

**City of Waukesha
Transit Commission**

**Disadvantaged Business Enterprise (DBE)
Program 2023 - 2025**

**March 2022
Revised February 9, 2024**



**Waukesha Transit Commission
2311 Badger Drive
Waukesha, WI 53188-5932**

City of Waukesha Transit Commission
Disadvantaged Business Enterprise Program

Objectives/Policy Statement (26.1, 26.23)

The City of Waukesha Transit Commission (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 has received Federal financial assistance from the United States 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 part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT 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 USDOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Compliance Specialist at Waukesha Metro Transit has been delegated as the DBE Liaison Officer. In that capacity, the Compliance Specialist 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 United States Department of Transportation.

The City has disseminated this policy statement to the Transit Commission Board and the Common Council and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts via direct mail and via the internet.

Signed _____ Date _____
Brian Engelking, Transit Manager

Definitions of Terms

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

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)

We will continue to carry out this program until all funds from USDOT financial assistance have been expended. We will provide to USDOT 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: Ms. Traci Johnson, Compliance Specialist, Waukesha Metro Transit, 2311 Badger Drive, Waukesha, WI 53188-5932; telephone: 262-524-3846; E-mail: tjohnson@waukesha-wi.gov. In that capacity, the DBELO 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 DBELO has direct, independent access to the Mayor concerning DBE program matters. The DBELO has an Administrative Assistant that devotes a portion of her time to the DBE program.

The DBELO 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 USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes City'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. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Refers DBEs to the Uniform Certification Process provided by the Wisconsin Department of Transportation (WISDOT).
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Federal Financial Assistance Agreement Assurance (26.13)

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

The City of Waukesha shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT 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 USDOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by USDOT, 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 USDOT-assisted contracts to make use of these institutions. To date we have identified the following such institutions: None exist in Waukesha.

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

Directory (26.25)

The Wisconsin Department of Transportation (the uniform certification program agency) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory is updated quarterly. The Directory is mailed to all prime contractors within the State of Wisconsin. The Directory is also available upon request to Mr. Paul Ndon, Wisconsin Department of Transportation, Civil Rights and Compliance Section; Paul.Ndon@dot.wi.gov. The Directory is also available on the internet at <https://wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

Overconcentration (26.33)

We have not identified that overconcentration exists in the types of work that DBEs perform.

Business Development Programs (26.35)

Not applicable.

Required Contract Clauses (26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every USDOT-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 USDOT 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.

(Note -This language is to be used verbatim, as it is stated in 26.13(b).)

Prompt Payment

We will include the following clause in each USDOT-assisted prime contract: The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the Recipient. In addition, the Contractor may not hold retainage from its Subcontractors or must return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the Recipient and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.

Monitoring and Enforcement Mechanisms (26.37)

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT 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)

Amount of goal

The City's overall DBE goal for FY 2023 - 2025 is the following: 1.25% of the Federal financial assistance we will expend in USDOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

Method

The following is a summary of the method we used to calculate this goal: (See Methodology Report).

Transit Vehicle Manufacturers [TVM] (26.49)

Prior to award of a vehicle contract, the City reviews the Eligible TVM List found at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list> to ensure that the TVM has an approved DBE program/goal. The City also notifies the FTA of the TVM purchase within 30 days of the contract award.

Process

The City will submit its overall DBE goal to the USDOT on a triennial basis.

Before establishing the overall goal each year, the City will consult with vendors, DBE organizations, minority chambers of commerce, and others 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.

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 during normal business hours at our office for 30 days following the date of the notice, and informing the public that the City and the USDOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. The notice shall be published in *transit trade publications*, minority newspapers, and on the transit system's website. There also will be a direct mailing to vendors.

Our overall goal submission to USDOT 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 USDOT [or, if the goal is established on a project basis, by the time of the first solicitation for a USDOT-assisted contract for the project.

Breakout 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 uses the following race-neutral means to increase DBE participation: [See Methodology Report].

We estimate that, in meeting our overall goal of 1.25%, we will obtain 1.25% from race-neutral participation and 0.0% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: [See *Methodology Report*].

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

Race Neutral Measures

The City will use the following Race-Neutral measures with the goal to achieve or exceed its DBE goal: Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, provide applicable and reasonable technical assistance and other services; carry 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).

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.

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

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

Good Faith Efforts (26.53)

Information to be submitted

The City treats bidder/offers' compliance with good faith efforts 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 at the time of contract award:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform
3. The dollar amount of the participation of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

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

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

Within five calendar days of being informed by the City 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: Chairman, Waukesha Transit Commission, 2311 Badger Drive, Waukesha, WI 53188-5932 or via e-mail at transit@waukesha-wi.gov. 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 or virtually 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 49 CFR 26.55.

Certification (26.61 - 26.91)

WISDOT 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 USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. WISDOT will make certification decisions based on the facts as a whole.

Process

WISDOT certification application form and documentation requirements can be obtained from WISDOT address listed above.

For information about the certification process or to apply for certification, firms should contact WISDOT. In the event WISDOT proposes to remove a DBE's certification, it will follow procedures consistent with 26.87. Decertification procedures are set forth in the WISDOT DBE Compliance Plan.

Unified Certification Program

The City participates in a statewide uniform certification plan administered by the Wisconsin Department of Transportation.

Certification Appeals

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

Departmental Office of Civil Rights
External Policy & Program Development Division
400 7th Street SW – Room 5414
Washington, DC 20590

We will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for our USDOT-assisted contracting.

"Recertifications"

Does not apply: Done by WISDOT.

"No Change" Affidavits and Notices of Change

WISDOT requires all DBEs to inform them, in a written affidavit, 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 a DBE's application for certification.

WISDOT also requires all owners of all DBEs they have 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 the following:

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 [Name Recipient] 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.

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

WISDOT will notify all currently certified DBE firms of these obligations annually. This notification will inform DBEs that to submit the "no change" affidavit, 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 he or she, 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

WISDOT will require all disadvantaged owners of applicants and of currently-certified DBEs whose eligibility under part 26 they review, to submit a statement of personal net worth as part of the application.

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 name, address, DBE/non-DBE status, age, and annual gross receipts of DBE firms.

We will collect this information in the following ways: We currently maintain a bidders list with all the required data. For subcontractors, we will require prime contractors to supply the necessary data.

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 City or USDOT. 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 USDOT

We will report DBE participation to USDOT as follows:

We will report DBE participation on a semi-annual basis, using the USDOT Uniform Report of DBE Awards/Commitments and Payments. These reports will reflect payments actually made to DBEs on USDOT 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 (Wisconsin Open Records Law will apply). 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 USDOT) without the written consent of the submitter.

Fostering Small Business Participation (Section 26.39)

The City will structure contracting requirements to facilitate race neutral competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. The Waukesha Transit Commission is a small agency and many of its contracting opportunities tend to be of a size that small businesses can reasonably perform. A review of

existing contracting opportunities shows that the majority are currently performed by small businesses according to the size standards established by the U.S. Small Business Administration.

On an annual basis, the City will review its contracting activities for small business participation and make necessary adjustments to its contracting procedures to foster reasonable levels of small business participation.