

NOTICE OF PROPOSED GUIDANCE DOCUMENT

DTIM BTLRRH 66

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 66, 49 CFR Part 26, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBTLRRH66>

2. Mailing written comments to:

Division of Transportation Investment Management
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7913
Madison, WI 53707- 7913

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsindot.gov to allow for ongoing comment.

AGENCY CONTACT

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DBE Requirements:



WAIT, THERE'S MORE?

DBE Basics

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- **Disadvantaged Business Enterprise (DBE) provisions apply to USDOT (including FTA) assisted contracts**
- **FTA planning, capital, and/or operating assistance spent on contracts**
- **WisDOT Transit DBE program addresses FTA funded contracting activities by WisDOT and subrecipients**

What is a Contract?

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- **Contract – A mutually binding legal relationship obligating a seller to furnish supplies or services (including construction) and the buyer to pay for them.**
- **Contracts include a subrecipient’s contract with a vendor or contractor, including procurement by purchase order or purchase by credit card, which is financed with FTA assistance.**
- **Contracts do not include grants and cooperative agreements.**

DBE Objectives

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- **Ensure nondiscrimination in the award and administration of DOT-assisted contracts**
- **Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts**
- **Help remove barriers to the participation of DBEs in DOT-assisted contracts**
- **Promote use of DBEs in all types of DOT-assisted contracts and procurement activities**

Goals and Goal Setting

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- Overall Transit DBE goal established every three years
- Goal of 1.10% effective October 1, 2016
- Race Neutral/Race Conscious goal = 0%
- Contract specific goals established as needed to assist in attaining overall goal

Contract Goals

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- **Upcoming contracts reviewed for suitability of a contract goal**
 - Does the contract have subcontracting opportunities?
 - Are there ready, willing, and able DBE firms?
 - Has the overall DBE goal been met?
- **Contract or Discretionary goal established**

Extra Effort on Contract Goals

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- Applies only when contract specific goal is established
- Bidders to achieve contract goal, or
- Demonstrate Good Faith Efforts to achieve goal
- Once contract is signed, goal now becomes a contract commitment

Contract Solicitation

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- **Standard DBE Contract Clauses**
 - Included in all WisDOT and subrecipient solicitations
 - A total of 5 items covered in the clauses
 - Clauses vary depending on whether a contract specific goal is established for the procurement
 - The **Procurement Manager** will provide the correct set of clauses

Closer Look at Contract Clauses

- Notice of DBE requirement and statement of goal

With a Contract Specific Goal	<u>Without</u> a Contract Specific Goal
<p>This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, <i>Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs</i>. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is 1.10%. A separate contract goal of ___% DBE participation has been established for this procurement.</p>	<p>This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, <i>Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs</i>. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is 1.10%. A separate contract goal has not been established for this procurement.</p>

Closer Look at Contract Clauses

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- **Contract Assurance**

With or Without a Contract Specific Goal

The contractor 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 this DOT-assisted contract. 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, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying the contractor from future bidding as non-responsive.

Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

Closer Look at Contract Clauses

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• DBE Participation

With a Contract Specific Goal	Without a Contract Specific Goal
<p>Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following prior to award:</p> <ul style="list-style-type: none">•The names and addresses of DBE firms that will participate in this contract;•A description of the work each DBE will perform;•The dollar amount of the participation of each DBE firm participating;•Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;•Written documentation 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 to do so. <p>Bidders/Offerors must present the information required above prior to contract award (see 49 CFR 26.53(3)).</p>	<p>The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.</p>

Closer Look at Contract Clauses

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- **Prompt Payment**

With or Without a Contract Specific Goal

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 10 calendar days after the contractor's receipt of payment for that work from the **{insert agency name}**.

In addition, the contractor is required to return any retainage payments to those subcontractors within 10 calendar days after the subcontractor's work related to this contract is satisfactorily completed.

Closer Look at Contract Clauses

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- DBE Subcontractors

With or Without a Contract Specific Goal

The contractor must promptly notify **{insert agency name}** and **WisDOT** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work.

The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **{insert agency name}** and **WisDOT**.

Additional DBE Provisions

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- **Transit Vehicle Manufacturer Certification**
 - Separate DBE program for TVM
 - TVM definition
 - Process, Contract clause, Certification
- **Bidders List**
 - Comprehensive list of vendors bidding on Transit contracts
 - Used in goal setting

Procurement Process

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- Contract solicitation initiated with the WisDOT **Procurement Manager**
- **Procurement Manager** ensures current DBE contract language included in solicitation documents
- No contract awards proceed without **Procurement Manager** signoff

Contract Monitoring

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- **DBE subcontracts**
 - Progress toward goal
- **Prompt payment to subcontractors**
 - Log of payments

Expectations

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- **Subrecipients**
 - Submit Quarterly Contract Reports on time
 - Initiate contract solicitations with **Procurement Manager** with ample time to address requirements
 - Coordinate with WisDOT staff when separate contract goal is established
 - Attend to record keeping on an ongoing basis
 - Seek assistance from WisDOT staff with DBE questions

Expectations continued

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- **WisDOT**
 - **Program Managers** collect and compile Quarterly Contract Reports
 - **Procurement Manager** assists in completing procurement process through contract award
 - **DBE Compliance Manager** handles goal setting, reporting to FTA, and contract boiler-plate language

Contact Information

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Comments and Questions?

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