

# **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BALTIMORE METROPOLITAN COUNCIL**

## **POLICY STATEMENT**

The Baltimore Metropolitan Council (BMC) is committed to and has developed a Disadvantaged Business Enterprise (DBE) Program that is consistent and in compliance with the federal regulations of the U.S. Department of Transportation (USDOT), Title 49 of the Code of Federal Regulations (CFR) Part 26. BMC, as a sub-recipient of federal financial assistance, has signed an assurance that it will comply with 49 CFR Part 26. Accordingly, BMC encourages DBEs to compete for BMC contracts and subcontracts and encourages joint ventures between DBE and non-DBE firms who compete for BMC contracts and subcontracts.

It is the policy of the BMC to ensure that DBEs, as defined in Part 26, have an equal opportunity to participate in the procurement process for all goods and services purchased by BMC, specifically those financed in whole or in part with federal funds. It is also our policy:

1. To ensure nondiscrimination in the award and administration of USDOT- assisted contracts;
2. To ensure a level playing field on which DBEs can compete fairly for USDOT- assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT- assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
7. To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

The Coordinator, Business Development & Governmental Relations of the BMC has been designated as the DBE Liaison Officer (DBELO) and is responsible for implementing all aspects of the DBE Program. The DBELO will be assisted by other BMC staff as needed in implementing the DBE requirements and compliance. Implementation of the DBE Program is accorded the same priority as compliance with other legal obligations incurred by BMC.

In administering its DBE Program, BMC shall not, either 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.

BMC will disseminate this DBE Program document to its members and all operating components of our organization. BMC will notify all DBE and non-DBE business

communities that perform work for BMC on USDOT-assisted contracts about BMC's DBE Program by placing the DBE Program on our web site at <http://www.baltometro.org>, include reference to the DBE Program in all BMC solicitations and provide a written DBE Program available through the BMC's Regional Information Center.

## **Introduction**

The Baltimore Metropolitan Council (BMC) recognizes its responsibility to ensure that Disadvantaged Business Enterprises (DBEs) have equal opportunity to participate in the performance of all contracts administered by BMC, specifically those financed in whole or in part with USDOT funds. As part of the effort to fulfill this responsibility, BMC has developed this DBE Program to reflect its commitment to the requirements and guidance contained in 49 CFR Part 26.

## **DBE Program Liaison Officer**

The BMC Coordinator, Business Development & Governmental Relations has responsibility for implementing the DBE program. The Coordinator, Business Development & Governmental Relations will also work with other appropriate officials and BMC staff to coordinate and implement the provisions of the DBE Program. Correspondence regarding DBE matters, as they pertain to contracts administered by BMC, should be forwarded to the BMC Coordinator, Business Development & Governmental Relations at 2700 Lighthouse Point East, Suite 310, Baltimore, Maryland 21224.

The DBELO is responsible for developing, implementing and monitoring the BMC DBE Program. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by USDOT.
2. Review third party contracts and purchase requisitions for DBE Program compliance.
3. Work with appropriate parties to set annual DBE goals.
4. Ensure that bid notices and request for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements to assure that DBE goals are included in solicitations.
6. Analyze BMC's progress toward DBE goal attainment and, if necessary, ways to improve progress.
7. Advise the BMC Board of Directors on DBE related matters and achievement.
8. Participate with Division Directors and Project Managers to determine contractor compliance with good faith efforts.

## **Definitions**

1. "Disadvantaged Business" means a for-profit small business concern: (a) that is at least 51percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small Business Concern" means a small business as defined in Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing the Act at 13 CFR Part121.
3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans or other individuals found to be socially and economically disadvantaged by the Small Business Administration pursuant to the Small Business Act.
4. "Joint Venture" means an association of a DBE firm and one or more other firms to carry out a single for-profit business enterprise for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is 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.

## **Applicability**

The DBE Program applies to all BMC goods and services purchased through a formal procurement process by the issuance of Request for Proposals (RFPs) or Invitations for Bids (IFBs).

## **Goals of the DBE Program**

### **A. Overall DBE Participation Goals**

In May the BMC Coordinator, Business Development & Governmental Relations, working with BMC staff, will determine the work tasks and activities (goods and services) that might be contracted out in the upcoming fiscal year. Due to the fact that BMC uses very specific types of consultants, primarily transportation planning consultants, a number of endorsed methodologies will be used to establish overall goals for DBE participation in BMC procurements. BMC will use a bidders list to determine the relative availability of DBEs in the Baltimore metropolitan area as well as a review of its previous record for meeting its DBE participation goals. BMC will establish an overall DBE participation goal based upon an analysis of the aforementioned information. If there is no upcoming work or contracting activities then no goal will be required.

BMC will publish a notice of the proposed overall goal, advising the public of the proposed overall goal and the rationale are available for inspection during normal business hours at BMC offices for 30 days following the date of this notice. The new annual DBE goal takes effect on July 1 of each year.

### **B. DBE Subcontract Goals**

BMC will set DBE goals for individual contracts that BMC determines will have subcontracting possibilities. BMC will review its DBE participation goals on past such contracts and the availability of DBEs in the subject areas in which subcontracts are to be awarded before setting a subcontracting DBE goal.

## **Implementation of DBE Participation Goals**

### **A. Methods for Achieving DBE Goals**

1. BMC will use race-neutral means to obtain DBE participation. A race neutral programs means that BMC expects to achieve its DBE goal through the normal competitive bid process. BMC will provide assistance to ensure that DBEs have the opportunity to participate in BMC procurements.
2. The BMC Coordinator, Business Development & Governmental Relations, in capacity as the BMC DBE Program Liaison Officer, reserves the right to establish DBE participation goals for specific contracts to meet any portion of BMC's DBE participation goal that BMC determines that it will not be able to meet using neutral means. Race conscious goals are those achieved through establishment of a percentage of contract cost that must be awarded to a certified DBE or good faith efforts to do so must be demonstrated.

### **B. Identification of DBE Participants**

In a formal RFP/IFB procurement for which a contract DBE goal is established, BMC shall require all bidders to include a plan for meeting the contract DBE participation goal. Bidders' submittals shall include the name of any DBE subcontractors who will participate in the contract, a clear and concise description of the work to be performed by each DBE subcontractor, written confirmation from the DBE that it is participating in the contract as detailed in the prime contractors plan and the dollar amount of each proposed DBE subcontract. BMC may include DBE participation as an evaluation criterion in selecting bidders for award. If the contract goal is not met, evidence of good faith efforts to meet the goal must be documented and provided.

### **C. DBE Certification**

BMC is not responsible for determining the eligibility of any particular company to be certified as a DBE. A directory of Maryland Department of Transportation (MDOT) certified DBE firms is maintained on their web site (<http://mbe.mdot.state.md.us>). If a DBE is not certified by MDOT, the DBE must become certified with MDOT prior to a bidder's proposal being submitted to BMC.

### **D. Good Faith Efforts**

It is the obligation of the bidder to make good faith efforts in meeting DBE contract goals either by meeting the contract goal or by documenting good faith efforts. The BMC Project Manager is responsible for notifying the BMC DBELO of a situation where it appears that the bidder has not met the DBE contract goal. The BMC DBELO can request additional documentation regarding the bidder's efforts to meet the DBE contract goal prior to the issuance of a final determination of whether the bidder made adequate good faith efforts to meet the contract goal.

BMC will also include in contracts with a DBE goal a provision stating that prime contractors can not terminate a DBE subcontractor for convenience and then perform the work of the terminated subcontractor with its own forces, or that of an affiliate, without the prior written approval of the BMC DBELO. If the prime contractor does terminate a subcontractor or if a DBE subcontractor fails to complete its work for any reason, the prime contractor will be required to make good faith effort to find another certified DBE subcontractor to substitute for the original DBE. If the prime contractor fails or refuses to comply within an agreed time period, the BMC Coordinator, Business Development & Governmental Relations may issue a formal order stopping all or part of work/payment until satisfactory action has been taken. If the prime contractor still fails to comply or resolve the issue to the satisfaction of the BMC Coordinator, Business Development & Governmental Relations, the BMC Executive Director may terminate the contract.

## **E. Contract Assurance**

BMC will incorporate into each USDOT-assisted contract it signs with a prime contractor and require in each subcontract (that the prime subcontractor signs with a subcontractor) the following clauses:

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

## **F. Record Keeping and Reporting**

BMC will maintain a bidder's list, consisting of information about all DBE and non-DBE firms that bid or quote on any formal procurement contract proffered by BMC. The purpose of the list is to provide BMC as accurate data as possible about available DBE and non-DBE firms who seek to work on BMC contracts regardless of fund source and for BMC's use of the bidders list approach to assist in calculating its overall goal. The bidders list will include the name, address, DBE or non-DBE status, age and annual gross receipts of firms. Information for the bidders list may be collected as determined by BMC, including, but not limited to, collecting said information from all bidders before or after the bid due date or conducting an alternative information collection method. For contracts that have a DBE contract goal, BMC shall obtain reports from prime contractors on their progress in meeting the DBE participation goal in their contracts.

## **G. Program Monitoring**

For contracts that include a DBE contract goal, BMC will implement appropriate mechanisms to ensure compliance with the DBE requirements of the contract. When a DBE subcontractor begins work on the project, BMC will review all available information

to verify that the DBE contractor identified will perform a commercially useful function and must be ready, willing and able to carry out its responsibilities by actually performing, managing and supervising the work involved, consistent with standard industry practices. If BMC determines that the DBE contractor is not performing a commercially useful function, BMC will notify the prime contractor in writing regarding the finding and provide the contractor 10 work days to eliminate the contract infraction.