 4) Form FHWA-1495, regarding wage rate information for a Federal-aid highway project, required only if Davis/Bacon predetermined wage rates apply to the project.
 - 5) Current Iowa Predetermined Wage Rate Decision, identifying Davis/Bacon predetermined wage rates for the State of Iowa. The wage rate decision shall be arranged on a bulletin board so that all wage rate and classification information is visible.
 - 6) Form 70-8025 Job Safety and Health.
 - 7) WH-1420 Your Rights Under the FMLA Act of 1993.
 - 8) WH-1462 Notice: Employee Polygraph Protection Act.
 - 9) Form FHWA-1495A (Spanish version of form FHWA-1495), stating "Informacion Sobre Escalas De Salarios Proyecto De Carretera Con Ayuda Federal", required only if Davis/Bacon predetermined wage rates apply to the project.*
 - 10) Form EEOC-P/S-1 (Spanish version of form EEOC-P/E-1), stating "La Igualdad de Oportunidades De Empleo Es LA LEY".*

* These forms are not required, but it is strongly recommended that these two Spanish notices be posted whenever the company employs and/or anticipates receiving applications from those who speak Spanish.
- b. All required postings shall be in place when work commences on a project and shall remain in place through completion of the project.
- c. Progress payments to the Contractor will not be made until these notices and posters are displayed at the required site.

F. Personnel Actions.

Wages, working conditions, employee benefits, and personnel actions of every type including hiring, upgrading, promotion, transfer, demotion, layoff, and termination shall be made without regard to race, color, religion, sex, national origin, age, or disability. The following procedures shall be followed by the Contractor/subcontractors. The EEO/AA Officer may appoint a designee to perform these functions.

1. Periodic Inspection of Project Sites.

Project sites shall be periodically inspected by the EEO/AA Officer to ensure that there is no discriminatory treatment of project site personnel

with regard to employee facilities and working conditions. The EEO/AA Officer shall document the dates of these inspections and provide the Contractor/subcontractor with a summary of the findings. The Contractor/subcontractor shall promptly take corrective action where evidence of discriminatory treatment is found.

2. Periodic Evaluation of Wage Differentials.

Wage differentials within each job classification shall be periodically evaluated by the EEO/AA Officer to determine whether there are any discriminatory wage practices. The EEO/AA Officer shall document the dates of these evaluations and provide the Contractor/subcontractor with a summary of the findings. The Contractor/subcontractor shall promptly take corrective action where evidence of discriminatory treatment is found.

3. Periodic Review of Selected Personnel Actions.

Selected personnel actions shall be periodically reviewed by the EEO/AA Officer to determine whether there is evidence of discrimination. The EEO/AA Officer shall document the dates of these reviews and provide the Contractor/subcontractor with a summary of the findings. The Contractor/subcontractor shall promptly take corrective action where evidence of discriminatory treatment is found.

4. Review of Supervisors.

An annual review shall be conducted to discuss each supervisor's performance with regard to the Contractor's/subcontractor's EEO/AA policy. The review shall include a discussion of each supervisor's adherence to the provisions of that policy.

5. Investigation of Each Complaint, with Corrective Action if Necessary.

An individual, group of individuals, or entity believing they have been subjected to discrimination prohibited by Title VI Nondiscrimination Provisions may file a written complaint with OES-Civil Rights. A formal, signed complaint shall be filed within 180 calendar days of the alleged occurrence.

Upon receipt of the complaint, the OES-Civil Rights Coordinator will determine its jurisdiction, acceptability, need for additional information, and investigative merit of the complaint. In cases where the complaint is against one of the Department's sub-recipients of federal highway funds or federal transition funds, the Department will assume the jurisdiction and will investigate and adjudge the case.

Once the Coordinator decides to accept the complaint for investigation, the complainant and the respondent will be notified in writing of such determination within five calendar days. The complaint will receive a case number and be logged into the OES-Civil Rights' records identifying its basis, race, color, national origin, and gender of the complainant.

In cases where the Department assumes the investigation of the complaint, the Coordinator will provide the respondent with the opportunity to respond to the allegations in writing. The respondent will have 10 calendar days to furnish OES-Civil Rights their response to the allegations.

Within 40 calendar days of receipt of the complaint, the OES-Civil Rights investigator* will prepare an investigative report for the Director of the Department's Operations and Finance Division to review. The report will include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition.

*This may be the District/Division Title VI Liaison, Coordinator, or Title VI Specialist.

The investigative report and its finding will be sent to the Attorney General's Office for review. The Attorney General's Office will review the report and associated documentation and provide input within 10 calendar days.

Comments or recommendations from the Attorney General's Office will be reviewed by the Department's Operations and Finance Division. The Department's Operations and Finance Division will discuss the report and recommendations with the Title VI Coordinator. The report will be modified as needed and made final for its release.

Once the Department's investigative report becomes final, the parties will be properly notified of the outcome and appeal rights.

The Department's investigative report and a copy of the complaint will be forwarded to FHWA, Washington Division Office, within 60 calendar days of the receipt of the complaint.

If the complainant is not satisfied with the results of the investigation, they shall be advised of their rights to appeal the Department's determination to the FHWA - Washington Division Office, U.S. DOT or U.S. Department of Justice. Appeals shall be filed within 180 calendar days after FHWA's final resolution. Unless new facts not previously considered come to light, reconsideration of the Department's determination will not be available.

The Department will serve as appealing forum to a complainant that is not satisfied with the outcome of an investigation conducted by a Department sub-recipient. The Department will analyze the facts of the case and issue its conclusion to the appellant within 60 calendar days of the receipt of the appeal.

G. Records and Reports.

A Contractor/subcontractor shall keep records to document compliance with the EEO/AA requirements. The records shall be retained for a period of 3 years following completion of the contract work, and shall be available for

inspection, at reasonable times and places, by authorized representatives of the Department and the FHWA.

1. The Contractor/subcontractor shall keep records to document the following:
 - a. All of the Contractor's/subcontractor's efforts and progress toward locating, hiring, training, qualifying, and upgrading women and minorities. A detailed summary of these efforts and progress shall include a list providing the name, address, phone number, date of contact, and contact person of each referral source and each publication in which job vacancies were posted. In addition, dated copies shall be kept of all job orders, tear sheets, and newspaper ads, along with the specific job classification that was posted in each of these employment notices.
 - b. All company efforts and progress toward cooperating with unions, community organizations, and other recruitment sources for the purpose of increasing employment opportunities for women and minorities. A current file, providing the following information, shall also be maintained:
 - 1) Name, address, and phone number of each woman and minority off-the-street applicant.
 - 2) Name, address, and phone number of each woman and minority referred from a union, community organization, or other recruitment source.
 - 3) The date on which action was taken with respect to each of the above individuals. If an individual was referred to the Contractor/subcontractor, but not employed by the Contractor/subcontractor, the reason(s) for not hiring the individual shall be documented. Similarly, if an individual was sent by the Contractor/subcontractor to a union hiring hall for referral, but not referred back to the Contractor/subcontractor by the union, the reason(s) for not making the referral shall be documented. Any additional actions taken with regard to either of these referrals shall also be documented.
 - c. Employment data, arranged both by race and sex within each race, for each of the following:
 - 1) The number of individuals employed within each of the Contractor's/subcontractor's job categories.
 - 2) The number of individuals employed as apprentices in all of the Contractor's/subcontractor's job categories combined.
 - 3) The number of individuals employed as on-the-job trainees in all of the Contractor's/subcontractor's job categories combined. The data shall be provided for any employee who worked on any Federal-aid project and any non-Federal-aid project let by the Department during the week of peak employment for the previous 12 months. A grid of these required kinds of data is illustrated on Form 650037 7-99 (Iowa PR-1391); see Article 1102.19, G, 2, b. The number of individuals employed as on-the-job trainees in all of the Contractor's/subcontractor's job categories combined. The data shall be provided for any

employee who worked on any Federal-aid project and any non-Federal-aid project let by the Department during the week of peak employment for the previous 12 months. A grid of these required kinds of data is illustrated on Form 650037 7-99 (Iowa PR-1391); see Article 1102.19, G.

- d. The name, race, sex, job classification, date of employment, and specific referral source(s) of each new employee utilized on any project let by the Department during the previous 12 months.
- e. The name, race, sex, job classification, date of employment, date of last job change, hours worked during the previous 12 months, and current rate of pay of each employee utilized on any project let by the Department during the previous 12 months.
- f. The name, race, and sex of each trainee and each employee who was terminated, transferred, demoted, or promoted while utilized on any project let by the Department during the previous 12 months. Records shall also include the dates for each of these actions, the previous and/or new job classifications, and the wage rates corresponding to those classifications.
- g. The maximum trainee/journey-worker ratio, by craft, that was utilized on all projects let by the Department during the previous 12 months.
- h. All meetings of supervisory employees that include a discussion, during the previous 12 months, of EEO/AA topics and requirements. Records shall also document the thoroughness of instruction explaining the company's EEO/AA obligations to new supervisory employees within 30 calendar days of their hiring or promotion date. Documentation of all meetings and training sessions shall be dated and signed by those in attendance. It shall also identify the specific EEO/AA topics that were discussed.
- i. The provision, for all personnel directly engaged in recruitment, of thorough instruction on the company's procedures for locating and hiring women and minorities. The instruction shall be given by the EEO/AA Officer within the past 12 months. Documentation of the instruction shall be dated and signed by those in attendance, and shall also include the specific EEO/AA topics that were discussed.
- j. The provision of information regarding the Contractor's/subcontractor's EEO/AA policy and the company's procedures for implementing the policy. The information shall be provided to all employees. Documentation should include the name of each employee receiving the information, along with the method and date of its distribution.
- k. All EEO/AA on-site inspections by the EEO/AA Officer, or designee, on projects let by the Department during the previous 12 months. Observations made during the inspection shall include the following: poster reviews; identification of segregated and non-segregated facilities; stated, observed, or overheard employee EEO/AA concerns; and the method(s) of addressing those concerns.

- l. Periodic evaluation of wage differentials within each job classification utilized on projects let by the Department during the previous 12 months.
 - m. Periodic review of selected personnel actions(s) to determine whether there is evidence of discrimination on projects let by the Department during the previous 12 months.
 - n. All pending Equal Employment Opportunity Commission, Department of Justice, and local and state Human/Civil Rights Agency cases, including a copy of each complaint and a summary of the Contractor's/subcontractor's investigation into each complaint.
 - o. Initiation of an investigation into each complaint of discrimination within 14 calendar days of the receipt of each complaint.
2. The Contractor/subcontractor shall submit the following documentation to the Office of Employee Services:
- a. The Contractor's/subcontractor's EEO/AA policy, shall be submitted annually and include the following:
 - 1) Age of the firm.
 - 2) Annual gross receipts of the firm may be reported by designating the appropriate bracket below:
 - Less than \$500,000
 - \$500,000 - \$1,000,000
 - \$1 million - \$2 million
 - \$2 million - \$5 million
 - \$5 million - \$10 million
 - \$10 million - \$20 million
 - \$20 million - \$50 million
 - over \$50 million
 - b. Two annual reports, submitted in July of each year, which are titled "Federal-Aid Contractor's Annual Employment Report" and "Annual Company Wide Report of Total Employment on All Federal and Non-Federal Projects Let by the Iowa Department of Transportation." Report form numbers are 650038 7-97 (Iowa PR-1391) and 650039 5-97 (Iowa PR-1391), respectively. The reports shall provide employment data, arranged both by race and sex within each race, for each of the following:
 - 1) The number of individuals employed within each of the Contractor's/subcontractor's job categories.
 - 2) The number of individuals employed as apprentices in all of the Contractor's/subcontractor's job categories combined.
 - 3) The number of individuals employed as on-the-job trainees in all of the Contractor's/subcontractor's job categories combined.

The annual data shall be provided during the last week in July for any employee who worked on any Federal-aid project and any non-Federal-aid project let by the Department. A grid of these required kinds of data is illustrated on both of the required report forms.
 - c. Immediate notification that a union having a collective bargaining agreement, contract, or other understanding with the

Contractor/subcontractor, has failed to refer to the Contractor/subcontractor a minority or woman who had been sent to the union hall by the Contractor/subcontractor for help in obtaining employment. The Office of Employee Services shall also be notified if the Contractor's/subcontractor's efforts to meet EEO/AA obligations have been impeded in any other way by a union referral process.

H. Non-compliance with EEO/AA Requirements.

Compliance with the Department's EEO/AA specifications and/or the Contractor's/subcontractor's EEO/AA policy will be enforced as follows:

1. Compliance through Informal Means, Including Conciliation and Persuasion.

If a Contractor/subcontractor is found to have violated the Department's EEO/AA specifications and/or the Contractor's/subcontractor's EEO/AA policy, reasonable efforts will be made, whenever possible, to secure the Contractor's/subcontractor's compliance through informal means, including conciliation and persuasion. Such efforts may require a written commitment by the Contractor/subcontractor to correct violations through a plan of specified remedial actions.

- a.** Violations are considered to be either deficiencies or minor deficiencies. Any of the following is considered to be a deficiency, all other violations are considered to be minor deficiencies:
 - 1)** Hiring employees from another company.
 - 2)** Failure to engage in a good faith recruitment effort.
 - 3)** Failure to use training hours assigned to a project.
 - 4)** A finding of probable cause with regard to a civil rights complaint.
 - 5)** Failure to utilize project assigned training hours on contracts.
 - 6)** Refusal to submit an EEO/AA policy.
 - 7)** Refusal to allow access to premises for an on-site compliance review.
- b.** The form of written agreement utilized for correcting deficiencies is called a conciliation agreement, whereas the form of agreement for resolving minor deficiencies is called a letter of commitment. If a letter of commitment is violated, the violation may be corrected through either a conciliation agreement or an enforcement proceeding. Violation of a conciliation agreement may lead to either a notice to show cause or an enforcement proceeding.

2. Compliance through Enforcement Proceedings or a Notice to Show Cause.

If conciliation efforts are unsuccessful, administrative enforcement proceedings may be initiated or the Contractor/subcontractor may be issued a show cause notice. The show cause notice will require the Contractor/subcontractor to show, within 30 calendar days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. Enforcement proceedings may lead to a written notice prohibiting the violations, requiring the Contractor/subcontractor to provide whatever remedies are appropriate,

and/or imposing sanctions. Such sanctions may include withholding progress payments; termination of a contract, in whole or in part; or suspension for an indefinite or specified period of time.

3. Compliance with Executive Order 11246.

The Office of Federal Contract Compliance Programs, within the United States Department of Labor, is the only party having authority to determine enforcement of and compliance with Executive Order 11246 requirements incorporated in contracts and subcontracts utilized by the Department. Included among these requirements are the equal opportunity clause, contained in 41 CFR 60-1.4; the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, contained in 41 CFR 60-4.2; and (3) the Standard Federal Equal Employment Opportunity Construction Contract Specifications, contained in 41 CFR 60-4.3.

Section 1103. Approval for Award and Award of Contract

1103.01 CONSIDERATION OF BIDS.

The Contracting Authority reserves the right to waive technicalities and to reject any or all proposals. Bidders may be denied a contract award for any one of the following reasons:

- A. For failure to meet the Contracting Authority's requirements for qualification of bidders, as set forth in Articles 1102.01, 1102.02, 1102.03, 1102.15, 1102.16, and in the contract documents for the project.
- B. For failure to maintain satisfactory progress on work already under contract.
- C. For failure to meet promptly financial obligations undertaken in connection with other work under the existing contract or previous contracts.
- D. For filing more than one proposal at any letting for the same work under the same or different names. However, affiliates will be allowed to bid against each other on proposals for the same contract. The Department, however, will only consider the lowest of the otherwise responsible affiliate bids for possible award. The proposals of the other affiliates bidding for that contract will be considered non-responsive for both DBE good-faith calculations and consideration for award of the contract.
- E. For an unsatisfactory record of performance and cooperation on previous contracts.
- F. For submitting an obviously unbalanced bid. An unbalanced bid shall be defined as a bid containing lump sum prices or unit bid prices which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs to complete that item.

- G. For having sublet or otherwise assigned work without the approval of the Contracting Authority.
- H. For forfeiture of a proposal guaranty and failure to enter into contract upon an offer of an award by the Contracting Authority in response to a prior advertisement for bids for the same project or any combination of projects involving the project for which award is currently being considered.
- I. For failure to file and maintain with the Contracting Authority a current Certificate of Insurance meeting the requirements of Article 1107.02.
- J. For filing proposals exceeding the bidder's qualification rating in a manner not permitted by the Contracting Authority.

1103.02 APPROVAL FOR AWARD.

- A. In the approval for award of contract, consideration will be given not only to prices bid but also to the mechanical and other equipment available to the bidder, the financial responsibility of the bidder, and the bidder's ability and experience in performance of like or similar contracts.
- B. Approvals for award will be made as promptly as practical after bids have been opened and read. The Contracting Authority reserves the right to delay the approval for award for such time as is needed for consideration of bids and for receipt of concurrence in recommended approvals for award from other governmental agencies whose concurrence may be required.

1103.03 RETURN OF PROPOSAL GUARANTY.

Proposal guaranties will be returned to the unsuccessful bidder by mail promptly after the approval for award has been made. Return to the successful bidder will be made promptly after the filing of the contract documents.

1103.04 CERTIFICATE OF INSURANCE.

The Contractor's certificate of liability and property damage insurance described in Article 1107.02 shall be filed with the Contracting Authority on or before the execution of the contract and shall be maintained throughout the prosecution of the work and until final acceptance and completion of the contract. A separate verification shall be required for contracts awarded on the basis of joint bids.

1103.05 REQUIREMENT OF CONTRACT BOND.

On all contracts, the Contractor shall file an acceptable bond in an amount not less than 100% of the contract sum with the Contracting Authority; however, the amount of the contract bond does not need to include the predetermined costs for incentives or bonuses shown on the contract. One copy of the bond shall be executed on the standard form of the Department, and shall be submitted with the signed contract. This bond shall be held to cover all work included in the contract, whether performed by the Contractor or under a subcontract or assignment. The bond shall be executed by the Contractor and by a surety company authorized to do business in the State of Iowa. The Contractor shall not begin work on any contract before being notified, in

writing, that the required bond has been approved and accepted, or until the signed contract is returned.

1103.06 EXECUTION OF CONTRACT.

The bidder to whom a contract is being awarded shall execute and file two copies of such contract with the Contracting Authority.

1103.07 FAILURE TO EXECUTE CONTRACT.

Unless the time limit is modified by the contract documents, failure to execute a contract and file an acceptable bond within 30 calendar days of the date of the approval for award, herein provided, will be just and sufficient cause for annulment of the approval for award and for forfeiture of the proposed guaranty to the Contracting Authority.

1103.08 DISCLOSURE OF SUBCONTRACTOR.

- A. A bidder awarded a contract with the Department shall disclose the names of all subcontractors who will work on the project or projects, or who the bidder anticipates will work on the project or projects. If a subcontractor named by a bidder awarded a contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost. If a subcontractor is added by a bidder awarded a contract, the bidder shall disclose the name of the new subcontractor.
- B. The list of proposed subcontractors shall be submitted to the Office of Contracts with the performance bond and signed contract.
- C. Failure to present the subcontractor list will cause the Contractor to be re-evaluated for future bidder qualification as per Article 1102.03.
- D. These requirements are in addition to Article 1108.01.

Section 1104. Scope of Work

1104.01 INTENT OF PLANS AND SPECIFICATIONS.

- A. The intent of the plans and specifications is to provide for the construction and completion of every detail of the work described therein. It shall be understood by the Contractor that the Contractor shall furnish all labor, material, tools, transportation, and supplies required for all or any part of the work to make each item complete in accordance with the spirit of the contract. It is understood that the apparent silence of the specifications as to any detail or the apparent omission of a detailed description concerning any point shall be regarded as meaning that only the best general practice is to prevail and that only first quality materials and first quality work are to be used.

Attachment E
Excerpts from Transit Managers' Handbook

Chapter 13 - Civil Rights

The Iowa DOT, transit systems and sub-providers may not discriminate in services provided, or in operations to provide those services. The state has the responsibility to ensure that transit systems receiving federal funding administered by OPT comply with civil rights requirements. Federal nondiscrimination statutes include:

1. [Americans with Disabilities Act of 1990 \(ADA\)](#) (42 U.S.C. Sections 12101 et seq.) and [Section 504](#) of the Rehabilitation Act of 1973, as amended, prohibit discrimination against individuals with disabilities in the provision of transportation service and employment opportunities;
2. [49 U.S.C. 5332](#), **US DOT's Equal Employment Opportunity (EEO) regulations**, prohibit discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;
3. [Title VI of the Civil Rights Act of 1964](#), as amended, prohibits discrimination on the basis of race, color, and national origin in services provided with federal funding (age, sex and disabilities added through various amendments); and
4. **US DOT's Disadvantaged Business Enterprise (DBE) regulations**, [49 CFR Part 26](#), prohibit discrimination in contracting and assists socially and economically disadvantaged business concerns ensure an opportunity to bid on federal contracts.

As the grantee for Section 5310, 5311, and statewide 5339 programs, the Iowa DOT is required to document that its subrecipients comply with all of the civil rights requirements in conducting their transit programs. Joint participation agreements contain assurance clauses that transit agencies' sign verifying compliance.

In signing joint participation agreements, each 5310, 5311, and statewide 5339 sub-recipient provides the following assurance: *no person, on the grounds of race, color, creed, national origin, sex, age or disability be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program or activity funded in whole or in part by the FTA. In addition, the joint participation agreement contains the assurance that the sub-recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin.*

Each Section 5310 or 5311 transit system must file, on a one-time basis, a signed and dated standard DOT Title VI assurance and update it as necessary when changes occur. The certificate and three appendices are part of the grant application.

Annually Section 5310 and 5311 transit systems must submit a local civil rights assurance. This is submitted as part of the annual grant application certifying that:

- the transit system shall not discriminate on the grounds of race, color, creed, national origin, sex, age or disability when providing service funded with FTA funds.
- the transit system shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, and shall take affirmative action to ensure that applicants and employees are not discriminated against during employment.
- The transit system shall make special efforts to provide transportation for persons with disabilities, and will comply with [49 CFR 27](#), Nondiscrimination on the Basis of Disability.
- The transit system has submitted the one time standard DOT Title VI Assurance.

Section 5310/5311 transit agencies are also required to report any civil rights complaints or pending lawsuits related to FTA funded activities and the outcome, as part of the annual funding application. All contracts with subproviders and other contractors must also include nondiscrimination clauses.

Title VI of the 1964 Civil Rights Act

[Title VI of the 1964 Civil Rights Act](#), Section 2000d, states: *No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.* The [Age Discrimination Acts of 1975](#) prohibited exclusion based on age, and [Title 23 USC 324](#) added that no person should be excluded from participation on the basis of sex. The [Civil Rights Restoration Act of 1987](#) reemphasized all of the anti-discrimination laws and the applicability to federal programs.

The Iowa DOT and direct FTA grant applicants must submit to FTA a Title VI Program that addresses requirements enumerated in [FTA Circular 4702.1B](#), *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*. Subrecipients shall submit Title VI Programs to the Iowa DOT in order to assist the Iowa DOT in its compliance efforts. For all recipients (including subrecipients), the Title VI **Program must be approved by the recipient's board of directors or appropriate governing entity or official** responsible for policy decisions prior to submission to FTA or to the Iowa DOT, as the case may be. Every Title VI Program shall include the following information:

1. **A copy of the transit agency's Title VI notice to the public** that indicates the transit agency complies with Title VI, and informs members of the public of the protections against discrimination afforded to them by Title VI. Include a list of locations where the notice is posted.
2. **A copy of the transit agency's instructions to the public regarding how to file a Title VI discrimination complaint**, including a copy of the complaint form.
3. A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the Transit Agency since the time of the last submission. This list should include only those investigations, complaints, or lawsuits that pertain to allegations of discrimination on the basis of race, color, and/or national origin in transit-related activities and programs and that pertain to the transit agency submitting the report, not necessarily the larger agency or department of which the transit agency is a part.
4. A public participation plan that includes an outreach plan to engage minority and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI **Program submission. A transit agency's targeted public participation plan for minority populations** may be part of efforts that extend more broadly to include other constituencies that are traditionally underserved, such as people with disabilities, low-income populations, and others.
5. **A copy of the transit agency's plan for providing language assistance to persons with limited English proficiency**, based on the DOT LEP Guidance.
6. Transit agencies that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the transit agency, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees or councils.
7. Primary recipient transit agencies shall include a narrative or description of efforts the transit agency used to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI Program submissions
8. If the transit agency has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., the transit agency shall include a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility.
9. Additional information as required of fixed route transit systems, states, and MPOs.

For Fixed Route Transit Systems,

- a. If a transit provider:
 1. Operates 50 or more fixed route vehicles in peak service and is located in an Urbanized Area (UZA) of 200,000 or more in population; or
 2. Has been placed in this category at the discretion of the Director of Civil Rights in consultation with the FTA Administrator.

Then the transit provider's Title VI Program must contain all of the elements described in this chapter.

- b. If a fixed route transit provider does not meet the threshold in paragraph a, then the transit provider is only required to set system-wide standards and policies, as described below.

Contents of fixed route transit systems Title VI Program:

1. All fixed route transit providers shall submit:
 - a. All general requirements explained and numbered 1-9, above; and
 - b. System-wide service standards and system-wide service policies whether existing or new, as described in FTA C 4702.1B Chapter IV.
2. Transit providers that operate 50 or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population will also include:
 - a. **A demographic analysis of the transit provider's service area;**
 - b. Data regarding customer demographics and travel patterns, collected from passenger surveys;
 - c. Results of the monitoring program of service standards and policies and any action taken, including **documentation to verify the board's or governing entity or official's** consideration, awareness, and approval of the monitoring results;
 - d. **A description of the public engagement process for setting the "major service change policy" and disparate impact policy;**
 - e. **A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official's consideration, awareness, and approval of the major service change policy and disparate impact policy;**
 - f. Results of equity analyses for any major service changes and/or fare changes implemented since the last Title VI Program submission;
 - g. **A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official's consideration, awareness, and approval of the equity analysis** for any service or fare changes required by FTA C 4702.1B.

Fixed route transit agencies are also required to set system-wide service standards and policies. These standards and policies must address how service is distributed across the transit system, and must ensure that the manner of the distribution affords users access to these assets. Providers of fixed route public transportation shall also adopt system-wide service policies to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin. Service policies differ from service standards in that they are not necessarily based on a quantitative threshold.

FTA requires all fixed route transit providers to develop quantitative standards for the indicators listed below:

1. Vehicle load.
2. Vehicle headway.
3. On-time performance.
4. Service availability.

FTA required fixed route transit providers to develop a policy for each of the following service indicators:

1. Distribution of transit amenities.
2. Vehicle assignment.

After an initial Title VI Program has been approved, an update is required every three years.

All transit agencies must notify beneficiaries of protections afforded them under Title VI. At a minimum, transit agencies shall disseminate this information to the public by posting a Title VI notice on the **agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc.** Transit agencies should also post Title VI notices at stations or stops, and/or on transit vehicles.

The Title VI notice shall include:

1. A statement that the agency operates programs without regard to race, color, or national origin.
2. A description of the procedures that members of the public should follow in order to request **additional information on the transit system's Title VI obligations.**
3. A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the recipient.

Transit agencies shall inform the public of their rights under Title VI through such measures as posting the Title VI notice on posters, comment cards, or fliers placed at stations, bus shelters, and in transit vehicles.

Notices detailing a transit agency's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed and consistent with the DOT LEP Guidance and the transit agency's language assistance plan.

Transit agencies who are subrecipients (Iowa's 16 regional systems and urban systems in areas under 50,000 in population) may adopt the Title VI Notice developed by the Iowa DOT; however, subrecipient transit agencies shall notify passengers and other interested persons that they may file discrimination complaints directly with the transit system.

All transit systems shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public. Transit agencies must also develop a Title VI complaint form, and the form and procedure for filing a **complaint shall be available on the transit system's website. Subrecipient transit agencies may adopt** the Title VI complaint investigation and tracking procedures and complaint form developed by the Iowa DOT, although complaints and investigations must be made to and done by the transit system.

All transit agencies must prepare and maintain a list of any of the following that allege discrimination on the basis of race, color, or national origin: active investigations conducted by entities other than FTA; lawsuits; and complaints naming the transit system. This list shall include the date that the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the transit agency in response, or final findings related to, the investigation, lawsuit, or complaint. The list shall be included in the Title VI Program submitted to FTA or Iowa DOT, depending on the size of the system, every three years.

Nondiscrimination requirements cover such areas as land acquisition and relocation of residences and businesses, impacts of construction, fixed guide-ways, placement of routes, vehicle assignments, transit amenities available such as bus shelters, headways, passenger loads, environmental considerations, public involvement, and multilingual communication.

If a grant applicant is planning the construction of a large FTA-assisted project such as a multi-modal transportation facility or a fixed guide-way light rail system, the applicant should be taking steps to ensure compliance with Title VI and [49 U.S.C. Section 5332](#) prior to submitting a grant application for assistance. Such steps should include: informing all communities of public be considered for selection to decision making transit boards and advisory committees; and ensuring that input on a facility's accessibility and location will be obtained and decisions will be made without regard to race, color, creed, national origin, age, or sex.

Environmental Justice

[Executive Order 12898](#), Environmental Justice (EJ), directed federal agencies to assess the impact of programs and policies on minority populations and low-income populations. Limited English Proficiency (LEP) of a community or service area must also be evaluated. If a significant portion of the community served is non-English speaking, it is the responsibility of the transit system to provide important information on services or public meetings, etc. in another language. Failure to provide information in the language of what has been determined as a significant portion of the community could result in a Title VI finding of discrimination based on national origin.

DOT Order 5610.2(a) sets forth the US DOT policy to consider EJ principles in all DOT programs, policies, and activities.

The guiding EJ principles to consider in planning and project development and through all public outreach and participation efforts are:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

In order to assist FTA in carrying out their EJ requirements, [FTA Circular 4703.1](#) provides guidance for incorporating EJ principles into plans, projects, and activities that receive funding from FTA. The Circular explains how to conduct an EJ Analysis, how to achieve meaningful public engagement with EJ populations, integrating EJ into transportation planning and service delivery, and incorporating EJ principles into the NEPA process.

Equal Employment Opportunity (EEO)

EEO requires all recipients of FTA funds to provide equal employment to all persons. The recipient shall take affirmative action to ensure that applicants are employed without regard to race, color, religion, sex or national origin.

A grantee or sub-grantee with 50 or more transit-related employees that has received \$1 million or more in capital or operating assistance in the previous federal fiscal year must submit an EEO program to FTA, or to the Iowa DOT in the case of regional and small urban (under 50,000 population) public transit systems. The specific components of this program may be found in [FTA Circular 4704.1](#), *Equal Employment Opportunity Program Guidelines for Grant Recipients*. In this program, grantees implement steps to ensure equal opportunity for employees and job applicants, without regard to race, color, creed, **national origin, sex, age, or disability**. **A major focus of this program is an analysis of the grantee's work force to identify job categories and levels of employment in which minorities and women are underrepresented.** After identifying categories and levels, corrective action must be recommended and acted upon. After an original EEO program has been approved, an update must be submitted every three years. An organization contemplating submitting a grant application should ensure that its latest EEO program update remains current.

The major components of an EEO program include:

- a. [Statement of Policy](#) by the chief executive officer regarding EEO policy affecting all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. The EEO policy statement must be placed in conspicuous locations so that **employees, applicants, and the general public are cognizant of the agency's EEO commitment.**

- b. Dissemination protocol explaining the formal communication mechanisms to publicize and disseminate the agency's **EEO policy, as well as appropriate elements of the program**, to its employees, applicants, and the general public.
- c. Designation of Responsible Personnel to manage the EEO program. The assigned person should be someone who reports and is directly responsible to the Chief Executive Officer. The EEO program manager should be identified by name in all internal and external **communications regarding the agency's EEO program**.
- d. Utilization Analysis identifying those job categories where there is an underutilization and/or concentration of minorities and women in relation to their availability in the relevant labor market. It also establishes the framework for goals and timetables and other affirmative actions to correct employment practices that contributed to any identified absence, underutilization, or concentration.
- e. Goals and Timetables to assist in the optimum utilization of human resources. Specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in the utilization analysis. In establishing the size of goals and the length of timetables, the recipient should consider results which can reasonably be expected from putting forth every good faith effort to make the overall affirmative action program work. If goals and timetables are **not met, there is an obligation to justify this failure following the recipient's annual evaluation of the EEO program**.
- f. Assessment of Employment Practices to Identify Causes of Underutilization: Affirmative Action to Remedy Problem Areas involves a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Identification of problem areas should **evaluate the impact of the agency's employment practices on all of its employment patterns** including recruitment, selection, promotion, termination, transfer, layoff, disciplinary action, compensation and benefits, training, etc.
- g. Monitoring and Reporting System should be established.

Americans with Disabilities Act (ADA)

The [Americans with Disabilities Act of 1990 \(ADA\)](#), (42 U.S.C. 12101 et seq. and [49 CFR](#) parts 27, 37, and 38) prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services provided by public or private entities. It applies to all governmental and commercial entities. It extends coverage to all entities that provide passenger transportation, whether or not they receive federal financial assistance and whether or not they are open to the public. It establishes detailed standards for the operation of public transit systems. [Section 504](#) of the Rehabilitation Act of 1973, as amended, ([29 U.S.C. Section 794](#)) prohibits discrimination on the basis of disability in employment and services by recipients of federal financial assistance. ADA Assistance: Toll Free Telephone Line: 1-888-446-4511 ADA Assistance: E-mail: ada.assistance@fta.dot.gov.

FTA funds may not be used to purchase vehicles that are not accessible by persons with disabilities, unless the vehicles are purchased for demand-responsive services and the transit system provides equivalent access to persons with disabilities when service is viewed in its entirety. FTA requires self-certification by applicants that it meets the accessibility requirement. Sub-recipients of OPT must provide an analysis showing this is the case before non-accessible vehicles will be funded in a statewide grant.

Transit agencies and sub-contractors must meet the ADA service provision requirements found in [49 CFR Part 37](#). Systems with fixed-route services must comply with the ADA complementary paratransit requirement, assuring that their paratransit service meets all comparability standards in the rule. Recipients of funding administered by OPT that change either their fixed-route services or their paratransit services shall notify the OPT and provide assurance that the paratransit service remains comparable. The OPT is responsible for verifying that subrecipients are in compliance.

Sub-recipients must establish a means of notifying participants, beneficiaries, applicants, employees (including vision and hearing impaired), unions, etc., that it does not discriminate on the basis of disability and is taking progressive steps to comply with [49 CFR Part 27](#).

Sub-recipients must keep on file for one year all complaints of non-compliance received. A record of such complaints must be kept for five years. An explanation of any such complaints and their resolution must be provided with each annual application for funding submitted to the OPT.

Basic Provisions – The purpose of ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life. The ADA covers a wide range of activities.

The ADA affects transportation providers in four significant ways.

1. The ADA accessible vehicle requirements pertain to vehicle acquisitions by both public and private entities for fixed route or demand responsive service.
2. The ADA contains accessibility requirements for the design and construction of new transportation facilities, alterations to existing facilities, and key stations on rail transit systems.
3. The ADA requires public entities providing fixed route service to provide complementary paratransit service to people with disabilities who cannot use fixed route service.
4. The ADA includes service requirements intended to ensure that people with disabilities are afforded equal opportunity to use transportation vehicles and facilities.

All transportation providers are prohibited from discriminating against individuals with disabilities. A person with disabilities may not be charged more for a trip than a person without disability would be charged for a similar trip.

All transit systems providing fixed route service must acquire accessible vehicles. This requirement applies to all vehicles being leased, rehabilitated or remanufactured.

Transit systems that only provide demand responsive service may purchase some non-ADA accessible vehicles if they can certify they provide equivalent service to individuals with disabilities.

A transit system may refuse service to someone who is violent and endangers others, or someone who is engaging in illegal conduct. A transit system may not refuse service to someone because the individual's disability results in appearance, odor, or involuntary behavior that may offend or annoy others.

Reasonable Modification of Policies and Practices – On March 13, 2015, the US DOT issued a Final **Rule under the ADA and Section 504 of the Rehabilitation Act of 1973, "specifically to provide that transportation entities are required to make reasonable modifications/accommodations to policies, practices, and procedures to avoid discrimination and ensure that their programs are accessible to individuals with disabilities."** This rule takes effect July 13, 2015, and can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-13/pdf/2015-05646.pdf>. 49 CFR Parts 27 and 37 are affected, as follows:

Part 27.7(e.) *Reasonable accommodations.* A public transit agency shall make reasonable accommodations in policies, practices, or procedures when such accommodations are necessary to avoid discrimination on the basis of disability unless the public transit agency can demonstrate that making the accommodations would fundamentally alter the nature of the service, program, or activity or result in an undue financial and administrative burden.

Part 27.13(a.) *Designation of responsible employee.* Each public transit agency shall designate at least one person to coordinate its efforts to comply with this part.

Part 27.13(b.) *Adoption of complaint procedures.* A public transit agency shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 37, 38, and 39. The procedures shall meet the following requirements:

1. The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under (a) of this part, must be sufficiently advertised to the public, such as on the **public transit agency's website**.
2. The procedures must be accessible to and usable by individuals with disabilities.
3. The public transit agency must promptly communicate its response to the complaint allegations, including reasons for the response, to the complainant by a means that will result in documentation of the response.

Part 37.3 Definitions. *Origin-to-destination service means providing service from a passenger's origin to the passenger's destination. A provider may provide ADA complementary paratransit* in a curb-to-curb or door-to-door mode. When an ADA paratransit operator chooses curb-to-curb as its primary means of providing service, it must provide assistance to those passengers who need assistance beyond the curb in order to use the service unless such assistance would result in a fundamental alteration or direct threat.

Part 37.5 (h.) It is not discrimination under this part for an entity to refuse to provide service to an individual with disabilities because that individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others. However, an entity **shall not refuse to provide service to an individual with disabilities solely because the individual's** disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons.

Part 37.17 (a.) *Designation of responsible employee.* Each public transit agency subject to this part shall designate at least one person to coordinate its efforts to comply with this part.

Part 37.17 (b.) *Adoption of complaint procedures.* A public transit agency shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 27, 38, and 39. The procedures shall meet the following requirements:

1. The process for filing a complaint, including the name, address, telephone number, and email address of the employee designated under (a) of this part, must be sufficiently **advertised to the public, such as on the public transit agency's website**.
2. The procedures must be accessible to and usable by individuals with disabilities.
3. The public transit agency must promptly communicate its response to the complaint allegations, including reasons for the response, to the complainant by a means that will result in documentation of the response.

Part 37.169(a.)

1. A public entity providing designated public transportation, in meeting the reasonable modification requirement of Part 37.5(g.)(1.) with respect to its fixed route, demand responsive, or complementary paratransit services, shall respond to requests for reasonable modification to policies and practices consistent with this section.
2. The public entity shall make information about how to contact the public entity to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices.
3. This process shall be in operation no later than July 13, 2015.

Part 37.169(b.) The process shall provide a means, accessible to and usable by individuals with **disabilities, to request a modification in the entity's policies and practices applicable to its** transportation services.

1. Individuals requesting modifications shall describe what they need in order to use the service.

2. **Individuals requesting modifications are not required to use the term 'reasonable modification' when making a request.**
3. Whenever feasible, requests for modifications shall be made and determined in advance, before the transportation provider is expected to provide the modified service, for example, during the paratransit eligibility process, through customer service inquiries, or through the **entity's complaint process**.
4. Where a request for modification cannot practicably be made and determined in advance, operating personnel of the entity shall make a determination of whether the modification should be provided at the time of the request.

Part 37.169(c.) **Requests for modification of a public entity's policies and practices may be denied only on one or more of the following grounds:**

1. **Granting the request would fundamentally alter the nature of the entity's services, programs, or activities.**
2. Granting the request would create a direct threat to the health or safety of others.
3. Without the requested modification, the individual with a disability is able to fully use the **entity's services, programs, or activities for their intended purpose.**

Part 37.169(d.) In determining whether to grant a requested modification, public entities shall be guided by the provisions of Appendix E of this Part.

Part 37.169(e.) In any case in which a public entity denies a request for a reasonable modification, the entity shall take, to the maximum extent possible, any other actions to ensure that the individual with a disability receives the services or benefit provided by the entity.

Part 37.169(f.)

1. Public entities are not required to obtain prior approval from the DOT for the process required by this section.
2. **DOT agencies retain the authority to review an entity's process as part of normal program oversight.**

Standards for Accessible Vehicles – FTA standards for accessible vehicles are found in [49 CFR Part 38](#). Accessible vehicles must be equipped with a lift or ramp, and must offer mobility aid security systems. There must be a minimum of one securement location on vehicles under 22 feet in length, and a minimum of two securement locations on longer vehicles. Vehicles must also have a clear path from the accessible entrance to the securement location. (30" wide by 54" tall on vehicles under 22 feet and 30" wide by 68" tall on larger vehicles.) Additional standards involve lift/ramp door and engine or brake interlocks, slip resistance properties of the flooring, color contrast of the interior lighting and signage. Larger vehicles used for fixed-route service must have public address systems and separate stop request signaling systems for persons in the securement locations. The regulation also sets specific minimum standards for each lift or ramp and for the mobility aid securement system.

Paratransit Eligibility – An individual is eligible for paratransit service if:

- Environmental barriers and the individual's disability prevent the individual from getting to or from a bus stop, boarding a fixed-route transit vehicle, or navigating the system.
- An individual applied for eligibility and 21 days from the submission of a complete application, the transit system has not acted on his or her application. Such eligibility is good until and unless the transit system denies the application. There is an administrative appeal process for denials.
- The transit system may suspend paratransit service to someone for a reasonable period of time for a pattern or practice of missing scheduled trips. Administrative due process must be provided prior to a suspension.
- Paratransit service must be provided for 21 days to out-of-town visitors with disabilities.
- Residency must not be considered and transit systems must honor eligibility cards issued by other transit agencies.

Public transit systems are not limited to serving ADA eligible persons aboard their paratransit services. They can provide paratransit service to anyone they choose. However, only the cost of service to ADA eligible persons counts in the context of a request for an undue financial burden waiver.

Paratransit - Service Criteria

Service Area – Paratransit must serve origins and destinations within corridors 3/4 of a mile wide on each side of each scheduled bus route, **including areas that may be outside the transit system's** jurisdiction. Small areas surrounded by these corridors must also be served. The paratransit service area can be enlarged, such as covering all other areas within the city limits. For systems receiving 5311 funding, paratransit services in expanded areas must be open to the general public.

Response Time – When advance reservation scheduling is used, reservations must be accepted the prior day (including Sundays). Real time scheduling may be used. The transit system may negotiate pickup times with the individual, but cannot insist that a trip begin more than an hour from the individual's requested time.

Fares – Fares may not exceed twice the fare for a similar fixed route trip (not taking discounts into account). Companions are eligible for the same fare. Personal attendants or aides ride free.

Trip Purpose – There can be no restrictions on the purpose of the trip.

Capacity – Capacity constraints are prohibited, including restrictions on the number of trips an individual can use, waiting lists, and patterns or practices that significantly limit the availability of service (e.g., substantial numbers of trip denials, untimely trips, or excessively long trips).

Subscription service is permitted, and may involve trip purpose priorities and capacity constraints. However, subscription service may not absorb more than half the paratransit capacity available at any given time of day unless there is excess capacity on the system.

Paratransit service must be available throughout a fixed route service area, except in areas only served by commuter bus service.

Public transit systems are not limited to only providing service required by these criteria.

Service Provision Requirements – All transportation providers must maintain accessibility features and equipment and repair out-of-order equipment promptly.

Public transit systems must establish a system of regular and frequent checks of lifts. When a lift fails, the vehicle must be taken out of service and the lift repaired. However, if there is no spare vehicle available, the transit system can keep the vehicle in service for three days (larger transit systems) or five days (smaller transit systems) to prevent a reduction in service. Alternative accessible transportation must be provided if a vehicle is in service with an inoperative lift and the headway to the next accessible vehicle exceeds 30 minutes.

Transit systems must transport a wheelchair and occupant if the lift and vehicle can physically accommodate them, unless doing so is inconsistent with legitimate safety requirements. **“Legitimate safety requirements” include such circumstances as a wheelchair of such size that it would block an aisle, would block the vestibule, or would interfere with the safe evacuation of passengers in an emergency. These “legitimate safety requirements” must be based on actual risks, not on speculation, stereotypes, or generalizations about individuals with disabilities or about the devices they use for mobility purposes.**

The transit system may require that the individual use the vehicle's securement devices, but cannot deny service because the securement system does not secure the wheelchair satisfactorily. Transfers to vehicle seats may be suggested, but not required.

Any passenger must be allowed to use lifts, even while standing, and must be allowed to face any direction.

Stops must be announced aboard fixed routes at major intersections and transfer points, or on request.

Transit systems may not refuse to let a passenger get off a vehicle using a lift at a stop, unless the lift will not deploy or could be damaged if used at that location.

Individuals who use a respirator or personal oxygen supply can travel with these devices, consistent with DOT hazardous materials rules.

Waiver to purchase non-accessible vehicles – The requirement to purchase only accessible vehicles may be waived for vehicles used for demand-responsive services, provided disabled persons have service equal to that offered other persons. The service for disabled persons must also be integrated with that for non-disabled persons to the maximum extent possible. Non-accessible vans and small buses may only be programmed for use in demand-responsive service when the system is able to certify that all of its services provide equivalent levels of service accessibility for disabled persons. In addition, any vehicle purchased without accessibility features must be readily convertible to wheelchair access. This will include purchase of a lift door on small buses.

Before any non-accessible equipped vehicle can be programmed for Section 5310/5311 or statewide 5339 recipients, an analysis of the demand-responsive service showing that it is equal in all seven areas listed below must be included as part of the funding application or as part of the TIP:

1. Response time;
2. Fares;
3. Geographic area of service;
4. Hours and days of service;
5. Restrictions based on trip purpose;
6. Availability of information and reservations capabilities; and
7. Constraints on capacity or service availability.

The transit system must file a certification that this criteria has been met before any non-accessible demand-responsive vehicle may be purchased. Transit systems receiving FTA funds through a statewide grant must make this certification to the state; direct FTA recipients must certify directly to FTA. A certification is not valid for more than one year ([Certificate of Equal Access for Persons with Disabilities](#)).

A written plan of how a transit system responds to a call for accessible transportation under each contract and in each service area will help provide documentation of procedure. Public participation is an important part of ADA and should be part of an ADA written plan. Documentation of this participation may be beneficial if the transit system is sued.

Sanctions – Failure to comply with ADA not only results in the transit system being ineligible for federal funds, but could also subject the system to private lawsuits. The OPT needs to be notified of any lawsuit filed against a transit system. Section 5307 systems must also notify FTA.

Private Taxis and the ADA – A private taxi company owning its own vehicles and receiving no public funding is still covered by the provisions of the ADA. Taxi companies may not discriminate against person with disabilities. They may not refuse service to person with disabilities, including persons using folding wheelchairs if the person can transfer to a vehicle seat. If the taxi driver loads packages or luggage in the

vehicle for other passengers, the driver is required to stow the folded wheelchair in the vehicle. A person with a disability may not be charged a higher fare than other passengers; however, if other passengers would be charged extra for stowing packages or luggage, the same fee may be applied to stowage of wheelchairs.

Private taxi companies are not required to purchase accessible vehicles if only automobiles are used. If larger vehicles such as vans or buses are purchased, taxi companies are required to purchase accessible vehicles unless they can demonstrate that equivalent service is provided to persons with disabilities when the total demand responsive service is considered. Private taxis under contract to public transit systems must meet the standards applicable to the transit system and will be viewed in conjunction with the transit system to determine whether equivalent service is available to persons with disabilities.

ADA Employment Provisions and Public Transit – Transit systems are reminded that the employment provisions of the ADA must also be met. Persons with disabilities may not be discriminated against in employment.

Each transit employer should have job descriptions in place for each position that describes the functional requirements of the position. These functional requirements should be reviewed periodically to verify that they remain valid. Transit systems are encouraged to consider recombining job responsibilities to facilitate employment of qualified persons with disabilities.

Employers, including transit systems, are required to make reasonable accommodations for otherwise qualified employees with disabilities. The reasonable accommodations may include purchase of assistance equipment, changing placement of files, etc. All work stations should be accessible.

Disadvantaged Business Enterprise (DBE) Program

The overall purpose of the DBE program is to ensure nondiscrimination in the award and administration of FTA assisted contracts. The program helps remove barriers for socially and economically disadvantaged firms to have the opportunity to participate in federal contracts. All recipients of FTA funds must demonstrate a *good faith* effort to obtain participation by DBE firms in FTA assisted contracts and report contracts awarded to DBE firms.

Each FTA recipient that receives more than \$250,000 in contracting opportunities is required to have a DBE program and goal. Contracting opportunities include purchase orders or contracts for the purchase of goods, services, or construction projects, excluding rolling stock. Recipients are required to have a goal only for years when more than \$250,000 in contracting opportunities is expected.

As an FTA recipient, the Iowa DOT is required to have a DBE program and FTA goal. The Iowa DOT is required to have one DBE program for all DOT programs, but separate goals for each of the administering agencies. OPT incorporated a small business element in the DBE program that can be found at http://www.iowadot.gov/civilrights/documents/SmallBusinessElement_%20FTA.PDF. Each subrecipient is required to report anticipated contracting opportunities to OPT, where the information is compiled to calculate a DBE goal and submitted to FTA. Additional DBE information can be obtained from the U.S. DOT DBE Web Site: <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise> and the Best Practices Procurement Manual http://www.fta.dot.gov/grants/12831_6037.html.

Certification as a DBE – A firm seeking certification as a DBE must demonstrate that it meets the federal requirements. The firm must be a for-profit small business concern that:

1. Is at least 51% owned (or 51% of stock owned) by one or more individuals who are *socially* and *economically* disadvantaged
2. Is managed and controlled on a daily basis by one or more individuals of the disadvantaged owners

Members of the following groups are presumed to be socially disadvantaged: Black-Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, and others designated by the small business administration. Any individual who is not a member of a protected minority group may provide evidence showing social disadvantage in education or business. For example, persons with disabilities may be able to show they are socially disadvantaged on a case-by-case basis.

Individuals are considered to be economically disadvantaged if they are socially disadvantaged individuals with a personal net-worth that does not exceed \$1.32 Million. Personal net-worth does not include the value of the primary residence or the value of the business.

The Iowa DOT's Office of Employee Services coordinates the Unified Certification Process (UCP) program that only requires one certification to do business as a DBE under any FTA, FAA, or FHWA assisted contract. For additional information or assistance in helping a firm receive certification as a DBE, contact: Iowa DOT Civil Rights Team, DBE Supportive Services, 515-239-1833, Hector.Torres-Cacho@dot.iowa.gov.

Bidders List – Agencies required to have a DBE program are required to maintain a bidders list of all **vendors submitting bids on solicitation. Bidder's lists are** intended to be used to identify available and willing vendors for any particular type of work. The bidders list will provide the most accurate data possible about the universe of available firms for use in setting goals. Information to be obtained and maintained in a bidders list must include: name and address of firm, dollar range of annual gross receipts, age of firm, and DBE status.

DBE Directory – A searchable [directory](#) of DBE firms certified by the Iowa DOT is available online and updated in real time.

DBE Goal – A DBE goal is the anticipated percent of DBE participation that an agency will try to achieve through race neutral or race conscious efforts. The goals are set with knowledge of relative availability of DBEs. No quotas are allowed in federal contracting. The statutes authorizing the DBE program set 10% as the national aspirational goal. However, grantees must set goals based on what will achieve a level playing field for DBEs in their own area. Individual recipients do not have to justify a goal that is less than the national goal.

The Iowa DOT sets a DBE goal every three years (FFY 2017– 2019 FTA DBE goal was 0.15%). Goals must be established 60 days prior to the start of the federal fiscal year.

Goals must now also be determined what portion will be achieved with race conscious or race neutral methods.

Race conscious: (also refers to gender) Specific selection method that consciously selects firms based on DBE status, for example, through use of a contract goal, or using DBE participation in selection criteria.

Race neutral: (also includes gender neutral) – Measures are used to increase opportunities for all small businesses, not just DBEs, and do not involve contract specific goals. Measures may include outreach and technical assistance in the procurement process actively encouraging firms to obtain DBE certification, actively soliciting quotes and proposals from DBE certified firms, and by requiring contractors to actively pursue DBE firms when sub-contracting. Selection is based on competitive bid or price consideration with no specific DBE goal.

Section 5307 transit agencies work directly with the FTA regarding DBE programs. Iowa's small urban and regional transit systems are not required to have their own DBE program or individual goal, unless they receive in excess of \$250,000 in contracting opportunities. However, as sub-recipients of FTA funds,

they are expected to use good faith efforts in any of their contracting with federal dollars to help achieve the statewide goal, and provide semi-annual reporting of their efforts. Any system receiving a capital grant for a construction project in excess of \$250,000 (other than rolling stock) is required to develop a contract goal or a DBE program and goal for their agency. A contract goal must be submitted to the OPT for approval.

Contract Goals: Contract goals may be used if there is a possibility for subcontracting the project. For a particular project, it is possible to determine a project goal by dividing the total number of available bidders in your local market area, by the number of available DBE vendors in your market area. If there is more than one type of industry that will be included in the project, such as heavy construction and trucking, the percentages should be computed separately for each type and weighted by the approximate amount of the contract spent on each.

$$.9 \times \frac{\text{heavy construction DBEs}}{\text{total heavy construction firms}} + .1 \times \frac{\text{\# trucking DBEs}}{\text{total trucking firms}}$$

Past experience and other regional information must also be considered after the initial percent is calculated to determine if an adjustment should be made. More details on goal setting can be obtained on the US DOT web site <http://www.osdbu.dot.gov/dbeprogram/tips.cfm>.

If a solicitation package contains a contract goal, a *good faith effort* must be demonstrated by bidders. **The Iowa DOT's** DBE manual describes the DBE responsibilities for showing good faith effort for federal aided construction projects <http://www.iowadot.gov/civilrights/documents/DBEProgram.pdf>.

Rolling stock purchases: Transit agencies must receive certification from each transit vehicle manufacturer bidding on a federally assisted contract that the manufacturer has complied with DBE requirements in 49 CFR 26.49 <http://www.gpo.gov/fdsys/pkg/CFR-2009-title49-vol1/pdf/CFR-2009-title49-vol1-sec26-49.pdf>. Vehicle manufacturers are required to submit annual DBE goals directly to FTA. Federal funds cannot be used to purchase a vehicle from a manufacturer who has not submitted a goal to FTA. A sample certification is available at http://www.iowadot.gov/transit/handbook/pdfs/ch9_dbe.pdf.

DBE Report Requirements – Current rules require FTA grant recipients to submit semiannual reports for all grantees. Currently, reports are based on federal fiscal year, due 30 days after the end of the reporting period. A current *Report of DBE Awards and Commitments* form is available at <http://www.iowadot.gov/transit/regulations/DBE%20Reporting%20Form.xlsx>.

All FTA-assisted purchases, with the exception of rolling stock, should be reported. This might include printing, janitorial services, computer services, supplies, construction contracts, facility remodeling, or other types of goods or supplies. Purchase orders, leases, contracts, and any type of purchase is included. DBE awards must also be separated into the minority group represented by the DBE.