metro transit

Objectives/Policy Statement (§26.1, §26.23)

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

It is the policy of Madison Metro Transit to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy –

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

The Civil Rights Director of the City of Madison has been delegated as the DBE Liaison Officer. In that capacity, the Civil Rights Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Madison Metro Transit in its financial assistance agreements with the Department of Transportation.

Madison Metro Transit will disseminate this policy statement to the Mayor and Common Council of Madison and all the components of our organization. A copy of this statement will be mailed to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Additionally, this statement will be posted on our website.

Eric Knepp, Interim Transit General Manager

8/22/2025
Date

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Definitions of Terms

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

Nondiscrimination (§26.7)

Madison Metro Transit will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin, or any other protected class covered by Section 39.03 of the Madison General Ordinances.

In administering its DBE program, Madison Metro Transit will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin, or any other protected class covered by Section 39.03 of the Madison General Ordinances.

DBE Program Updates (§26.21)

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (§26.43)

We do not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO) (§26.45)

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

Director
City of Madison Department of Civil Rights
City County Building Room 523
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
(608) 266-4910 VOICE (608) 266-6514 FAX (866) 704 2314 TTY/Textnet

In this capacity, the Civil Rights Director is responsible for implementing all aspects of the DBE program and ensuring that Madison Metro Transit complies with all provisions of 49 CFR Part 26. The Civil Rights Director has direct, independent access to Madison Metro Transit's General Manager concerning DBE program matters. The DBELO has a staff of four (4) professional employees assigned to the DBE program on a part-time basis. An organization chart displaying the DBELO's position in the organization is found in **Appendix 1** to this program.

The Affirmative Action Division of the Department of Civil Rights is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with Madison Metro Transit to set overall annual and individual project goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Madison Metro Transit's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Maintains Madison Metro Transit's updated directory of certified DBEs.

Federal Financial Assistance Agreement Assurance (§26.13)

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

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

DBE Financial Institutions

It is the policy of Madison Metro Transit to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We

have conducted an Internet search to identify and use such institutions. To date we have identified only one such institution operating in the State of Wisconsin: Wisconsin are Columbia Savings and Loan Association and BAY BANK. Additional research in this area will be conducted.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Directory (§26.25)

The Affirmative Action Division of the Department of Civil Rights maintains a directory in collaboration with other members of the Wisconsin UCP identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, telephone number and the type of work the firm has been certified to perform as a DBE. The Directory is updated on a weekly basis. The Directory is available as follows:

1. The directory can be viewed and/or downloaded by visiting the following website:

   https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx

Overconcentration (§26.33)

Madison Metro Transit has not identified overconcentration in any areas of work.

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

Prompt Payment

We will include the following clause in each DOT-assisted prime contract:

> The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contractor receives from Madison Metro Transit. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or

postponement of payment from the above referenced time frame may occur only for good cause following written approval of Madison Metro Transit. This clause applies to both DBE and non-DBE subcontractors.

If a subcontractor is not paid in a timely fashion, the prime contractor shall pay interest on the balance due from the 30th day after the prime contractor's receipt of any payment from City of Madison and/or Madison Metro Transit, at the rate specified in s. 71.82(1)(a) of the Wisconsin State Statutes, compounded monthly. The City of Madison and/or Madison Metro Transit may hold retainage from prime contractors, provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and/or obligate prime contractors to pay all retainage owed to subcontractor(s) for satisfactory completion of accepted work within 30 days after City of Madison and/or Madison Metro Transit's payment to the prime contractor. Other mechanisms, consistent with this part and applicable state and local law, may also be used to ensure that contractors are fully and promptly paid.

Subcontractors receiving payment under this subsection shall pay lower-tier subcontractors and be liable for interest on late payments, in the same manner as prime contractors are required to pay subcontractors, as noted above.

Madison Metro Transit will forward copies of written notification of non-payment from affected subcontractor(s) to the prime contractor and its bonding company. Upon receipt of written notice from the bonding company to redirect any or all future payments Madison Metro Transit will provide the prime contractor with written notice of its intent to comply with bonding company's directive until a Court injunction demanding otherwise is issued.

Monitoring and Enforcement Mechanisms (§26.37)

The Affirmative Action Division (AAD) of the Department of Civil Rights will track and monitor all contracts awarded to prime, non-DBE firms. The purpose for this monitoring is to maintain the level of compliance proposed by the prime contractor with the subcontractor(s).

The contractor is required to execute subcontractor agreements or purchase orders with DBEs within five (5) business days of notification of contract award or prior to the start of work, whichever is earlier. The AAD will then monitor the work performed and the dollar amounts paid to the DBE during the life of the contract.

To ensure DBE compliance on all contracts regardless of dollar amount, the AAD will contact the prime contractor and DBE subcontractors when the project reaches the 50% and 90% marks of completion. The prime contractor will receive a request for Status Report of DBE Subcontractor Payment from the AAD. The request will identify the names of DBEs proposed by the prime contractor, the proposed goods/services the DBE subcontractors were to supply and

the proposed DBE subcontracted dollar amount. The prime is requested to supply within two (2) business days proof of payment for each of the DBEs listed in order to verify the year-to-date participation.

DBE subcontractors are requested to provide an Affidavit for DBE Subcontractor Participation/Payment attesting to the work performed and the amount paid to date to the subcontractor.

On construction projects, contractors are required to submit the DBE Status Report form to reflect current payments to DBEs. Payment requests submitted without the DBE Status Report will not be processed. Further, the contractor must submit partial and final waivers of liens from DBE subcontractors.

The contractor must maintain records of all relevant data with respect to the utilization of DBEs. These records must be retained for a period of at least three (3) years after final acceptance of contract work. Full access to these records shall be granted to Madison Metro Transit, or any duly authorized representatives, thereof.

Non-Compliance and Liquidated Damages

During the performance of any contract or agreement to which this DBE program applies, Madison Metro Transit reserves the right to conduct compliance reviews. If Madison Metro Transit finds the contractor not to be in compliance with the provisions of this DBE Program, Madison Metro Transit will notify the contractor in writing of the steps necessary, in the judgment of Madison Metro Transit, to bring the contractor into compliance. In the event the contractor fails or refuses to take adequate corrective action, Madison Metro Transit may direct imposition of one or more of the following sanctions:

1. Termination or cancellation of the contract, in whole or in part; or,
2. Denial to participate in any future contracts or other agreements awarded by Madison Metro Transit; or,
3. Any other remedial action Madison Metro Transit deems appropriate.

In the event that a Contractor is found to be out of compliance, the emphasis of enforcement and conciliation procedures shall be placed on voluntary resolution of noncompliance. Noncompliance is voluntarily resolved where a Contractor agrees to implement acceptable remedies with or without the initiation of enforcement action. Such remedies shall be set forth in writing, in the form of a Letter of Commitment or a Conciliation Agreement. However, voluntary resolution of deficiencies may be inappropriate where: the nature of the noncompliance demonstrates a complete disregard of the Disadvantaged Business Program and its provisions; the Contractor makes serious false representations; or the Contractor does not agree, in writing, to the types of remedies set forth in this Section. The Contract Compliance Specialist should initiate enforcement proceedings in cases where voluntary resolution is not possible.

Remedies and Sanctions

Remedies are affirmative steps that are required to eliminate the effects of discrimination and/or noncompliance. They are corrective, not punitive. Sanctions, such as termination of a contract or debarment, are punitive measure to be used when a Contractor fails to implement acceptable remedies for noncompliance, or where voluntary remedies are inappropriate.

The remedies to be used in bringing a Contractor into compliance will depend on the types of deficiencies that are identified during the compliance review. They may be simple corrections or actions that require more concerted effort such as stepped-up recruiting efforts, including proper dissemination of bid notices, or complying with record keeping requirements. Remedies must be sufficient to correct all deficiencies and to ensure future compliance.

Letters of Commitment & Conciliation Agreements

1. **Letters of Commitment.** A Letter of Commitment is to be used to resolve noncompliance when only minor changes in the Contractor's practices need to be made and bad faith is not alleged. Letters of Commitment shall be dated and signed by an authorized official of the Contractor, including her/his title, and itemize the deficiencies and the corrective actions to be taken. The letter shall also specify the dates when the corrective actions were or will be completed.

2. **Conciliation Agreements.** A Conciliation Agreement is to be used in resolving cases of noncompliance that involve major deficiencies in applying the DBE requirements, including deficiencies related to record keeping and documentation of good-faith efforts, goals and timetables, or establishing subcontracting policies and commitments; substantial deviation from DBE commitments and failure to show good cause for the deviation; or absence of good cause for failure to take the actions specified in a Letter of Commitment.

   The Contract Compliance Specialist shall monitor and evaluate progress made under the Conciliation Agreement and shall retain progress reports for the Contractor's review file. Where there is reason to believe that the Contractor has violated a Conciliation Agreement, a Demand to Cure Default shall be issued. This notice shall include a cover letter and an enclosure citing the provisions the Contractor is alleged to have violated and the basis for the allegations. The notice gives the Contractor fifteen (15) days to demonstrate, through the written presentation of facts and evidence, that it has complied with the cited provisions. If the Contractor refuses or is unable to make such a demonstration, including adequate evidence of good-faith effort where appropriate, the matter shall be processed for enforcement. Where the alleged noncompliance involves

alleged irreparable injury, the notice shall be made orally and the matter immediately processed for enforcement. The oral notification shall be followed with a written notice.

Enforcement Proceedings

Enforcement proceedings lead to the application of sanctions such as termination of a contract or debarment. They are to be used as a last effort to bring a Contractor into compliance with their affirmative action obligations. Enforcement proceedings are to be used where: 1) voluntary resolution is inappropriate; 2) a Contractor does not or is not able to demonstrate that they complied with a Conciliation Agreement before a Demand to Cure Default expires, where irreparable injury is not alleged; or 3) a Demand to Cure Default alleging irreparable injury has been issued.

The Contractor has the right to request a hearing where each party shall have the right to appear in person and by counsel, to call and examine all witnesses, and to introduce new exhibits. At the hearing the Contract Compliance Specialist shall have the burden to prove the facts supporting their case. The body established to hold such hearings shall have the power to compel by subpoena duces tecum the production before it of books, records, papers or other evidence, which may relate to the subject matter of the hearing. The provisions of Sec. 227.45, Wis. Stats. shall be abided by in the admission of evidence. Written finding of fact and conclusions of law shall be made on the following issues:

a. Whether the finding of noncompliance should be sustained;
b. If the finding of noncompliance is sustained, Madison Metro Transit shall decide whether the contract should be canceled, terminated, or suspended, in whole or in part; whether the contractor should be found ineligible for further Madison Metro Transit contracts, and if so, what measures taken by the contractor will restore eligibility; and whether liquidated damages should be sought under the provisions of the contract. Madison Metro Transit may allow the contractor additional time to take the necessary remedial action.

Madison Metro Transit shall provide written findings and conclusions and a written order within thirty (30) days after the conclusion of the hearing and shall serve copies thereof upon the contractor by certified mail. Madison Metro Transit's findings shall constitute final administrative determinations and shall be subject to review in court as by law may be provided.

If Madison Metro Transit orders the contract to be canceled, terminated, or suspended, the receipt by the contractor of such order shall constitute written notice of termination under the termination procedures provided in the contract.

If Madison Metro Transit orders that a contractor be found ineligible for further Madison Metro Transit contracts, no bids or proposals of the contractor may be opened or considered, until the Contract Compliance Specialist certifies that the contractor has taken the measures specified by Madison Metro Transit to restore eligibility, or until the expiration of two (2) years from the date of the order, whichever is sooner.

If Madison Metro Transit after consulting with its legal representation determines that liquidated damages should be sought, court action shall be instituted to recover such damages.

If the contractor fails to comply with the Demand to Cure Default and fails to request a hearing, the contract shall be terminated. In addition, Madison Metro Transit may order additional remedies.

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

Overall Goals (§26.45)

Madison Metro Transit's current DBE goal and methodology follow.

Amount of goal

Madison Metro Transit's overall DBE goal for FFY 2025-2027 is 17.89% of the federal financial assistance projected to be expended in DOT assisted contracts (exclusive of FTA funds used for the purchase of transit vehicles).

Metro has identified several DOT-assisted contracting opportunities for FFY 2025-2027 with a projected value of $198,360,000.75. As such, Metro needs to expend $35,486,604 with DBEs in order to achieve its 17.89% goal. The City of Madison, through multiple projects, was able to exceed it's overall DBE goal during the last triennial period. As a result, the City of Madison has increased this period's race neutral goal to 1.6% with the approach of targeting DBE firms on smaller projects to bid directly to the City.

The remaining 16.29%% will be achieved through race conscious means. The majority of Metro's awards for FFY 2025-2027 are expected to be in the form of construction contracts. Construction is the primary industry within which DBEs have participated predominately as subcontractors rather than primes. As a result, these projects have allowed for increased opportunities and greater utilization of DBEs.

Regardless of whether DBEs participate as prime contractors or subcontractors, they will do so without the use of set-asides, quotas, or any other preferential treatment based on race/ethnicity or gender.

Method

The following is a summary of the method used to calculate this goal: **Appendix 2.**

Transit Vehicle Manufacturers (§26.49)

Madison Metro Transit will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Madison Metro Transit may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Process

Madison Metro Transit submits its overall goal to DOT on August 1 of each year. Madison Metro Transit along with the Department of Civil Rights ensures that there is adequate stakeholder and public participation. The Department of Civil Rights involves the primary stakeholders and customers in a variety of ways and settings, from one-time meetings to ongoing subcommittee meetings. Forums for involvement include: internal and external stakeholder opportunities for developing data and recommendations; the use of public informational meetings for general and specific purposes involving contractors, transit system managers, state and local officials, and community and minority groups; and the use of an internet website and social media to inform the public and potentially affected interests about activities and issues.

Madison Metro Transit shall publish a notice announcing the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection online for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 30 days from the date of the notice. The notice shall include addresses to which comments may be sent, and will be published in general circulation media and available minority-focused media and trade association publications. Additionally, Madison Metro will post the DBE Program to its website and social medias to allow readers to provide immediate feedback.

Before establishing the overall goal in subsequent years, Madison Metro Transit will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and

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

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection at Madison Metro Transit website and Department of Civil Rights website for 30 days following the date of the notice, and informing the public that Madison Metro Transit and DOT will accept comments on the goals for 30 days from the date of the notice. This notice will be issued on Madison Metro Transit's and Department of Civil Right's Facebook and X accounts. Normally, we will issue this notice by July 1 of each year. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from US DOT.

Race-Neutral Means of Achieving Goal

Madison Metro will utilize the following race-neutral means to achieve this level of participation on these contracts:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;

(2) Providing technical assistance and other services;

(3) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate); and

(4) Ensuring distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

Race-Conscious Contract Goals

Madison Metro Transit will use contract goals to meet any portion of the overall goal Madison Metro Transit does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively

result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

Race-conscious contract goals will be used only on those DOT-assisted contracts that have subcontracting possibilities. Metro's contract goals shall provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract. Individual project goals will vary depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

To ensure that Metro's DBE program continues to be narrowly tailored to overcome the effects of discrimination, Metro shall adjust its use of contract goals as follows:

(1) If, during the course of any year in which Metro is using contract goals, and it is determined that it will meet the overall goal, Metro shall reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined that Metro will fall short of the overall goal, then it shall make appropriate modifications in its use of race-neutral and/or race-conscious measures to allow Metro to meet the overall goal.

(2) If the DBE participation obtained by race-neutral means alone meets or exceeds the overall goals for two consecutive years, Metro is not required to make a projection of the amount of the goal that can be met using such means in the next year. Contract goals will not be set on any contracts in the next year. Rather, Metro will continue using only race-neutral means to meet its overall goals unless and until it does not meet the overall goal for a year.

(3) If Metro's DBE participation exceeds its overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), Metro shall reduce its use of contract goals proportionately in the following year.

Metro shall maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. This data shall be reported to the concerned operating administration as provided in §26.11.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a

subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Good Faith Efforts (§26.53)

Information to be Submitted

Each solicitation for which a contract goal has been established will require the bidders/offers to submit a Disadvantaged Business Enterprise Compliance Report due by the specified bid closing time and date. Bids submitted without a completed DBE Compliance Report as outlined below will be deemed nonresponsive and the bidder ineligible for award of this contract.

The DBE Compliance Reports are evaluated to determine the bidder/offerors' compliance with good faith efforts requirements. Compliance with the good faith requirements is a matter of responsibility. If the bidder meets or exceeds the goal established for DBE utilization, the bidder shall be deemed a responsible bidder eligible for contract award. If the bidder does not meet the goal established for DBE utilization, the bidder's DBE Compliance Report shall be evaluated to determine whether or not a good faith effort to achieve the specified good faith efforts shall be evaluated to determine shall submit the following as its Disadvantaged Business Enterprise Compliance Report.

Demonstration of Good Faith Efforts

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

The Contract Compliance Specialist is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive and/or responsible. We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Administrative Reconsideration

A bidder that achieves or exceeds the DBE goal will be in compliance with the DBE requirements of this project. In the event that the bidder is unable to achieve the DBE goal, the bidder must demonstrate that a good faith effort to achieve the DBE goal were made. Failure to either achieve the goal or demonstrate a good faith effort to do so may be grounds for the bidder being deemed a nonresponsible contractor ineligible for award of this contract.

A bidder which does not achieve the established goal and is deemed nonresponsible for failure to demonstrate a good faith effort to achieve such goal and subsequently denied eligibility for award of contract may, with 72 hours of receiving such notification, appeal that decision to the City of Madison Affirmative Action Commission. All appeals must be made in writing to the City of Madison Affirmative Action Division and received within 72 hours of Madison Metro Transit's notice. Postmark not applicable. A bidder deemed nonresponsive may not appeal City's decision to deny eligibility for award of contract.

Within three (3) days of being informed by Madison Metro Transit that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Director
City of Madison Department of Civil Rights
City County Building Room 523
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
(608) 266-6514 FAX
dcr@cityofmadison.com EMAIL

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts When a DBE is Replaced on a Contract

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

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

Counting DBE Participation (§26.55)

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

Certification Standards (§§26.61 – 26.71)

Madison Metro Transit will use the certification standards described in Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decision based on the facts as a whole.

Our certification application form and documentation requirements are found in **Appendix 3** to this program.

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

City of Madison Department of Civil Rights, Affirmative Action Division
City County Building Room 523
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703
(608) 266-6510 VOICE
(608) 266-6514 FAX
(866) 704 2314 TTY/Textnet
TargetedBusinessEnterprise@cityofmadison.com EMAIL

Burdens of Proof

The firm seeking certification has the burden of demonstrating to the City, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control. The City of Madison will rebuttably presume that members of the designated groups identified in §26.67(a) are a socially and economically disadvantaged individual (SEDO). This means that they do not have the burden of proving that they are socially and economically disadvantaged. However, applicants have the obligation to provide the City with information concerning their economic

disadvantage (see §26.67). Individuals, who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to the City, by a preponderance of the evidence, that they are a socially and economically disadvantaged individual.

The City will make determinations concerning whether SEDOs and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

Group Membership Determinations

If the City of Madison has reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, we will require the individual to demonstrate, by a preponderance of the evidence, that they are a member of a presumed socially disadvantaged group. In making such a determination, we will consider whether the person has held themselves out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. We may require the applicant to produce appropriate documentation of group membership.

If the City determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

The City's decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

Social and Economic Disadvantage

Presumption of Disadvantage

The City of Madison will reputably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are SEDOs. The City will require applicants to submit a signed certification that each SEDO owner is, in fact, socially and economically disadvantaged.

We will require each SEDO owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed statement of personal net worth, with appropriate supporting documentation.

In determining net worth, we will exclude an individual's ownership interest in the applicant firm, the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm), and retirement assets. A contingent liability shall not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

Rebuttal of Presumption of Disadvantage

If an individual's statement of personal net worth shows that the individual's personal net worth exceeds $2.047M, the individual's presumption of economic disadvantage is rebutted. No proceeding is required in order to rebut the presumption of economic disadvantage in this case.

If the City has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged we may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Such proceeding shall follow the procedures of §26.87.

In such a proceeding, the City of Madison has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. The individual may be required to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, their ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until they make an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $2.047Ms, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

8(a) and SDB Firms

If a firm applying for certification has a current, valid certification from or is recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), the City of Madison may accept the firm's 8(a) or SDB certification in lieu of conducting our own certification proceeding, just as we may accept the certification of another DOT recipient for this purpose. The City of Madison is not required to do so, however.

Individual Determinations of Social and Economic Disadvantage

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. The City shall make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $2.047M shall not be deemed economically disadvantaged. In making these determinations, the City shall use the guidance found in § 26.67(d) that they are a socially economically disadvantaged based on their own experiences and circumstances that occurred within American society.

Business Size Determination

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The City of Madison shall apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous five fiscal years, in excess of $30.72 million. The Secretary adjusts this amount for inflation from time to time.

Ownership Determination

In determining whether the SEDO participants in a firm own the firm, the City shall consider all the facts in the record, viewed as a whole.

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals (SEDO). In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by SEDOs. Such ownership must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by SEDOs.

The firm's ownership by SEDOs must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The SEDO owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate

with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

All securities that constitute ownership of a firm shall be held directly by SEDO persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by SEDO persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a SEDO individual for purposes of determining ownership of the firm, if:

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The contributions of capital or expertise by SEDO owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

The following requirements apply to situations in which expertise is relied upon as part of a SEDO owner's contribution to acquire ownership:

(1) The owner's expertise must be:

(a) In a specialized field;
(b) Of outstanding quality;
(c) In areas critical to the firm's operations;
(c) Indispensable to the firm's potential success;
(d) Specific to the type of work the firm performs; and
(e) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

The City shall always deem as held by a SEDO, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

The City shall presume as not being held by a SEDO, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

(1) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(2) Involved in the same or a similar line of business; or

(3) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the SEDO individual must demonstrate, by clear and convincing evidence, that:

(1) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The SEDO individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

The City shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the City must deem the ownership interest in the firm to have been acquired by that spouse with their own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The City shall not count a greater portion of joint or community property assets toward ownership than state law would recognize as

belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

The City may consider the following factors in determining the ownership of a firm. However, we shall not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

(1) A SEDO acquired their ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a SEDO on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a SEDO to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a SEDO.

Control Determination

In determining whether SEDOs control a firm, the City of Madison shall consider all the facts in the record, viewed as a whole.

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the City shall scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. We shall consider whether present or recent employer/employee relationships between the SEDO(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm. We shall also examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. In considering factors related to the independence of a potential DBE firm, we shall consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the SEDO. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the SEDO, without the cooperation or vote of any non-SEDO, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

The SEDO 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.

A SEDO must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, SEDOs must control the board of directors. In a partnership, one or more SEDOs must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The SEDO of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the SEDO must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the SEDOs in the firm's overall affairs must be such that the recipient can reasonably conclude that the SEDOs actually exercise control over the firm's operations, management, and policy.

The SEDOs 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 SEDOs 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 SEDOs 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.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the SEDOs who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the City shall not deny certification solely on the ground that the person lacks the license or credential. However, we may take into account the absence of the license or credential as one factor in determining whether the SEDOs actually control the firm.

The City shall consider differences in remuneration between the SEDOs and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. We may determine that a firm is controlled by its SEDO although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-disadvantaged individual formerly controlled the firm, and a SEDO now controls it, we may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

In order to be viewed as controlling a firm, a SEDO cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A SEDO may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, we shall make a judgment about the control the SEDO exercises vis-a-vis other persons involved in the business as we do in other situations, without regard to whether or not the other persons are immediate family members.

If the City cannot determine that the SEDO (as distinct from the family as a whole) control the firm, then the SEDOs have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a

SEDO, and the non-disadvantaged individual remains involved with the firm in any capacity, the SEDO now owning the firm must demonstrate, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the SEDO was made for reasons other than obtaining certification as a DBE; and

(2) The SEDO actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its SEDO, the City may consider whether the firm owns equipment necessary to perform its work. However, we shall not determine that a firm is not controlled by SEDOs solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

The City of Madison shall grant certification to a firm only for specific types of work in which the SEDOs have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate only that its SEDOs are able to control the firm with respect to that type of work. In this situation, the firm shall not be required to be recertified or submit a new application for certification, but the City shall verify the SEDO's control of the firm in the additional type of work.

A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the City shall generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

In order for a partnership to be controlled by SEDOs, any non-disadvantaged partners must not have the power, without the specific written concurrence of the SEDO(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The SEDOs controlling a firm may use an employee leasing company. The use of such a company does not preclude the SEDOs from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the

employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Other Considerations

Consideration of whether a firm performs a commercially useful function or is a regular dealer or distributor pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided below we shall not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. We may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

The City shall evaluate the eligibility of a firm on the basis of present circumstances. We shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by SEDOs at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor shall we refuse to certify a firm solely on the basis that it is a newly formed firm.

DBE firms and firms seeking DBE certification shall cooperate fully with the City of Madison's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by SEDOs, are not eligible to be certified as DBEs.

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged (socially and economically disadvantaged owner – SEDO). Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm -- even a DBE firm -- cannot be an eligible DBE. If SEDOs own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company. The City may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by SEDOs.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by SEDOs.

A DBE firm shall not be required to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.65. Such a firm must be controlled by SEDOs, as provided in §26.71.

Certification Procedures

Unified Certification Program

Madison Metro Transit, as a founding member of the Wisconsin UCP, continues to work with the State of Wisconsin Department of Transportation, Milwaukee County, and Dane County to provide a one-stop process to applicants for Wisconsin DBE certification. The fully-implemented Wisconsin UCP continues to explore more effective and efficient methods of institute uniformity into the program.

Process

The City of Madison's DBE certification procedures are designed to ensure that only firms certified as eligible DBEs under this section participate as DBEs in our program. The City shall determine the eligibility of firms as DBEs consistent with the standards of 49 CFR 26 Subpart D. As such we shall take all the following steps in determining whether a DBE firm meets these standards:

(1) A certifier must visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. The certifier must review those persons' résumés and/or work histories. The certifier must maintain a complete audio recording of the interview. The certifier must also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which the certifier must keep in its files.;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit the Uniform Certification Application form. The City shall review all information on the form prior to making a decision about the eligibility of the firm.

When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information that the City has obtained about that firm (e.g., including application materials or the report of a site visit) the City shall promptly make the information available to the other recipient.

Interstate certification shall be completed by Wisconsin UCP members Wisconsin Department of Transportation and Milwaukee County. Should a firm come to the City of Madison seeking Interstate certification, they will be refereed to Wisconsin Department of Transportation and Milwaukee County.

The City of Madison shall safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Once the City of Madison has certified a DBE, it shall remain certified indefinitely. The City may not require DBEs to reapply for certification as a condition of continuing to participate in the program, unless the factual basis on which the certification was made changes.

DBEs are required to inform the City in writing of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in its application form. Changes in management responsibility among members of a limited liability company are covered by this requirement.

The DBE must attach supporting documentation describing in detail the nature of such changes. The notice must take the form of a Declaration of Eligibility sworn to by the SEDOs of the firm. The DBE must provide the City with written notification within 30 days of the occurrence of the change. Failure to make timely notification of such a change will result in the DBE being deemed to have failed to cooperate under §26.109(c).

DBEs shall be required to provide to the City, every year on the anniversary of the date of their certification (Jurisdiction of Original Certification), a Declaration of Eligibility (DOE) sworn to by the firm's owners. This DOE must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application

form, except for changes about which you have notified the recipient under paragraph (i) of this section. The DOE shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. Failure to provide this affidavit in a timely manner will result in the DBE firm being deemed to have failed to cooperate under §26.109(c).

The City must advise each applicant within 30 days of filing whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
The City of Madison shall make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. This time period may be extended once, for no more than an additional 30 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. The City's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

Denials of Initial Requests for Certification

When the City of Madison denies a request by a firm, which is not currently certified with the City, to be certified as a DBE, we shall provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based shall be made available to the applicant, on request.

When a firm is denied certification, a time period of six months must elapse before the firm may reapply to the City of Madison for certification. The time period for reapplication begins to run on the date the explanation is received by the firm.

When the City makes an administratively final denial of certification concerning a firm, such firm may appeal the denial to the Department under §26.89.

Procedures to Remove a DBE's Eligibility

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

The City shall review its records concerning the firm, any material provided by the firm and the complainant, and other available information. Additional information may be requested from the firm or conduct any other investigation deemed necessary.

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

Recipient-Initiated Proceedings

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

DOT Directive to Initiate Proceeding

If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm certified by the City does not meet the eligibility criteria of this part, the concerned operating administration may direct the City to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide the City and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

The City shall immediately commence and prosecute a proceeding to remove eligibility as provided by in the above section entitled "Recipient-Initiated Proceedings".

Hearing

When a firm is notified that there is reasonable cause to remove its eligibility as provided in the above sections, the City shall give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. In such a proceeding, the City bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

The City of Madison shall maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is

an appeal to DOT under §26.89, the City shall provide a transcript of the hearing to DOT and, on request, to the firm. The City, however, shall retain the original record of the hearing. The firm may be charged only for the cost of copying the record.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the City bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as during a hearing.

Separation of Functions

All businesses denied DBE certification or recertification may appeal such decision to the Targeted Business Appeals Committee. To ensure separation of functions in a denial of certification, the City has determined that the Targeted Business Appeals Committee shall be responsible for hearing appeals to any decision to deny a business' application for DBE certification or recertification. This Committee will serve as the decision maker in decertification proceedings. An administrative "firewall" has been established to ensure that the TBA Committee will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

Grounds for Decision

A decision to remove eligibility may not be based on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. Such a decision shall be based only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) information or evidence not available to you at the time the firm was certified;

(3) information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that the City's determination to certify the firm was factually erroneous.

Notice of Decision

Following the City's decision, it shall provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice shall inform the firm of the consequences of the City's decision and of the availability of an appeal to the Department of Transportation under §26.89.

Copies of the notice shall be sent to the complainant in an ineligibility complaint or the concerned operating administration that had directed the City to initiate the proceeding.

Status of Firm During Proceeding

The certifier's decision remains in effect until the Department of Transportation resolves the appeal or the certifier reverses itself.

Effects of Removal of Eligibility

Upon removing a firm's eligibility, the City shall take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or the City has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the decertification notice has been issued, the ineligible firm does not count toward the contract goal or overall goal. The City shall direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before having been notified of the firm's ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the City has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility was issued shall not count toward the overall triennial goal, but may count toward the contract goal.

(3) If, however, the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the City may continue to count its participation on that contract toward overall triennial and contract goals.

Availability of Appeal

Any firm or complainant may appeal the City's decision in certification matter to US DOT. Such appeals may be emailed to: S33AppealsManagementRecords@dot.gov.

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

A firm whose application has been denied or decertified may not reapply to the City for certification until six (6) months have passed from such action.

When the City makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89. This administrative review is

not a remedy a firm needs to exhaust before making a certification appeal to DOT under §26.89.

Declaration of Eligibility and Notices of Change

We require all DBEs to inform us, in a written statement, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with its application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification (Jurisdiction of Original Certification), a Declaration of Eligibility, meeting the requirements of §26.83(j).

The City requires DBEs to submit with this Declaration of Eligibility documentation of the firm's size and gross receipts.

The City has will notify currently certified DBE firms of these obligations via email. This notification will inform DBEs that to submit the Declaration of Eligibility, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that they, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

The City will require all SEDOs of applicants and of currently certified DBEs whose eligibility under part 26 we review, to submit a statement of personal net worth.

Appendix 4 sets forth the City's personal net worth form and the documentation respondents must submit with it.

Information Collection and Reporting

Bidders List

Madison Metro Transit will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address including zip code, DBE/non-DBE status, race and gender information for the firm's majority owner, NAICS code applicable to each scope of work the firm sought to perform in it's bid, age of the firm, and annual gross receipts of firms.

We will collect this information by including a DBE Vendor Survey questionnaire in all bid packages.

Monitoring Payments to DBEs

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

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

Reporting to DOT

We will report DBE participation to DOT on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Appendices

Appendix 1 – DBELO Organizational Chart

- https://www.cityofmadison.com/human-resources/documents/orgcharts/DCR.pdf

Appendix 2 – City of Madison Annual Overall DBE Goal Submissions, FFY 2025, 2026, 2027

- https://www.cityofmadison.com/metro/documents/DBE-goal.pdf

Appendix 3 – DBE Application Form & Documentation Requirements

- https://www.cityofmadison.com/civil-rights/documents/DBE_ucpappl2024_0.pdf

Appendix 4 – DBE Personal Net Worth Form

- https://www.cityofmadison.com/civil-rights/documents/pnw2024.pdf