

**DULUTH TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
CY 2016-2018 PROGRAM**

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**DULUTH TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

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## 1.0 DULUTH TRANSIT AUTHORITY DBE POLICY

### Policy Statement and Objectives, 49 CFR 26.1, 26.23

The Duluth Transit Authority established a Small and Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (FTA) 49 CFR Part 26. The Duluth Transit Authority has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Duluth Transit Authority has signed an assurance that it will comply with 49 CFR Part 26. The Duluth Transit Authority also supports and encourages participation of Veteran-owned concerns (including Service Disabled Veteran-owned concerns) in procurement actions.

To ensure that Small and Disadvantaged Business Enterprises (and Veteran-owned concerns, where applicable) have an equal opportunity to receive and participate in procurement actions, it is the Duluth Transit Authority's policy:

- a. To ensure nondiscrimination in the award and administration of FTA-assisted contracts;
- b. To create a level playing field on which Small and Disadvantaged Business Enterprises can compete fairly for FTA-assisted contracts;
- c. To ensure that the Small and Disadvantaged Business Enterprises programs are narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in FTA-assisted projects as Small and Disadvantaged Business Enterprises;
- e. To help remove barriers to the participation of Small and Disadvantaged Business Enterprises in FTA-assisted projects;
- f. To cooperate with and assist those private, nonprofit, and publically funded agencies that assist Small and Disadvantaged Business Enterprises, and Veteran-owned businesses to compete successfully in the marketplace outside the Small and Disadvantaged Business programs.

The Duluth Transit Authority's Director of Finance has been delegated as the Disadvantaged Business Enterprise Liaison Officer, and in that capacity, is responsible for implementing the Disadvantaged Business Enterprise program.

Implementation of the Disadvantaged Business Enterprise program is accorded the same priority as compliance with all other legal obligations incurred by the Duluth Transit Authority in its assistance agreements with the United States Department of Transportation.

The Duluth Transit Authority's Disadvantaged Business Enterprise policy may be obtained by calling 218-623-4317 or via email at [cmontgomery@duluthtransit.com](mailto:cmontgomery@duluthtransit.com).

The Duluth Transit Authority has disseminated this policy statement to the Duluth Transit Authority's Board of Directors and all of the components of our organization. It is incorporated into the Duluth Transit Authority's policies and procedures, and is continuously available for public viewing on the Duluth Transit Authority website. We have distributed this statement to Disadvantaged Business Enterprises and Non-Disadvantaged Business communities that perform work for us on FTA assisted contracts, to the Duluth Builder's Exchange, to the University of Minnesota Duluth Center for Economic Development, to the University of Minnesota Duluth Veteran's Resource Center, the St. Louis County Veteran's Service Office, and in a legal notice in the newspaper of record, the Duluth News Tribune.

Signed this 19th day of October, 2015

Dennis Jensen  
General Manager  
Duluth Transit Authority

## 1.2 Objectives

In accordance with 49 CFR Section 26.1, the objectives of the Duluth Transit Authority's DBE program are:

- a. To ensure nondiscrimination in the award and administration of FTA-assisted contracts;
- b. To create a level playing field on which Disadvantaged Business Enterprises can compete fairly for FTA-assisted contracts;
- c. To ensure that the Disadvantaged Business Enterprise programs are narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in FTA-assisted projects as Disadvantaged Business Enterprises;
- e. To help remove barriers to the participation of Disadvantaged Business Enterprises in FTA-assisted projects;
- f. To cooperate with and assist those private, nonprofit, and publically funded agencies that assist Small and Disadvantaged Business Enterprises, and Veteran-owned businesses to compete successfully in the marketplace outside the Small and Disadvantaged Business Enterprise programs.

## 1.3 Applicability

The Duluth Transit Authority is the recipient of federal transit funds authorized by Titles I, III, V and VI of MAP-21, Pub. L. 102-240, or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Pub. L. 105-178.

## 1.4 Non-Discrimination Requirements

The Duluth Transit Authority will never exclude any person from participating 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 Duluth Transit Authority 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.

## 2.0 DULUTH TRANSIT AUTHORITY DBE PROGRAM DEFINITIONS

In accordance with 49 CFR Section 26.5, the following definitions apply to the Duluth Transit Authority's DBE program.

**AFFILIATION** As defined in the Small Business Administration (SBA) regulations, 13 CFR Part 121:

1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
  - a. One concerns controls or has the power to control the other;
  - b. A third party or parties controls or has the power to control both; or
  - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the Small and Disadvantaged Business Enterprise (DBE) program.

**AFFIRMATIVE ACTION** Specific and positive activities undertaken by the Duluth Transit Authority and its contractors to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve small and disadvantaged business enterprises fully in contracts and programs funded by the FTA.

**ALASKA NATIVE** A citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**ALASKA NATIVE CORPORATION** Any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

**APPLICANT** One who submits an application, request, or plan to be approved by a departmental official or by a primary recipient as a condition of eligibility for FTA financial assistance; and application means such an application, request, or plan.

**BIDDER LIST** Pursuant to 49 CFR Section 26.11(c), the Duluth Transit Authority will create and maintain a Bidder List, consisting of information about DBE and non-DBE firms that bid or quote on FTA-assisted projects for the purpose of calculating annual DBE goals.

**COMMERCIALLY USEFUL FUNCTION** Work performed by a DBE firm in a particular transaction that in light of industry practices and other relevant considerations has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the Duluth Transit Authority's judgment, the firm

(even though an eligible DBE business) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

**COMPLIANCE** The condition existing when a recipient or contractor has correctly implemented the requirements of the program.

**CONTRACT** A legally binding relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

**CONTRACTING OPPORTUNITY** Any decision by the Duluth Transit Authority or its contractors to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

**CONTRACTOR** One who participates, through a contract or subcontract (at any tier), in a FTA-assisted highway, transit, or airport program covered by this part; and includes lessees.

**DBE DIRECTORY** The Minnesota Unified Certification Program's list of Certified and Denied Firms is the directory used by the Duluth Transit Authority and its contractors to identify DBE (and Veteran-owned business concerns, when applicable) potential prime and subcontractors and suppliers.

**DBE LIAISON OFFICER** The official designated by the DTA General Manager to have overall responsibility for promotion of DBE participation.

**DEPARTMENT OR FTA** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHA), the Federal Transportation Agency (FTA), and the Federal Aviation Administration (FAA).

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)** A for-profit small business concern:

- ❑ That is at least 51% owned by one or more individuals who are both socially and economically disadvantaged; or in the case of a corporation, in which at least 51% of the stock is owned by one or more such individuals; and
- ❑ Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**FTA-ASSISTED CONTRACT** Any contract or modification of a contract between the Duluth Transit Authority and a contractor (at any tier) that is funded for in whole or in part with FTA financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**FTA/SBA Memorandum of Understanding or MOU**, refers to the agreement signed on November 23, 1999, between the Department of Transportation (FTA) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and FTA's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.



**EQUAL OPPORTUNITY** The requirements of non-discrimination in employment with regard to race, religion, creed, color, national origin, ancestry, physical handicap, medical condition, age, marital status, or sex, and in accordance with Government Code, Section 12490.

**GOAL** The annual percentage of FTA-assisted dollars intended to be awarded to DBEs. The annual overall DBE goal is achieved through a combination of race-neutral and race-conscious measures, including contract-specific goals. Small Business Enterprise goals are reserved for large, mega projects unless required by a grantor. Veteran-owned business concerns are not assigned a goal unless required by a grantor.

**GOOD FAITH EFFORTS** Efforts to achieve a DBE goal or other requirement of the program, which by their scope, intensity, and appropriateness to the objective, can be expected to fulfill the program requirement.

**HOME STATE** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

**IMMEDIATE FAMILY MEMBER** Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**INDIAN TRIBE** Any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in these definitions.

**JOINT DEVELOPMENT** The planning and implementation of an income producing real estate development which is adjacent to or physically related to an existing or proposed public transportation facility (e.g. transit station, Park and Ride, or bus facility).

**JOINT VENTURE** An association of a DBE or Veteran-owned firm and one or more other firms to carry out a single for profit business enterprise, for which the parties contribute their property, capital, efforts, skills, and knowledge, and in which the DBEs or Veteran-owned firms responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital, contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**LESSEE** A business or person that leases, or is negotiating to lease, property from a recipient or the department on the recipient's or department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

**LEVEL PLAYING FIELD** The objective of the FTA and Duluth Transit Authority's DBE program; wherein an environment is created to achieve the level of participation by DBEs that would reasonably be expected in the absence of discrimination.

**MANUFACTURER** A business that operates, or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

**MINNESOTA UNIFIED CERTIFICATION PROGRAM (MnUCP)** The “one stop” certification process for Minnesota-based DBEs. (It also lists those DBEs from other states who are certified in their home state and requests to be included on the MnUCP.) Certification, decertification, renewals and database maintenance is performed by four agencies: the Minnesota Department of Transportation, the Metropolitan Council, the Metropolitan Airports Commission and the City of Minneapolis.

**MINORITY** A person who is a U.S. citizen or lawful permanent resident of the U.S. and who is

- a. “Black American”, which includes persons having origins in any of the black racial groups of Africa.
- b. “Hispanic American”, which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
- c. “Native American”, which includes persons that are American Indians, Eskimos, Aleuts or Native Hawaiians.
- d. “Asian-Pacific American”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas; or
- e. “Asian-Indian American”, which includes persons whose origins are from India, Pakistan, and Bangladesh.

**NATIVE HAWAIIAN** Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**NATIVE HAWAIIAN ORGANIZATION** Any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered under the State of Hawaii is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**NONCOMPLIANCE** The condition existing when a recipient or contractor has not correctly implemented the requirements of the program.

**NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)** The classification code designation which best describes the primary business of a firm. The NAICS code designations are described in the North American Industry Classification Manual.

**OPERATING ADMINISTRATION OR OA** Any of the following parts of the FTA: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

**PRE-BID/PRE-PROPOSAL CONFERENCE** A meeting held by the Duluth Transit Authority, prior to the bid/proposal closing date of a particular project, at which prospective bidders/proposers are advised of Duluth Transit Authority specification requirements, which include DBE provisions.

**PRE-BID/PRE-CONSTRUCTION CONFERENCE** A meeting held by the Duluth Transit Authority after award of contract on a particular construction project, but prior to the beginning

of any work, at which the prime contractor is advised of its federal compliance obligations and any final technical requirements.

**PRIMARY RECIPIENT** A recipient who received FTA financial assistance and passes some or all of this assistance on to another recipient.

**PRINCIPAL PLACE OF BUSINESS** The business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**PROGRAM** Any undertaking by a recipient to use FTA financial assistance, and includes the entire activity any part of which receives FTA financial assistance.

**RACE-CONSCIOUS MEASURE OR PROGRAM** One that is focused specifically on assisting only DBEs, including women-owned DBEs.

**RACE-NEUTRAL MEASURE OR PROGRAM** One that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**RECIPIENT** Any entity, public or private, to which FTA financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**REGULAR DEALER** A firm that owns, operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.

**RELATIVE AVAILABILITY** The percentage of available DBE firms in light of local circumstances and the number of total available firms.

**SECRETARY** The Secretary of Transportation or his/her designee.

**SERVICE DISABLED VETERAN-OWNED SMALL BUSINESS CONCERN** A business verified by the U.S. Veteran's Administration Center for Veteran's Enterprises or the Minnesota Department of Transportation that is not less than 51 percent of which is owned by one or more Service-Disabled Veterans; the management and daily business operations of which are controlled by one or more Service-Disabled Veterans, or in the case of a Veteran with a permanent and severe disability, a spouse or permanent caregiver of such Veteran. For the purposes of this policy, "Veteran-owned Small Business Concern" shall include Service Disabled Veteran-Owned Small Business Concerns.

**SET-ASIDE** A contracting practice restricting eligibility for the competitive award of a contract solely to DBE as may be required.

**SMALL BUSINESS ADMINISTRATION OR SBA** The United States Small Business Administration.

**SMALL BUSINESS CONCERN** (with respect to firms seeking to participate as DBEs in FTA-assisted contracts) A small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

**SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS** (for purposes of FTA-assisted projects) Any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is:

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis;
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**TRANSIT VEHICLE MANUFACTURER** A manufacturer of vehicles used by FTA recipients for the primary program purpose of public mass transportation (e.g. buses, railcars, vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers of locomotives or ferryboats. The term refers to distributors of or dealers in transit vehicles with respect to requirements of 49 CFR Part 23.67 of the regulations.

**TRIBALLY OWNED CONCERN** Any concern that at least 51% owned by an Indian tribe as defined in these definitions.

**U.S. FTA REGULATIONS (49 CFR Part 23 and Part 26)** Federal rules and regulations published in the Federal Register dated March 31, 1980; amended April 27, 1981; July 21,

1983; October 21, 1987; and March 4, 1999; by the Department of Transportation, Office of the Secretary; entitled "Participation by [Minority Business Enterprise] in Department of Transportation Programs" and codified at Title 49, Code of Federal Regulations, Part 23.

**VETERAN-OWNED SMALL BUSINESS CONCERN** A business verified by the U.S. Veteran's Administration Center for Veteran's Enterprises or the Minnesota Department of Transportation that is not less than 51 percent of which is owned by one or more Veterans; the management and daily business operations of which are controlled by one or more Veterans, or in the case of a Veteran with a permanent and severe disability, a spouse or permanent caregiver of such Veteran. For the purposes of this policy, Veteran-Owned Small Business Concerns shall include Service Disabled Veteran-Owned Small Business Concerns.

### **3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION**

1. The DTA General Manager has responsibility for establishing and maintaining a program to promote the Duluth Transit Authority's DBE program. This responsibility will be carried out in conjunction with the DBE Liaison Officer.
2. The Director of Finance of the Duluth Transit Authority has overall responsibility for implementation of the DBE Concerns program, and performs the role of providing policy leadership regarding the involvement of Small and DBEs and Veteran-owned Concerns in the activities of the Duluth Transit Authority.
3. In accordance with 49 CFR Section 26.25, the Duluth Transit Authority has designated its Director of Finance as its DBE Liaison Officer, responsible for implementing all aspects of the DBE program. The DBE Liaison Officer shall have direct and independent access to and direct communication with, the Duluth Transit Authority General Manager concerning DBE program matters.
4. Department directors, division directors and managers of operating departments have responsibility for effectively carrying out this policy within their particular departments. The manager of each program shall work in cooperation with the DBE Liaison Officer for the promotion of DBEs in his or her department. Each department director will include DBE contracting efforts as a factor in regular contract review activities.

#### **3.1 Duties of DBE Liaison Officer**

The responsibilities of the DBE Liaison Officer include:

1. Gathers and reports statistical data and other information as required by the FTA.
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 request 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 attainment) and identifies ways to improve progress.
6. Analyzes the Duluth Transit Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the General Manager and the Duluth Transit Authority Board of Directors on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Acts as a liaison to the Minnesota Uniform Certification Program MnUCP; refers potential DBEs to the appropriate authority for certification or registration, as applicable.
12. Coordinates with the Minnesota DBE certifying agencies on program utilization, obtaining vendor data, training, outreach, vendor reviews, and other actions at the request of the MnUCP certifying agencies.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintaining and updating the Duluth Transit Authority's bidder list as provided for in Section 8.1 of this program.
15. Coordinating development and implementation of policies and procedures for DBE participation on joint development projects with the City of Duluth, Minnesota.

16. Reviewing contractor compliance with alternate dispute resolution requirements for contractors and DBE vendors.
17. Ensuring the placement of legal and public notices of the Duluth Transit Authority's annual DBE goals pursuant to Attachment A of this program.

### **3.2 Responsibilities of Support Personnel**

Duluth Transit Authority personnel from other Departments share the responsibility for ensuring the effective implementation of the DBE program. They shall give their full cooperation and active support to the DBE Liaison and his/her designee(s) in this effort. The following are the support personnel.

- City Attorney
- Director of Finance
- Grants and Planning Manager
- Director of Maintenance
- Accounting
- Procurement Manager
- Duluth Transit Authority Project Managers

#### **3.2.1 City Attorney**

The responsibilities of the Legal-General Counsel in support of the DBE program include:

1. Addressing legal matters relating to DBE program implementation.
2. Rendering legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
3. Advising the DBE Liaison Officer and the Procurement Manager regarding matters dealing with imposition of administrative sanctions against contractors who violate DBE provisions.
4. Representing the Duluth Transit Authority in all litigation matters involving DBE issues.

#### **3.2.2 Director of Finance**

The responsibilities of the Director of Finance DBELO in support of the DBE program include:

1. Ensuring the submittal of data from all departments to assist in the establishment of contract-specific goals.
2. Compiling data to develop the federal funding base for calculation of the annual DBE goals pursuant to Attachment A of this program.
3. Analyze budget proposals, project requests, and projected operational needs for potential DBE participation in future procurements.
4. Allocating appropriate resources (budget and staff) to participate at trade fairs targeted for DBEs.
5. Ensuring that all department staff:
  - a. Receive adequate orientation on DBE policies and procedures.
  - b. Refer all potentially eligible vendors to apply for DBE certification with the MnUCP certifying agencies.
  - c. Utilize the MnUCP's DBE directory to seek potential vendors.
  - d. To the greatest extent possible, solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.

### **3.2.3 Grants and Planning Manager**

The responsibilities of the Grants Manager in support of the DBE program include:

1. Ensuring the submittal of data to the DBE Liaison Officer to assist the establishment of contract-specific goals.
2. Providing the DBE Liaison Officer with copies of grant requirements for DBE participation.
3. Provide the DBE Liaison Officer with a schedule of future capital purchases that may require DBE participation.
4. Allocate appropriate resources to participate at trade fairs targeted for DBEs.

### **3.2.4 Accounting Department**

The responsibilities of the Accounting Department in support of the DBE Program include:

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining the Bidders List of prime and subcontractors in accordance with 49 CFR Section 26.11 and Section 8.1 of this program.
3. Maintaining computerized data on purchase orders and contracts to enable compilation of quarterly FTA and other DBE progress reports.

### **3.2.5 Procurement Manager**

The responsibilities of the Procurement Manager in support of the DBE program include:

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Maintaining Bidders List of prime and subcontractors in accordance with 49 CFR Section 26.11 and Section 8.1 of this program.
3. Ensuring that the project request from the requesting department has been properly routed to the DBE Liaison Officer for determination of contract-specific DBE goals.
4. Providing the DBE Liaison Officer with draft scopes of work for Invitations to Bid (IFBs), Requests for Proposals (RFPs), and Requests for Invitations for Qualifications (RFIQs) to enable goal-setting, outreach and, where applicable, development of appropriate DBE language.
5. Providing the DBE Liaison Officer with copies of all final IFBs, RFPs, RFIQs, purchase orders (POs), mailing lists and advanced notices.
5. Incorporating DBE goals and appropriate DBE contract compliance language into IFBs, RFPs, and RFIQs.
7. Informing the DBE Liaison Officer of any changes to IFBs, RFPs, RFIQs and POs prior to solicitation.
8. Sending IFBs, RFPs, RFIQs and POs to DBEs referred by the DBE Liaison Officer.
9. Placing IFB, RFP, RFIQ, and PO notices in minority, veteran or small business-focused newspapers.
10. Notifying the DBE Liaison Officer of scheduled pre-bid, pre-proposal and pre-construction conferences.
11. Maintaining a computerized bidder's list, noting commodity codes and other data to assist staff in identifying potential DBE vendors and contractors in accordance with Section 8.1 of this program.
12. Ensuring that the DBE Liaison Officer's designee serves on all formal Proposal/Bid Evaluation Teams.



13. Forwarding copies of bids/proposals to the DBE Liaison Officer for evaluation of compliance with DBE vendor requirements.
14. Incorporating analysis prepared by the DBE Liaison Officer concerning bidders' and proposers' conformance with DBE requirements into Duluth Transit Authority executive summaries (business items) for all contracts or procurements with DBE goals.
15. Maintaining computerized data on purchase orders and contracts to enable compilation of quarterly FTA and other DBE progress reports.
16. Allocating appropriate resources (budget and staff) to participate at trade fairs targeted for DBEs.
17. Ensuring that all department staff:
  - a. Receive adequate orientation on DBE policies and procedures.
  - b. Refer all potentially eligible vendors to apply for the MnUCP DBE certification.
  - c. Utilize the MnUCP's DBE business directory to seek potential vendors.
  - d. To the greatest extent possible, solicit quotes from at least one DBE (in commodities or services where DBEs are identified) for informal procurements.
18. Incorporating applicable DBE provisions into contracts.
19. Ensuring that RFPs, RFIs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
20. Facilitating release to DBEs of public documents that provide non-proprietary information on prior winning bids and proposals.

### **3.2.6 Duluth Transit Authority Project Managers**

The responsibilities of Project Managers in support of the DBE program include:

1. Ensuring the timely submittal of data to the DBE Liaison Officer to assist in the establishment of contract-specific goals, and the monitoring of contractors' DBE obligations.
2. Becoming familiar with the Duluth Transit Authority's DBE policies and procedures, including but not limited to, attending orientation sessions conducted by the DBE Liaison Officer and/or Procurement staff concerning contract procurement and administration, and DBE policies and procedures.
3. Providing the Procurement Manager with a complete project request that includes detailed specifications and a list of work that could reasonably be "unbundled" in a manner to maximize the ability of DBEs to favorably compete.
4. Utilizing the MnUCP DBE directory to search for potential DBE vendors.
5. Providing maximum opportunity to DBEs by initiating informal bidding procedures for DBEs to compete for contracts within their respective areas that do not require solicitation of formal, public bids or proposals.
6. Referring all potentially eligible firms to apply for the MnUCP DBE certification.
7. Packaging or "unbundling" individual contracts in a manner to maximize the ability of DBEs to compete favorably and ensuring that RFPs, RFIs, and IFBs do not contain unnecessary requirements that could unduly restrict or eliminate DBEs from competing.
9. Informing the DBE Liaison Officer of the scheduled pre-construction conference.
10. Informing the DBE Liaison Officer of any potential problems concerning DBE utilization during contract administration.

## **4.0 ADMINISTRATIVE REQUIREMENTS**

#### **4.1 Financial Institutions**

In accordance with 49 CFR Section 26.27, the Duluth Transit Authority is committed to investigating the full extent of services offered by, and making reasonable efforts to use, financial institutions owned and controlled by socially and economically disadvantaged individuals in our community, and to encourage prime contractors on FTA-assisted contracts to make use of these institutions. The Duluth Transit Authority has searched the United States Department of the Treasury Minority Bank Deposit Program for eligible financial institutions. To date we have identified the following institutions:

#### **None**

Information on the availability of such institutions can be obtained by electronically at [www.fms.treas.gov/mbdp](http://www.fms.treas.gov/mbdp), or from the Duluth Transit Authority DBE Liaison Officer.

#### **4.2 Overconcentration**

The Duluth Transit Authority has not identified that overconcentration exists in the types of work that DBEs may perform.

#### **4.3 Business Development Program**

The Duluth Transit Authority supports business development programs through the University of Minnesota Duluth Center for Economic Development, and/or the University of Wisconsin Small Business Development Center, communicates to these agencies the DBE policy statement and upcoming opportunities for DBE, and Veteran-owned Small Business Concerns, and participates in outreach efforts to raise awareness among the respective agency's clients regarding the Duluth Transit Authority's DBE program.

#### **4.4 Preferential Consideration**

The Duluth Transit Authority will not use geographic preference in considering or awarding FTA-funded projects, regardless of a DBE designation.

### **5.0 DETERMINING, COUNTING AND MEETING OVERALL ANNUAL DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS**

#### **5.1 Goals**

The Duluth Transit Authority's Goal Setting Methodology to calculate the overall goal and the goal calculations can be found in Attachment A of this program. This section of the program will be updated every three years or as directed by the Federal Transit Administration.

#### **5.2 Transit Vehicle Manufacturers (TVMs) Participation and Certification**

In accordance with 49 CFR Section 26.45, the Duluth Transit Authority requires that each transit vehicle manufacturer (TVM) certify, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, that it has complied with the requirements of this section. FTA assistance used in transit vehicle procurements will not be included in the base amount from which the annual overall goal is calculated.

#### **5.3 Race-Neutral Measures**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment B of this program. This section of the program will be updated when the goal calculation is updated.

#### **5.4 Contract Goals**

The Duluth Transit Authority may use contract goals to meet any portion of the overall goal that the Duluth Transit Authority does not project being able to meet using race-neutral means, when permitted by law. 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 may establish contract goals only on those FTA-assisted contracts that have subcontracting opportunities. We need not establish a contract goal on every such contract, and the size of the 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, etc.)

We will express our contract goals as a percentage of the total amount of the FTA-assisted contract.

In order to achieve the percentage of the annual overall DBE goal not attainable by race-neutral means, the Duluth Transit Authority will set contract-specific goals as follows:

1. The DBE Liaison Officer will receive from the requesting department a detailed request for each purchase requisition over \$25,000.
2. The DBE Liaison Officer will consult with the requester to determine the level and type of subcontracting opportunities for goal setting.
3. The DBE Liaison Officer will conduct an in-depth analysis of the DBE availability within the identified contract.
4. The DBE Liaison Officer will recommend the contract-specific goal to the Procurement Manager and the requestor, for incorporation into the appropriate solicitation documents.

#### **5.5 Good Faith Efforts**

In accordance with 49 CFR Section 26.53 and Appendix A thereto, the following guidelines will apply to good faith efforts.

1. For all contracts where goals are set, regardless of contract size, prime contractors will be required to propose the participation of specific DBEs to either (a) meet the goal; or (b) demonstrate good faith efforts to meet the goal in their bid or proposal.
2. In “design-build” or “turnkey” contracting situations where the Duluth Transit Authority lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, the Duluth Transit Authority will set a goal for the project. The master contractor then must establish contract-specific goals, as appropriate, for all subcontracts it lets. The Duluth Transit Authority will monitor the master contractor’s activities to ensure that they are consistent with the requirements of the program.
3. Bidders must submit with their bids/proposals, written confirmation of their commitment to use DBE subcontractor(s), whose participation it submits to meet a contract-specific goal, and identify all DBEs proposed to participate in the contract, regardless of their percent of participation. The list of proposed DBEs will include:
  - a. A description of how DBE firms will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation in the contract as a prime contractor, joint venture partner, subcontractor, trucker, or supplier.
  - b. The name and address of each DBE prime contractor, joint venture partner, subcontractor, trucker or supplier that the bidder intends to credit toward the DBE goal. The complete legal business name as used for DBE certification shall be identified on the form.

- c. A description of the work to be performed or materials to be supplied by each DBE.
  - d. The estimated dollar value of each DBE's participation in the contract.
  - e. The estimated percent of the total bid for each DBE. The percentage allocated for each DBE business must be in accordance with the provisions for performing a commercially useful function, as required by 49 CFR Section 26.55, and described in Attachment C of this program.
4. All bidders must submit in their bid/proposal written confirmation from the DBE(s) participating in the contract as provided in the prime contractor's commitment.
  5. If the list of proposed DBEs does not demonstrate meeting the contract-specific goal, bidders must complete and submit a Good Faith Efforts Summary form (Attachment D) with the bid/proposal.
  6. The DBE Liaison Officer will determine whether a contractor made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR Section 26.53, and Appendix A thereto. The bidder must show that they took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following types of activities:
    - a. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
    - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, unbundling or breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
    - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
    - d. Negotiating in good faith with interested DBE businesses. The bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE firms that were considered; a description of information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE firms to perform the work.
    - e. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of

the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE firms if the price difference is excessive or unreasonable.

- f. Not rejecting DBE firms as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
  - g. Making efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
  - h. Making efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials or related assistance or services.
  - i. Effectively using the services of available minority/women, small business or veteran's community organizations; minority/women, small business or veteran's contractors' groups; local, state and Federal offices of minority/women, small business or veteran business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE firms.
  - j. The performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, the Duluth Transit Authority may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the Duluth Transit Authority may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.
7. Any of the following conditions will constitute failure to meet the goal:
- a. The total percentage participation by DBE firms reflected on the list of proposed DBEs is less than the DBE goal set forth in the procurement.
  - b. Firms on the list of proposed DBEs whose participation are being credited toward meeting the DBE goal, but are not certified by the MnUCP as DBEs as of the execution of the contract.

## **5.6 Administrative Reconsideration**

1. In accordance with the reconsideration process pursuant to 49 CFR Section 26.53, and this program, the Duluth Transit Authority will, when appropriate, appoint a person to serve as its reconsideration official. 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.
2. The reconsideration official is Dennis E. Jensen, DTA General Manager.  
Mr. Jensen is:
  - a. Familiar with the Duluth Transit Authority's DBE program and its requirements; and
  - b. Does not have any involvement in any decisions that a bidder's good faith efforts were inadequate for which they are serving as reconsideration official.
3. Within fifteen (15) days of being informed by the Duluth Transit Authority 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:

Dennis E. Jensen, General Manager  
 Duluth Transit Authority  
 2406 West Michigan Street  
 Duluth, MN 55806  
 218-722-4426  
[djensen@duluthtransit.com](mailto:djensen@duluthtransit.com)

4. 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 so. The reconsideration official 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.
5. If the Duluth Transit Authority determines that the apparent successful bidder has failed to meet the Good Faith Efforts requirements of this program, it will, before contract award, provide the bidder an opportunity for administrative reconsideration. The bidder will have the opportunity to:
  - a. Provide a written documentation or argument concerning the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
  - b. Meet in person with the Duluth Transit Authority or its reconsideration official (as required) to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so.
6. The Duluth Transit Authority will send the bidder a written decision on its reconsideration, explaining the basis of whether it met the goal or made adequate good faith efforts to do so.
7. In accordance with 49 CFR Section 26.53, the result of the Duluth Transit Authority's reconsideration process is not subject to administrative appeal to the Department of Transportation.

### **5.7 Good Faith Efforts when a DBE is Replaced on a Contract**

1. The Duluth Transit Authority requires that prime contractors not terminate for convenience a DBE subcontractor listed on the list of proposed DBE firms (or an approved substitute DBE) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent of the Duluth Transit Authority's DBE Liaison Officer.
2. If a DBE subcontractor is terminated or fails to complete its work on a contract for any reason, the prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract-specific goal.
3. These good faith efforts requirements also apply to DBE bidders/proposers for prime contracts. The work proposed to be performed with its own work force as well as work

committed to DBE subcontractors and suppliers will count toward the contract-specific goal.

### **5.8 Counting DBE Participation**

The Duluth Transit Authority will count DBE participation toward overall contract goal as provided in 49 CFR 26.55 and Attachment C of this program.

### **5.9 Quotas, Set-Asides and Penalties**

1. Pursuant to 49 CFR Section 26.43, the Duluth Transit Authority will utilize the following guidelines for use of quotas and set-asides:
  - a. The Duluth Transit Authority will not use quotas for DBEs on FTA-assisted contracts subject to the regulations of 49 CFR Part 26.
  - b. The Duluth Transit Authority has the discretion to use set-aside contracts only in limited and extreme circumstances, when no other method could be reasonably expected to redress egregious instances of discrimination.
2. In accordance with 49 CFR Section 26.47, the Duluth Transit Authority will not be penalized or be held in non-compliance with the regulations because DBE participation falls short of its overall goal, unless the Duluth Transit Authority has failed to administer its program in good faith.
3. If the Duluth Transit Authority does not have an approved DBE program or overall goal, or if it fails to implement its program in good faith, it will be considered to be in non-compliance with the regulations.

## 6.0 REQUIRED CONTRACT PROVISIONS

### 6.1 Assurances

1. In accordance with 49 CFR Section 26.13, each financial assistance agreement that the Duluth Transit Authority signs with a FTA operating administration (or a primary recipient) must include the following assurance:

“The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA-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 FTA-assisted contracts. The recipient’s DBE program, as required under 49 CFR Part 26 and as approved by FTA, 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 recipient of its failure to carry out its approved program, the Department may impose sanctions as provided 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.*)”

2. In accordance with 49 CFR Section 26.13, each contract the Duluth Transit Authority signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

“The contractor, sub recipient 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 FTA-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.”

### 6.2 Alternative Dispute Resolution

1. The Duluth Transit Authority requires prime contractors to employ alternative dispute resolution methods for disputes between prime contractors and DBE subcontractors.
2. Prime contractors must notify the Procurement Manager of any disputes that may involve withholding payment to a DBE subcontractor, and may not withhold payment to a DBE subcontractor without the express written consent of the Duluth Transit Authority DBE Liaison Officer. Any delay or postponement of payment among the parties may take place only for good cause.

### 6.3 Prompt Payment, Joint Checks

1. In accordance with 49 CFR Section 26.29, and Minnesota § 337.10 (3), the Duluth Transit Authority has established a contract clause requiring prime contractors to pay subcontractors for satisfactory performance of their contracts no later than ten (10) days from receipt of each payment that the Duluth Transit Authority makes to the prime contractor. This clause requires the return of retainage payments from the prime contractor to the subcontractor within ten (10) days after the contractor receives payment from the Duluth Transit Authority for work fully completed by the subcontractor. This



clause also provides for appropriate penalties for failure to comply, in accordance with terms and conditions set by the Duluth Transit Authority.

2. The Duluth Transit Authority has also established as part of its DBE program, the following additional mechanisms to ensure prompt payment:
  - a. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors of any tier will use appropriate alternative dispute resolution mechanisms to resolve payment disputes as referred to in this program.
  - b. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed, including retainage held after the subcontractor's work is completed.
5. The Duluth Transit Authority may, consistent with the regulations and applicable state and local law, implement other mechanisms at its discretion, to ensure that DBEs and other contractors are fully and promptly paid.
6. Prime contractors and/or subcontractors who wish to use joint check arrangements with subcontractors, including DBEs must obtain prior approval from the Duluth Transit Authority.
7. Prime contractors and/or subcontractors using joint check arrangements must have a written agreement containing all information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs.
8. Payments to a DBE subcontractor or supplier made by a prime contractor, subcontractor or DBE in the form of a cashier's check, bank check or other alternate payment form (including cash) must be reviewed and approved by the Duluth Transit Authority prior to payment.
9. Prime contractors and/or subcontractors utilizing joint checks must make the ability to use joint checks available to all subcontractors, (DBEs and non DBEs.)
10. In order to facilitate the independence of the subcontractor, the use of joint checks should be limited to procurement of specific materials and not a long-term, open-ended arrangement.
11. Joint checks issued by the prime contractor and/or subcontractor must be delivered or mailed to the DBE for presentment and payment to the DBE's suppliers or subcontractors. Prime contractors or non-DBE contractors should not make payment directly to the supplier or subcontractor.
12. The Duluth Transit Authority reserves the right to reject requests for joint check arrangements at any time, and/or to cancel such arrangements as it deems necessary.

#### **6.4 Monitoring Payments to DBEs**

1. In accordance with the requirements of this Section, the Duluth Transit Authority will require all prime contractors to submit on a monthly basis, evidence of actual payments to each DBE listed on the contract.
2. This evidence shall take the form of the Summary Subcontracts Award and Paid Report.
3. The Duluth Transit Authority will review and monitor the amount actually paid to each DBE and non-DBE in accordance with the requirements of this Section.

#### **6.5 Legal and Contract Remedies**

1. In accordance with 49 CFR Section 26.37, the Duluth Transit Authority will implement appropriate mechanisms to ensure compliance by all participants with program requirements, including that DBE commitments are actually performed by DBEs. This monitoring includes the review of monthly Summary of Subcontract Awards and Paid

Report (Exhibit C), and a provision that DBE participation is counted toward overall or contract goals only when payments are actually made to DBEs. The Duluth Transit Authority will apply all legal and contract remedies available under Federal, state, and local law as described in this program.

2. The contract compliance function of Procurement Manager will include monitoring the contractor's and subcontractor's compliance with the DBE program.
3. Non-compliance by the contractor with the requirements of the DBE regulations constitute a breach of contract and may result in termination of the contract, liquidated damages or other appropriate remedy as set forth in Section 6.5.1 of this program.
4. Prior to execution of all contracts containing DBE goals, the prime contractor will be directed to the contract specification for the Duluth Transit Authority's specific DBE reporting and record keeping requirements, as described in Section 6.6 of this program.

#### **6.5.1 Administrative Sanctions**

1. All contractors deemed to be in non-compliance will be informed in writing, by certified mail, by the DBELO that sanctions shall be imposed for failure to meet DBE utilization goals and/or submit documentation of good faith efforts. The Contractor will be given five (5) working days from the date of the notice to file a written appeal to the Duluth Transit Authority General Manager. Failure to respond within the five (5) day period shall constitute a waiver of appeal. The notice will state the specific sanction to be imposed.
2. The Duluth Transit Authority General Manager or designee, at his or her sole discretion, may schedule a hearing to gather additional facts and evidence and shall issue a final determination on the matter within five (5) working days of receipt of the written appeal. There shall be no right of further appeal to the Duluth Transit Authority.
3. Sanctions may include, but not be limited to:
  - a. Liquidated damages;
  - b. Suspension of payment to the contractor of any monies held by Duluth Transit Authority as retained on the contract;
  - c. The denial to the contractor (including its principal and key personnel) of the right to participate in future contracts of the Duluth Transit Authority for a period of up to three years; and
  - d. Contract termination.
  - e. The DBE Liaison Officer will recommend which sanction to apply.

#### **6.6 Contractor Reporting Requirements**

1. During the term of the contract, the contractor will continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform in the contract, and that the contractor meets its DBE goal. These efforts shall include but not be limited to the following:
  - a. Negotiating in good faith to attempt to finalize a subcontract agreement with DBEs committed to prior to contract award;
  - b. Continuing to provide assistance to DBE subcontractors or suppliers in obtaining bonding, lines of credit, etc., if required by the contract;
  - c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Duluth Transit Authority approval to substitute the DBE;
  - d. As with all subcontractors, timely payment of all monies due and owing to DBE subcontractors and suppliers;
  - e. Timely submittal of complete and accurate DBE reports in accordance with paragraph 3 below; and

- f. Informing the Duluth Transit Authority's Procurement Manager in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the bid.
2. If a contractor requests a substitution of DBE subcontractors or suppliers, the contractor must exert good faith efforts to replace a DBE subcontractor with another DBE subcontractor subject to the approval of Duluth Transit Authority.
3. The contractor will submit monthly progress reports to the Duluth Transit Authority, in conformance with the currently approved schedule, reflecting its DBE participation. A Summary Subcontracts Award and Paid Report (Exhibit C) shall be submitted to comply with this reporting requirement. Failure to submit this report in a timely manner will result in the imposition of administrative sanctions pursuant to Duluth Transit Authority's DBE policy and FTA regulations.
4. The Procurement Manager will review the contractor's monthly progress reports to monitor and determine whether the utilization of DBEs is consistent with the commitment of the contractor as stated in its bid or proposal.
5. If it is determined that the contractor's DBE utilization during performance of the contract is not consistent with the commitment thereto, the contractor will be requested, in writing, to submit evidence of its good faith efforts to meet the commitment. The contractor shall be given ten (10) working days to submit this documentation. Failure to respond shall place the contractor in non-compliance, subject to sanctions as provided in the section on Administrative Sanctions.
6. The contractor's good faith effort documentation will then be reviewed for accuracy, sufficiency and internal consistency. The Procurement Manager shall make a determination as to the adequacy of the contractor's good faith efforts documentation and so inform the contractor. If it is determined that the contractor's good faith efforts documentation is acceptable, the contractor will be deemed to be in compliance with the DBE utilization goals. If it is determined that the contractor's good faith efforts documentation is not acceptable, the contractor will be notified and be deemed to be in non-compliance with the DBE utilization goals.
7. The dollar amount of Change Orders or any other contract modifications that increase or decrease the work area in which DBE participation has been committed to in the bid, will be commensurately added to or subtracted from the total contract base figure used to compute actual dollars paid to DBE businesses. Revised total contract dollar values shall be reflected in the monthly progress report submitted to Duluth Transit Authority and referenced above.
8. Failure to carry out these requirements constitutes a breach of contract and, and after notification to the U.S. Department of Transportation, may result in termination of the contract by Duluth Transit Authority or imposition of other appropriate sanctions. This notice is given pursuant to 49 CFR Section 23.43(c). For purposes of this section, timely submittal means received in the contract compliance function of the Procurement Manager by the close of business on the fifteenth (15th) of the following month.

## **7.0 UNIFIED CERTIFICATION PROGRAM (SUBPART E)**

### **7.1 Unified Certification Program**

Federal Regulation, 49 CFR, Part 26, Subpart E, Section 26.81 states that each state must implement a “one stop” certification process for Disadvantaged Business Enterprises (DBEs). Each entity receiving Department of Transportation (FTA) funds is required to enter into and sign an agreement establishing and supporting a Unified Certification Program (UCP) within the state.

In response to this mandate, four agencies perform the certification of DBEs within the state of Minnesota under the Minnesota Unified Certification Program (MnUCP); the Minnesota Department of Transportation, the Metropolitan Council, the Metropolitan Airports Commission and the City of Minneapolis. The Duluth Transit Authority has signed an agreement supporting the Minnesota Unified Certification Program (MnUCP), that it will abide by MnUCP designations, and will assist with supporting the program through cooperation and actions made at the request of the certifying agencies.

1. The MnUCP makes all certification decisions on behalf of all FTA recipients in Minnesota with respect to participation in the FTA DBE Program. Specifically:
  - a. Certification decisions by the MnUCP are binding on all FTA recipients within the state.
  - b. The MnUCP provides “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
  - c. The MnUCP carries out all obligations of recipients with respect to certification and nondiscrimination, and recipients may use only MnUCPs that comply with the certification and nondiscrimination requirements of this part.
2. All certifications by the MnUCP shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
3. The Minnesota UCP maintains the unified DBE directory containing, for all firms certified by the MnUCP (including those from other states certified under the provisions of this section), the information required by 49 CFR Part 26.31.
4. The MnUCP directory is available to the public electronically, on the Internet, and in print format; the electronic version of the directory is updated by the MnUCP certifying agencies, and includes additions, deletions and other changes as soon as they are made. The directory is available at [www.FTA.state.mn.us/civilrights.dbedirectory](http://www.FTA.state.mn.us/civilrights.dbedirectory) or via a link at the Duluth Transit Authority website, [www.duluthtransit.com](http://www.duluthtransit.com). Print copies may be obtained by calling the Duluth Transit Authority Procurement Manager at 218-623-4329.
5. In addition, the DTA may accept those certifications from other private or public agencies tasked with identifying and assisting Small and Disadvantaged Business Enterprises can compete fairly for FTA-assisted contracts in accordance with 49 CFR Part 26.

### **7.2 Small Business Administration (SBA) 8(a) and SDB Firms**

1. 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 8(a) or SDB certification based on the firm’s self-certification), the Duluth Transit Authority will accept the firm’s 8(a) or SDB certification in lieu of the MnUCP registration.

The Duluth Transit Authority may, at its discretion, accept the certification of another FTA recipient for this purpose.

2. The Duluth Transit Authority's Disadvantaged Business Enterprise program includes contracting requirements to facilitate 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.
3. Requirements may include, but are not limited to:
  - a. Establishing a race-neutral small business set-aside for prime contracts where appropriate and approved by the Federal Transit Agency.
  - b. In multi-year design-build contracts or other large contracts (e.g. for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
  - c. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
  - d. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
  - e. To meet the portion of the Duluth Transit Authority's overall small business participation goal through race-neutral measures, the Duluth Transit Authority will ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
4. The Duluth Transit Authority will not limit the number of contracts awarded to small business concerns.
5. Those minority and women-owned firms that are eligible for DBE certification under the MnUCP program will be actively encouraged to become certified through the SBA or other certifying organization.
6. Those certified DBEs that meet the size criteria established under CFR Part 26 are presumptively eligible to participate in contracts as a small business.
7. Every effort will be made to avoid creating barriers to the use of new, emerging or untried businesses.
8. The Duluth Transit Authority will encourage competition between small business concerns to the greatest extent possible.
9. The Duluth Transit Authority will accept small business concerns regardless of their location; no local or geographic preference will be used.
10. Where permitted by law, the Duluth Transit Authority may award a preference to small business concerns in the form of a preference of up to six percent (6%) in the amount bid for specified construction work to small business concerns, or that percentage of bid preference provided to any disadvantaged business group in the project. The preference will be applied only for the purposes of evaluating proposals, and will not be used to determine the contract award amount or payment due to the contractor under the contract.

### **7.3 Veteran-owned Small Business Concerns, and Service-Disabled Veteran-owned Small Business Concerns**

1. The Duluth Transit Authority may award a preference in the amount bid for specified construction work to veteran-owned small businesses, on those projects funded exclusively by state or local funds, unless prohibited by the federal government.
2. The purpose of the bid preference for veteran-owned small business concerns is in accordance with Minnesota Statutes §161.321 subdivision (9).
3. If a firm applying for certification has a current, valid certification from or is recognized by MnFTA or the United States Department of Veteran's Affairs Center for Veteran's Enterprise (CVE) (except a CVE certification based on the firm's self-certification as a Veteran-owned Small Business Concern or Service-Disabled Veteran-owned Small Business Concern), the Duluth Transit Authority will accept the certification in lieu of the MnUCP registration. The Duluth Transit Authority may, at its discretion, accept the certification of another FTA recipient for this purpose.
4. The Duluth Transit Authority's Small and Disadvantaged Business Enterprise and Veteran-owned Business program may include contracting requirements to facilitate competition by veteran-owned small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude veteran-owned small business participation in procurements as prime contractors or subcontractors.
5. Requirements may include, but are not limited to:
  - a. In multi-year design-build contracts or other large contracts (e.g. for "megaprojects") funded solely by state or local funds unless otherwise required by the federal government, requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including veteran-owned small business concerns, can reasonably perform.
  - b. Requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including veteran-owned small business concerns, can reasonably perform, rather than self-performing all the work involved.
  - c. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of veteran-owned small business concerns to compete for and perform prime contracts.
6. The Duluth Transit Authority will not limit the number of contracts awarded to veteran-owned small business concerns.
7. Those veteran-owned firms that are eligible for certification under the CVE program will be actively encouraged to become certified in the MnUCP or certified by MN DOT, as applicable.
8. Those certified Veteran-owned Small Business Concerns that meet the size criteria established under CFR Part 26 are presumptively eligible to participate in contracts as a small business.
9. Every effort will be made to avoid creating barriers to the use of new, emerging or untried veteran-owned business concerns.
10. The Duluth Transit Authority will encourage competition between small businesses, including veteran-owned business concerns to the greatest extent possible.
11. The Duluth Transit Authority will accept veteran-owned business concerns regardless of their location; no local or geographic preference will be used.
12. Preference will be in the form of a preference of up to six percent (6%) in the amount bid for specified construction work to veteran-owned small business concerns, or that percentage of bid preference provided to any other designated small business group goals applicable to the project. The preference will be applied only for the purpose of

evaluating proposals, and will not be used to determine the contract award amount or payment due to the contractor under the contract.

13. The Duluth Transit Authority encourages prime contractors to consider veteran-owned small business concerns when subcontracting work on Duluth Transit Authority projects.

## **8.0 RECORD KEEPING, CONFIDENTIALITY, REPORTING**

### **8.1 Bidder List**

Pursuant to 49 CFR Section 26.11(c), the Duluth Transit Authority will create and maintain a Bidder List, consisting of information about DBE and non-DBE firms that bid or quote on FTA-assisted projects. The purpose of this list is to allow the use of the bidder list approach to calculating overall goals. The Bidder List will include the name, address, DBE or non-DBE status, age and the range of annual gross receipts of the firm by asking each firm that responds to a Request for Proposals or Invitation to Bid to indicate into what gross receipts bracket they fit (e.g. less than \$500,000, \$500,000 to \$1 million, etc.)

This information will be required in a contract clause requiring prime bidders to report the information for themselves and all subcontractors and/or suppliers with services or supplies over \$5,000 in value, as well as a notice in all solicitations and otherwise widely disseminated requesting firms quoting on subcontracts to report information directly to the Duluth Transit Authority.

### **8.2 Confidentiality of Information**

1. Pursuant to 49 CFR Part 26.67 (a)(2)(ii), the Duluth Transit Authority will safeguard from disclosure to unauthorized persons information that may be reasonably considered to be confidential business information, consistent with Federal, state and local law. Financial information submitted in response to a required personal net worth statement requirement under 49 CFR Part 26.67 will not be released to a third party without the express written consent of the submitter.
2. The Duluth Transit Authority is subject to and will comply with state freedom of information laws, and to the extent permitted by law, will seek exceptions for certain kinds of confidential business information submitted by DBEs and applicants for certification.
3. The Federal Freedom of Information Act and Privacy Act apply only with respect to records in the possession of FTA and other Federal agencies (see 26.109(a)(1)), not records in the possession of state or local government agencies who receive federal financial assistance. Federal law that prohibits local government agencies from disclosing certain records in their possession takes precedence over state law.

### **8.3 Reporting to the U.S. Department of Transportation**

1. The Duluth Transit Authority will continue to provide data on its DBE program to the Department as directed by the FTA Operating Administration. The Duluth Transit Authority shall submit a semi-annual report describing the activities undertaken toward progress achieved in meeting the goal of greater DBE participation in its procurement and financial assistance programs during the preceding federal quarter. These reports shall discuss at least the following:
  - a. Data on the level of DBE participation in contracting and subcontracting activities of the Duluth Transit Authority and recipients of financial assistance both in terms of

- number of DBE contracts awarded and the identities of DBEs and the dollar value of work being so contracted.
- b. A statistical breakdown and methods of awards to DBEs, for example, open competition, small business set-aside, competitive DBE set-asides, and subcontracts.
  - c. Data reported by prime contractors under subcontracting as required by federal procurement regulations.
  - d. A description of any participation or attendance in seminars, conferences, or workshops on DBE or Veteran-owned businesses by the Duluth Transit Authority.
  - e. A brief description of any problems encountered in the general area of DBEs or specific contracts or projects.
  - f. Specific efforts to identify and award contracts to DBEs.
  - g. A summary of the extent to which percentages have been met.
2. All reports and records will be categorized separately by type of work by the North American Industry Classification code for all DBE businesses and other firms. Reports will be made available to the public and DBE reports will be submitted to the Duluth Transit Authority's Board.
  3. The Duluth Transit Authority will bring to the attention of the Department of Transportation any false, fraudulent or dishonest conduct in connection with this program, so that the FTA can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the FTA Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109.
  4. The Duluth Transit Authority will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
  5. The Duluth Transit Authority will provide monitoring and enforcement to verify that work committed to DBEs are actually performed by the DBE. This will be accomplished by DTA staff performing unannounced site visits to observe work and/or company labels on vehicles, uniforms, paychecks, reviewing delivery documents, personnel interviews, or other means, as applicable.



**DULUTH TRANSIT AUTHORITY  
DBE PROGRAM SECTION-TO-REGULATIONS REFERENCE**

Section	Regulatory Basis
<b>1.0 DULUTH TRANSIT AUTHORITY DBE POLICY</b>	
1.1 Policy Statement	26.3; 26.7; 26.21; 26.23
1.2 Objectives	26.1
1.3 Applicability	26.3
1.4 Non-Discrimination Requirements	26.7, 26.13
<b>2.0 DBE PROGRAM DEFINITIONS</b>	26.5
<b>3.0 RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION</b>	
3.1 Duties of DBE Liaison Officer	26.25
3.2 Responsibilities of Support Personnel	26.25
<b>4.0 ADMINISTRATIVE REQUIREMENTS (SUBPART B)</b>	
4.1 Financial Institutions	26.27
4.2 Overconcentration	26.33
4.3 Business Development Program	26.35
4.4 Preferential Consideration	23.73
<b>5.0 DBE GOALS FOR FEDERALLY-ASSISTED CONTRACTS</b>	
5.1 Goals	26.45
5.2 Transit Vehicle Manufacturers (TVMs)	26.49
5.3 Race-Neutral Measures	26.51
5.4 Contract Goals	26.51
5.5 Good Faith Efforts	26.53; Appendix A
5.6 Administration Reconsideration	26.53
5.6 Good Faith Efforts When a DBE is Replaced	26.37, 26.55
5.7 Counting DBE Participation	26.37, 26.55
5.8 Quotas, Set-Asides, and Penalties	26.43; 26.47
<b>6.0 REQUIRED CONTRACT PROVISIONS</b>	
6.1 Assurances	26.13
6.2 Alternative Dispute Resolution	26.29
6.3 Prompt Payment, Joint Checks	26.29
6.4 Monitoring Payments to DBEs	26.37
6.5 Legal and Contract Remedies	26.37, Appendix B
6.6 Contractor Reporting Requirements	26.55 (counting)

Section	Regulatory Basis
<b>7.0 UNIFIED CERTIFICATION PROGRAM (SUBPART E)</b>	
7.1 Unified Certification Program	26.81
7.2 Small Business Administration (SBA) 8(a) and SDB firms	26.39
7.3 Veteran-owned Small Business Concerns	
<b>8.0 RECORD KEEPING, MONITORING AND ENFORCEMENT</b>	
8.1 Bidder's List	26.11
8.2 Confidentiality of Information	26.109
8.3 Reporting to FTA	26.11
<b>ATTACHMENTS</b>	
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Attachment B, Breakout of Estimated Race-Neutral/Race-Conscious Participation	26.51
Attachment C, Counting DBE Participation	26.37
Attachment D, Forms	

## **Duluth Transit Authority DBE Goal Setting Methodology – FY 2016-2018**

### **A. Overall Goal Setting**

1. In accordance with Section 26.45 (f), the Duluth Transit Authority hereby submits its triennial overall DBE goal to the Federal Transportation Administration (FTA) for implementation beginning October 1, 2015 unless otherwise instructed by the FTA..
2. The Duluth Transit Authority continues to consult with business groups, minority, women's and general contractor groups, community organizations, etc. to obtain information concerning the availability of small, disadvantaged and non-disadvantaged businesses, the effects of discrimination against DBEs for contracting opportunities, and the Duluth Transit Authority's efforts to establish a level playing field for the participation of DBEs.

The Duluth Transit Authority participated in several outreach events in conjunction with the University of Minnesota Duluth Small Business Development Center, the University of Wisconsin, MN PTAC, and the U.S. Small Business Administration. These events have allowed the DTA to expand its Bidder's List to include interested parties in a variety of specialties, and to route notices in the event of a procurement of particular goods or services in their designated NAICS code.

3. The Duluth Transit Authority will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our offices for thirty (30) days following the date of the notice, and informing the public that the Duluth Transit Authority and the FTA will accept comments on the goals for 45 days from the date of the notice. The notice will include addresses where the proposed goals may be viewed and addresses for submission of comments. Public comments will be collected and included in the goal summary for the triennial period unless the FTA instructs otherwise.

This notice will be published in:

- a. the Duluth News Tribune
  - b. the Superior Telegram
  - c. the Cloquet Pine Journal
  - d. Other local newspapers with relativity
4. The Duluth Transit Authority will begin using the overall goal on October 1<sup>st</sup> for the triennial period unless we have received other instructions from the FTA. Presently, the planned projects are relatively small and do not appear to have subcontractor opportunities, thus there are no projects with a DBE contract goal. However, if that status changes, the DTA may elect to establish a goal on a project basis using race conscious means. We will begin using our goal by the time the first solicitation for a FTA-assisted contract for the project.

**B. Section 26.45: Overall Goal Calculation**

Amount of Goal

1. DTA’s overall goal for FY 2016-2018 is the following: 1.3% of the Federal Financial assistance we will expend in FTA-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

Upcoming projects for the FY 2016- 2018 total \$2,170,000

Duluth Transit Authority  
 Goal Calculation  
 FY 2016-2018

Contract Category	FTA \$		DBE \$
Construction	\$1,620,000	@ 1.3%	\$21,060
Material, Supplies & Equipment	\$ 550,000	@ 0%	\$0
<u>Other</u>	<u>-</u>		
Total	\$2,170,000		\$21,060

Methodology used to Calculate Overall Goal:

Step 1:

Determine the base figure for the relative availability of DBE’s.

The base figure for the relative availability of DBE’s was calculated as follows:  
 :

Using MN UCP, there were a total of

$$\text{Base Figure} = \frac{1}{132} \frac{\text{Ready willing and able DBE for the types of contracts we anticipate awarding}}{\text{All firms ready willing and able}}$$

When we divided the numerator by the denominator we arrived at the base figure for our overall goal of 1.3%

The data source or demonstrable evidence used to derive the numerator was obtained from the: Minnesota Unified Certification Program (MN UCP), District 1.

Rationale for selection of District 1: To ensure that the DBE program is narrowly tailored to a well-defined geographic market area in accordance with DOT guidelines, MN UCP District 1 was selected as the data source. MN DOT District 1 encompasses eight counties, St. Louis, Lake, Carlton, Pine, Koochiching, Itasca, Aitkin, and Cook counties, comprising one fourth of

the state's total land area ([www.dot.state.mn.us](http://www.dot.state.mn.us)). It is the area where the greatest number of contractors and subcontractors who do business with the DTA are located, and where the DTA expends the majority of its contracting dollars. There were a total of 20 registered DBEs on the MN UCP for District 1, one of which matched the NAICS code for the upcoming capital projects.

In addition, because Superior, Wisconsin is included in the Duluth, Superior MSA, the Wisconsin DOT DBE list was also examined for potential DBEs in the Superior District. There were no firms on the WI DOT DBE UCP list in the NAICS codes for upcoming capital projects from the Superior District.

The data source or demonstrable evidence used to derive the denominator was obtained from the: U.S. Census List for the Duluth MSA and the Duluth Transit Authority's Bidder's list and Vendor list. Available DBEs are included in the base figure; no additional DBEs from other sources were identified or included. There were no additional resources to identify available DBEs. The Duluth Builder's Exchange, the Arrowhead Builder's Association, and the Duluth Chamber of Commerce do not track member's DBE status (there are no regional organizations dedicated to minority contracting or minority contractor membership.) The DTA has suggested to those organizations that there may be a benefit to adding this information to the membership roster and encouraging minority contractor membership.

Because there were no firms in the IT, Signalization and Signs category for DBE, no weighting was used for the final calculation. It is expected that 100% of the DBE participation in capital projects for the upcoming triennial will be on Construction projects due to the lack of available DBEs in those NAICS Codes on the MN UCP for District 1.

#### Step 2:

After calculating a base figure of the relative availability of DBE's, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

1. A survey of past DTA capital projects for the last three years indicates that most of the contractors for construction dollars were from the Duluth Superior MSA as defined by the U.S. Census Bureau (see DTA vendor list.) Most of the dollars for passenger amenities, signs, IT equipment and software were not from the Duluth Superior MSA. There were no DBEs for these purchases in the past three years.
2. Anecdotal evidence from DBE outreach events attended by DTA staff indicate that certified DBEs are receiving multiple solicitations from prime contractors on government funded projects in District 1. Most of the outreach event attendees were potential DBEs who had not attained certification through a state DOT, PTAC or comparable entity. One attendee had been declined DBE certification by the MN PTAC due to issues with ownership of shared assets with her husband. Her business was added to the DTA's Bidder's List, but has not received DBE status on the MN UCP.

Because there was no evidence to better measure the percentage of work that DBEs would be likely to obtain in the absence of discrimination, no adjustment was made to the denominator.

#### Sources of Information

1. The following departments assisted the DBE Liaison Officer in the development of the annual goal by providing budget, financial, procurement, and other relevant information which will be used to develop the federal funding base against which the annual DBE goals are calculated:
  - a. Office of the Director of Finance.
  - b. Director of Administration and Planning.
  - c. DTA Procurement Manager
  - c. DTA General Manager.
  - d. All departments that intend to purchase goods and services during the reporting period.
  
2. Data sources used to develop the annual overall DBE goal may include, but not be limited to, the following:
  - a. The Duluth Transit Authority's fiscal year budget.
  - b. Grant-funded capital lists, specific Capital Projects, Financial Plan and Schedule.
  - c. Past results of contracting agencies such as the Duluth Transit Authority with similar contracting opportunities, and the reasons for the level of such results.
  - d. Demographics and business activity of the geographical area in which the Duluth Transit Authority will solicit bids or proposals.
  - e. Direct feedback from vendors and potential DBE vendors.

FTA assistance used in transit vehicle procurements will not be included in the base amount from which the annual overall goal is calculated.

3. The Duluth Transit Authority will conduct public participation in setting the overall goal. This participation will include the following:
  - a. A published notice announcing the Duluth Transit Authority's proposed overall goal, informing the public that the proposed goal, and its rationale are available for inspection during normal business hours at the Duluth Transit Authority's principal office for 30 days following the date of the notice, and informing the public that the Duluth Transit Authority and the FTA will accept comments on the goals for 45 days from the date of the notice. The notice will include the addresses to which comments may be sent, and will be published in general circulation media and available minority-focused media and trade association publications.

### **5.1.1 Establishing the DBE Base Figure**

1. The Base Figure will reflect the "relative availability" of DBEs based on demonstrable evidence of ready, willing and able DBEs relative to all ready, willing and able firms available to participate in FTA-assisted contracts. The Duluth Transit Authority will establish the Base Figure through the use of the following sources:

- a. DBE directories and Census Data.
- b. Bidders Lists.

### **5.1.2 Adjusting the DBE Base Figure**

1. The DBE base figure will be adjusted based on statistical evidence available, including an analysis of the current capacity of DBEs, data on the financial ability of DBEs, input from interested parties, including DBEs who could potentially perform the work, and past participation, where the DTA has contracted for similar goods and services.

### **5.1.3 Reporting Goals**

1. Pursuant to 49 CFR Section 26.45, the Duluth Transit Authority's annual overall DBE goal will be submitted to the FTA for approval 60 days prior to the beginning of the FTA fiscal year. The overall goal submission will include the following:
  - a. A description of the methodology used to establish the goal, including the Base Figure and the evidence by which it was calculated.
  - b. A description of the adjustments made to the Base Figure and the evidence relied on for the adjustments, including a summary of the relevant available evidence in the Duluth Transit Authority's jurisdiction. Where applicable, this will include an explanation of why the Duluth Transit Authority did not use that evidence in adjusting the Base Figure.
  - c. A projection of the relative portions of the overall goal that the Duluth Transit Authority expects to meet through race-neutral and race-conscious means.
2. The annual goals will be submitted to the Duluth Transit Authority Board of Directors for approval and will become part of all FTA financial assistance agreements.
3. Concurrent with DBE goal submittal, the Duluth Transit Authority will publish a notice in majority and minority-focused newspapers, as well as our web site announcing the goals, and providing the public an opportunity to review the annual goals and submit comments to the Duluth Transit Authority and/or the FTA.

The Duluth Transit Authority estimates that in meeting our overall goal of 1.3% we will obtain 100% from race neutral participation and 0% through race conscious measures. The upcoming projects are relatively specialized and leave little opportunity for subcontracting.

The following is a summary of the basis of our estimated breakout of race neutral and race conscious DBE participation:

**Race Neutral:**

Estimated Private Sector Participation in DBE: 1.3%

Estimated DBE participation in Local Programs  
with no DBE Goals 0%

**Race Conscious:**

None

**5.1.4 Small Business Participation**

The DTA has included a small business element in the DTA Small and Disadvantaged Business Enterprise Policy. The DTA has not established a goal for small business participation in its contracts, except for a large building project scheduled to be completed by January 1, 2016. For the upcoming triennial, there are no mega projects and inadequate certified firms to warrant a small business participation goal.

Presently there are 21 firms in Minnesota that have received 8(a) certification from the U.S. Small Business Administration, none in the Duluth Superior MSA in the NAICS codes for anticipated projects, and none of the firms on the DTA's Bidder's List. Thus, the DTA will not establish a Small Business Participation goal for FY 2016-2018 unless we have received other instructions from the FTA.

If it is later discovered that there is adequate small business representation in the NAICS categories for a specific project that includes subcontractor opportunities, the DTA may elect to establish a goal on a project basis. We will begin using our goal by the time the first solicitation for a FTA-assisted contract for the project.

**Triennial Capital Expenditure Plan, Excluding Vehicles 2016-2018**

**2016 Capital Expenditure Plan**

**Passenger Amenity Equipment \$50,000**

Description: signs, software  
NAICS codes: 339950, electrical signs

**Facility Renovations \$125,000**

Description: Windows  
NAICS codes: 238150, window installation

**Security \$50,000**

Description: security equipment  
NAICS codes: 334290, alarm systems, 423710, hardware



**Small Maintenance \$50,000**

Description: Tools, machinery equipment

NAICS codes: 333318, commercial and service industry machinery, 423120, motor vehicle supplies and equipment, 423830, industrial machinery and equipment

**Transit Terminals and Shelters \$75,000**

Description: Shelters

NAICS codes: 332311, prefabricated metal building and component manufacturing

**Information Technology & Software \$100,000**

Description: Hardware,

NAICS codes: 334118, computer terminal and peripheral equipment,

**2017 Capital Expenditure Plan****Downtown Terminal and Stop Imprv. \$400,000**

Description: Building, shelter upgrades

NAICS codes: 236220, Alteration, addition and renovation of commercial and industrial buildings, 332311, prefabricated metal building and component manufacturing

**Passenger Amenity Equipment \$50,000**

Description: Signs, software

NAICS codes: 339950, electrical signs,

**Facility Renovations \$400,000**

Description: Siding, Roof

NAICS codes: 238170, siding contractors, 238160, roofing

**Information Technology & Software \$100,000**

Description: Ticketing hardware, software

NAICS codes: 334514, counting device manufacturing

**Traffic Signal Prioritization \$120,000**

Description: Hardware

NAICS codes: 238210, electrical contractors, wiring installation, 541330, traffic engineering services

**2018 Capital Expenditure Plan****Downtown Terminal and Stop Imprv. \$200,000**

Description: Shelters

NAICS codes: 236220, alteration, renovation of commercial and industrial buildings, 332311, prefabricated metal building and component manufacturing

**Passenger Amenity Equipment \$50,000**

NAICS codes: 339950, electrical signs

**Facility Renovations \$300,000**

Description: overhead doors, windows

NAICS codes: 332321, 238290

**Security \$50,000**

Description: Equipment

NAICS codes: 334290, communications equipment

**Small Maintenance \$50,000**

Description: Tools, equipment

NAICS codes: 333318, commercial and service industry machinery, 423120, motor vehicle supplies and equipment, 423830, industrial machinery and equipment.

Construction, including Shelters and traffic signal installation, traffic engineering services:  
\$1,620,000

Materials, Supplies and Equipment, including maintenance tools and machinery, IT and Security: \$550,000

**Total all capital expenditures 2016-2018: \$2,170,000**

Vendors on the Bidder's List in the NAICS codes designated for capital funds for Construction Projects =11; none were DBEs.

Summary of NAICS codes, and the number of DBEs in MN DOT District 1, Duluth:

236220 Commercial and institutional building construction, 1  
238150 Glass and glazing contractors, 0  
238160 Roofing contractors, 0  
238170 Siding contractors, 0  
238210, Electrical Contractors and other wiring installation,0  
238290 Other Building Equipment Contractors  
332311 Prefabricated metal building and component manufacturing, 0  
332321 Metal window and door manufacturing, 0

Vendors from the MN UCP included in these NAICS in Northern Minnesota: 1 (Frontier Construction, 218-246-9512)

**US Census Data, Duluth Superior MSA 2013, Business by NAICS code**

236220 Commercial and Institutional Building Construction,	20
238150, Glass and Glazing Contractors,	3
23816 Roofing Contractors,	14
238170, Siding Contractors,	9
238210, Electrical Contractors and other Wiring Installation,	73
332321, Metal window and door manufacturing,	2
332311, prefabricated metal building and component manufacturing,	0
Total:	121

Calculation of firms ready, willing and able firms for construction related activities=

11 firms on the DTA Bidder's list  
121 firms on the US Census for the Duluth Superior MSA  
132 Total

1 DBE vendor in designated NAICS codes from MN DOT District 1

1/132 =1.3%

**Summary of NAICS codes, and the number of DBEs in MN DOT District 1 for IT**

Technology, Passenger Amenities, etc., Duluth: (none)  
 333318 Other commercial and service industry machinery and manufacturing, 0  
 334118, Computer and electronic product manufacturing, 0  
 334290 Other communications equipment manufacturing,0  
 334514 Counting Device Manufacturers 0  
 339950 Sign Manufacturing, 0  
 423120 Motor Vehicle Supplies and new parts merchant wholesalers, 0  
 423830 Industrial machinery and equipment merchant wholesalers, 0  
 541330 Traffic Engineering Services, 0

**Census Data, Duluth Superior MSA 2013, Business by NAICS code for IT, Traffic Signalization, Signs, etc.**

333318, Other commercial and service industry machinery manufacturing,	1
334118 Computer and electronic Product manufacturing	0
334290, Other Communications Equipment Manufacturing,	1
334514 Measuring and Control Instruments Manufacturing,	0
339950, Electrical Signs,	5
423120 Motor Vehicle Supplies,	11
423830 Industrial Machinery and Equipment Wholesalers,	4
541330 Traffic Engineering Services	0
Total:	22

0 DBEs for IT, Traffic Signalizations, Signs, etc.

22 All Firms ready and willing for IT, Traffic Signalization, Signs, etc.

0% goal for IT, Signalizations, Signs, etc.

Because there were no DBEs in the IT, Signalizations, Signs, etc. category, 100% of the DBE goal was assigned to the Construction category, where there was one potential vendor. The DTA will solicit all firms on the Bidder’s list for the respective categories, as well as any new firms that request to be added, and any firms that it may become aware of that are willing and able to do business with the DTA in the ensuing triennial period.

Change from previous years:

The DTA is just completing a major building project which carried a 10% DBE goal and a 2% small business goal. The upcoming triennial goal of 1.3%is significantly lower due to a lack of firms in the area that can supply the needed goods and services, and smaller projects that are unlikely to attract vendors from outside the local area. The DTA does not provide a geographic preference to bids and will welcome any interested parties interested in responding to DTA solicitations.

Adjustments:

After examining the available information, no adjustments are made to the DBE goal.



## ATTACHMENT B

### **26.51: Breakout of Estimated Race-Neutral/Race Conscious Participation**

In accordance with 49 CFR Section 26.51, the Duluth Transit Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE Participation. The Duluth Transit Authority uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of DBEs and other small businesses. For example:
  - a. Unbundling large projects to make them more accessible to small businesses.
  - b. Requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own work forces.
  - c. Ensuring that contract solicitations do not contain unnecessarily restrictive requirements.
  - d. Waiving or allowing incremental bonding.
2. Providing technical assistance and other services, including but not limited to:
  - a. Referring potentially eligible firms to apply for the Minnesota Unified Certification Program (MnUCP) for DBE certification.
  - b. Referring DBEs to appropriate business development centers, including the University of Minnesota Duluth Center for Economic Development, and the University of Wisconsin Small Business Development Center, and the Minnesota Procurement Assistance Center, among others, for more in-depth "hands on" technical and financial assistance (i.e. preparing bids, proposals, business plans, financial statements, and accessing working capital and bonding).
  - c. Assisting in preparation of bid submissions to assure bids are technically correct.
  - d. Explaining terms, conditions and specifications of bidding documents and procurement regulations that may apply.
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities, including but not limited to:
  - a. Ensuring the inclusion of DBEs on the Duluth Transit Authority's mailing lists for bidders.
  - b. Ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
  - c. Providing for the provision of information in languages other than English, where appropriate.
  - d. Publishing and distributing a comprehensive guide which contains information about the Duluth Transit Authority's DBE procurement policies and procedures, name and telephone numbers of key contact persons, and a listing of all Duluth Transit Authority types of goods and services they may purchase.
  - e. Linking interested DBEs with appropriate buyers, contract administrators and project managers to inquire about short and long-range needs of the Duluth Transit Authority for procurement of goods and services within their areas of specialization.

- f. Ensuring adequate lead-time in advertisements to allow DBE firms sufficient opportunity to develop bid packages.
  - g. Providing information on contracts, procedures and specific contracting opportunities in written form by direct mail to those DBE firms that are certified with the Minnesota Unified Certification Program (MnUCP) and organizations that work in support of DBE firms.
4. Conducting outreach to DBE's to inform them of upcoming contract opportunities through some of the following methods:
- a. Trade fairs
  - b. Newsletters
  - c. Seminars
  - d. One-on-one
  - e. Minority and women business associations
  - f. Business development centers
  - g. Vendor relations programs
  - h. Advertisements in minority and majority publications
  - i. Veteran's groups and associations
  - j. Small and Micro-business development centers
  - k. The Duluth Transit Authority's website

In order to insure that Duluth Transit Authority's DBE Program will be narrowly tailored to overcome the effects of discrimination, if contract goals are utilized, the Duluth Transit Authority will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and 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:

- a. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- b. DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- c. DBE participation on a prime contract exceeding a contract goal;
- d. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

## ATTACHMENT C

### **COUNTING DBE PARTICIPATION**

In accordance with 49 CFR Section 26.55, the Duluth Transit Authority will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

1. If a firm is not currently certified as a DBE in accordance with the standards of Subpart D of the regulations at the time of the execution of the contract, the firm's participation toward any DBE goals will not be counted, except as provided in 49 CFR Section 26.87(I).
2. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
3. The participation of a DBE subcontractor toward the prime contractor's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE.
4. When a DBE or participates in a contract, the value of the work actually performed will be counted as follows:
  - a. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 49 CFR Part 26.55) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - b. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a FTA-assisted contract, toward DBE goals, provided that the Duluth Transit Authority determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - c. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
5. When a DBE performs as a participant in a joint venture, the Duluth Transit Authority will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
6. The Duluth Transit Authority will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
  - a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Duluth Transit Authority will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with

the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Duluth Transit Authority must examine similar transactions, particularly those in which DBEs do not participate.
  - c. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Duluth Transit Authority must presume that it is not performing a commercially useful function.
  - d. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. The Duluth Transit Authority may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - e. The Duluth Transit Authority's decisions on matters of whether a DBE performs a commercially useful function are subject to review by the concerned operating administration, but is not subject to an administrative appeal to FTA.
7. The Duluth Transit Authority will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
  - b. The S/DB must itself own and operate at least one fully licensed, insured, and operational truck used on its contract.
  - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
  - f. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm.
8. The Duluth Transit Authority will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- a. The Duluth Transit Authority will count one hundred percent (100%) of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.



- b. The Duluth Transit Authority will count sixty percent (60%) of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
9. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
10. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 CFR Section 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease and not on an ad hoc or contract-by-contract basis.
11. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of 49 CFR Section 26.55(e)(2).
12. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Duluth Transit Authority will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided that the Duluth Transit Authority has determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The Duluth Transit Authority will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

**ATTACHMENT D**  
**Title 49: Transportation**

**Part 26**-Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program

The most current version of Title 49 C.F.R Part 26 can be found at the Government Printing Office Electric Code of Federal Regulations website at:

[www.ecfr.gov/cgi-bin/ECFR?page=browse](http://www.ecfr.gov/cgi-bin/ECFR?page=browse)

or by contacting the Duluth Transit Authority at 218-623-4329, or email at

[www.duluthtransit.com](http://www.duluthtransit.com).

# ATTACHMENT E Duluth Transit Authority Organization Chart

