

**CITY of YAKIMA**  
**DBE PROGRAM**  
(Effective 10/1/02 through 9/30/05)

**Definition of Terms**

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

**Objectives /Policy Statement (26.1, 26.23)**

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

It is the policy of the City to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City's policy:

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

The City's Purchasing Manager is designated the DBE Liaison Officer (DBELO). In this capacity, the Purchasing Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

The Yakima City Council adopted this policy statement, which is disseminated to City Departments, officers, and employees. The City also distributed this statement to DBE and non-DBE business enterprises performing work as needed on DOT-assisted contracts by publishing it in the Yakima Herald-Republic and on the City's official web site.

\_\_\_\_\_ Date: \_\_\_\_\_  
Richard A. Zais, Jr., City Manager

**Nondiscrimination. (26.7)**

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

In administering its DBE program, the City 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.

**DBE Program Updates (26.21)**

The City will continue to carry out this program until all funds from DOT financial assistance are expended. The City will provide to DOT updates representing significant changes in the program.

**Quotas (26.43)**

In accordance with 49 CFR Part 26 and rulings of the U.S. Federal Courts, the City does not use quotas in the administration of this DBE program.

**DBE Liaison Officer (DBELO) (26.45)**

The City believes it is the obligation of the entire city staff to see that the DBE program is fully implemented and successful. To that end, every city staff member involved with the administration of DOT-assisted projects is obligated to carry out this policy. However, for the purpose of coordinating city staff, the City designates the Purchasing Manager as the DBELO:

Sue Ownby, CPPB  
Purchasing Manager  
129 North 2<sup>nd</sup> Street  
Yakima, Washington 98901  
Phone (509) 576-6695  
FAX (509) 576-6394  
E-mail [sownby@ci.yakima.wa.us](mailto:sownby@ci.yakima.wa.us)

In this capacity, the Purchasing Manager is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provisions

of 49 CFR Part 26. The Purchasing Manager has direct, independent access to the City Manager concerning DBE program matters. The DBELO has a staff of 2 professional employees assigned to the Purchasing Division on a full-time basis and who devote a portion of their time to this program. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program. The responsibility for developing, implementing, and monitoring the DBE program shall be a coordinated effort with other appropriate city staff members and officials. Some of the duties and responsibilities of the various city staff members may include the following:

- Gathers and reports statistical data and other information as required by DOT;
- Reviews third party contracts and purchase requisitions for compliance with this program;
- Works with City of Yakima Transit Division to set overall annual goals;
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results;
- Analyzes City's progress toward goal attainment and identifies ways to improve progress;
- Participates in pre-bid meetings;
- Advises the CEO/governing body on DBE matters and achievement;
- Participates with legal counsel and project managers to determine contractor compliance with good faith efforts;
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance;
- Plans and participates in DBE training seminars;
- Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Washington State;
- Provides outreach to DBEs and community organizations to advise them of opportunities; and
- Maintains the City's updated directory on certified DBEs.

### **Federal Financial Assistance Agreement Assurance (26.13)**

The City has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT

assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City 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 the City 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. The City has surveyed banking, savings and loan, mortgage organizations, the small business administration and the chamber of commerce to determine their knowledge of any DBE institutions. The City has not identified any DBE financial institutions in the community.

As information on the availability of DBE financial institutions becomes known, it may be obtained from the DBELO.

### **Directory (26.25)**

The City has never maintained an independent directory identifying all the firms eligible to participate as DBEs but rather has relied on the State of Washington's list of certified DBEs. The Washington State Office of Minority and Women's Business Enterprises maintains the Directory. The Internet address for accessing the State's Directory is <http://www.omwbe.wa.gov/directory/directory.htm>. As part of complying with DOT policy guidelines, the City has put together a directory listing DBEs available to the City.

The directory will list the firm's name, address, phone number, certification number, and the type of work the firm has been certified to perform as a DBE. The City shall revise the Directory annually (once each calendar year). The Directory will be made available by contacting the Purchasing Manager at City Hall, 129 North 2<sup>nd</sup> Street, Yakima, Washington 98901.

### **Overconcentration (26.33)**

At this time, the City has not identified over concentrations of DBEs in any particular area of contractors used by the City.

## **Business Development Programs (26.35)**

At this time, the City does not have a business development or mentor-protégé program.

## **Required Contract Clauses (26.13, 26.29)**

### **Contract Assurance**

The City shall 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**

The City shall include the following clause in each DOT-assisted prime contract:

The prime contractor agrees it is important to pay each subcontractor promptly under this prime contract for satisfactory performance and failure to do so may exclude DBE subcontractors from participating in City contracts.

Therefore, the contractor agrees to bill the City for each subcontractor's satisfactory performance of work on at least a biweekly basis, and pay each subcontractor under this prime contract for satisfactory performance of its contract no later than (14) fourteen days from the receipt and an approval of an invoice from the prime contractor.

The prime contractor agrees further to return retainage payments to each subcontractor within (14) fourteen days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

### **Monitoring and Enforcement Mechanisms (26.37)**

The City 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. The City also will consider similar action under our own legal authorities, including responsibility determinations in future contracts in events of non-compliance with DBE regulation by a participant in our procurement activities.

### **Overall Goals (26.45)**

#### **Amount of Goal**

The City established a three year rolling average goal of 10% beginning October 1, 2002 through September 30, 2005 for the Federal financial assistance the City will expend in DOT-assisted contracts. This is exclusive of FTA funds to be used for the purchase of transit vehicle and real estate procurement.

#### **Method**

The following is a brief summary of the method used to calculate its goal:

City of Yakima staff provided information to Yakima Valley Conference of Governments (YVCOG) staff to determine what the Base Percentage Figure should be. YVCOGs documentation of methodology is enclosed as Attachment B.

### **Transit Vehicle Manufacturers (26.49)**

The City requires transit vehicle manufacturers as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements to certify they have complied with the requirements of this section. Alternatively, the City may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of Transit Vehicle Manufacturers complying with this program element.

#### **Process**

The City will begin the process of submitting its overall goal to DOT on or about May 15 of each year. The actual goal will be submitted to the FTA on or about August 1 of each year.

The City will consult each year with the State of Washington's Office of Minority and Women's Business Enterprises and local community building and trades groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs before establishing the City's overall goal.

Following consultation, the City will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection at the Purchasing Manager's Office, Yakima City Hall, during normal business hours for 30 days following the date of the notice. The notice shall inform the public that the City and DOT will accept comments on the overall goal for 45 days from the date of issuing the notice.

The City will normally publish the notice of the proposed overall goal in the Yakima Herald-Republic and on the City's Official Web Site on or about June 1 of each year. The notice shall include the addresses to which comments may be sent and the addresses (including office and web site) where the proposal may be reviewed.

The City's overall goal submission to DOT will include a summary of information and any significant comments received during the public participation process and any City's responses.

The City will begin using its overall goal on October 1 of each year, unless it has received other instructions from DOT.

#### Break-out of Estimated Race-Neutral and Race-Conscious Participation

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

- Develop a DBE list as extensively as possible,
- Send notices of projects to contractors on the City's DBE list,
- Provide prime contractors a list of DBEs to partner with or provide subcontract services, and
- Advertise using available minority media the projects that could accommodate small business.

Note: Race-neutral means the City will outreach, technically assist, and revise the procurement process to insure increased opportunities for all small businesses, not just for DBEs.

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

Race-neutral DBE participation includes:

- Any time a DBE wins a prime contract through customary competitive procurement procedures,
- Any time a DBE is awarded a subcontract on a prime contract that does not carry a DBE goal,

Or, even if there is a DBE goal,

- Any time a DBE wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award its subcontracts).

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

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Providing technical assistance and other services;
- 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);
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Assist in establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- Ensuring distribution of our DBE directory, through print and electronic means, to the broadest range of potential prime contractors; and

- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media

The City estimates that to meet its overall goal of 10%, it will obtain 5% from race-neutral participation and 5% through race-conscious measures.

The City will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) 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.

It is the City's goal to reduce the percentage of the overall goal obtained by race-conscious methods as the Program and the number of available DBEs further develops.

### **Contract Goals (26.51)**

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

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

## **Good Faith Efforts (26.53)**

### **Information to be submitted**

The City treats bidder/offers' compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information

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

### **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 49 CFR Part 26.

The Purchasing Manager 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 responsible.

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

### **Administrative Reconsideration**

Within (15) fifteen days of being informed by the City that they (bidder/offeror) are not a responsible bidder/offeror because they did not document sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offers should make their request in writing to the following reconsideration official:

Glenn K. Rice  
Assistant City Manager  
129 North 2<sup>nd</sup> Street  
Yakima, Washington, 98901.

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether they met the goal or made adequate good faith efforts to do.

The City 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

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

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

#### Counting DBE Participation (26.55)

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

### Certification (26.61 - 26.91)

The City will use the certification standards of 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. A firm must meet all certification eligibility standards to be certified as a DBE. The City will make its certification decision based on the facts as a whole.

### Process / Unified Certification Program

The State of Washington Office of Minority and Women's Business Enterprises has a unified certification program. This agency also conducts certifications, re-certifications, and decertification.

### Certification Appeals

Any firm or complainant may appeal the City's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7th St., SW, Room 5414  
Washington, DC 20590

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

### "No Change" Affidavits and Notices of Change

The City requires all DBEs to inform the City by written affidavit of any change in circumstances affecting a DBE's 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.

City also requires owners of all DBEs it has certified to submit on the anniversary date of their certification a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is as follows:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have

provided written notice to the [City] under 26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.

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

### Personal Net Worth

The City will require all disadvantaged owners of applicants and of currently certified DBEs whose eligibility under 49 CFR part 26 City review, to submit a statement of personal net worth.

## **Information Collection and Reporting**

### Bidders List

The City 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 Bidders name
- Address
- DBE/non-DBE status.

The City will collect this information by inserting a contract clause requiring prime bidders to report name/addresses and other information of all firms that provide a quote to them.

### Monitoring Payments to DBEs

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

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

DBE participation is reported to DOT as follows:

- The City will report DBE participation quarterly using DOT Form 4630.
- Reports will reflect payments actually made to DBEs on DOT assisted contracts.

## Confidentiality

The City 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, the City 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.

## Attachments

Attachment A: City of Yakima Organizational Chart.

Attachment B: Overall Goal Submission Developed by YVCOG

A copy of 49 CFR Part 26