

# DBE

## DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

### FOR THE BI-STATE AREA



Including comprehensive, cooperative and  
continuing transportation planning activities performed by  
Bi-State Regional Commission, Illinois & Iowa Departments of Transportation,  
and Local Units of Government  
with the assistance of the  
U.S. Department of Transportation and the States of Illinois and Iowa

**DISADVANTAGED BUSINESS  
ENTERPRISE (DBE) PROGRAM  
FOR THE  
BI-STATE REGIONAL COMMISSION**

Initiated October 1, 2004 to September 30, 2005  
(FFY 2004)

Including comprehensive, cooperative, and continuing  
transportation planning activities to be performed by:

Bi-State Regional Commission  
Illinois Department of Transportation  
Iowa Department of Transportation  
and  
Local Units of Government

with the assistance of:

U. S. DEPARTMENT OF TRANSPORTATION  
(Federal Highway Administration and  
Federal Transit Administration)  
STATE OF ILLINOIS  
STATE OF IOWA

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## **ABSTRACT**

**TITLE:** Disadvantaged Business Enterprise Program for the  
Bi-State Regional Commission  
Initiated October 1, 2004 to September 30, 2005 (FFY 2004)

**AUTHOR:** Bi-State Regional Commission

**SUBJECT:** A program covering activities of the Bi-State Regional Commission  
related to meeting federal Disadvantaged Business Enterprise (DBE)  
Program requirements for direct receipt of Federal Transit Administration  
Section 5309 Grant of \$297,004 authorized by Bi-State Regional  
Commission February 25, 2004.

**PLANNING AGENCY:** Bi-State Regional Commission  
Rock Island, Illinois

**SOURCE OF COPIES:** Bi-State Regional Commission  
1504 Third Avenue  
P. O. Box 3368  
Rock Island, Illinois 61204-3368

**ABSTRACT:** The Bi-State Disadvantaged Business Enterprise (DBE) Program applies  
to providing contracting opportunities for disadvantaged business  
enterprises related to direct federal transportation funding received by Bi-  
State Regional Commission initiated in Fiscal Year 2004 (October 1,  
2004 - September 30, 2005) for direct receipt of Federal Transit  
Administration Section 5309 Grant of \$297,004 authorized by Bi-State  
Regional Commission February 25, 2004. The work of the Commission  
is carried out with full involvement and participation of local elected and  
appointed officials and other citizens.

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## BI-STATE REGIONAL COMMISSION

### DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

#### POLICY STATEMENT

##### Section 26.1, 26.23 - Objectives/Policy Statement

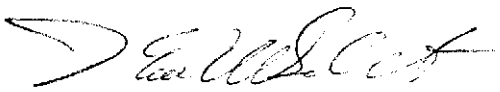
The Bi-State Regional Commission, hereafter referred to as "Bi-State", has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Bi-State has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Bi-State has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Bi-State to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

The Bi-State Administrative Services Director has been delegated as the DBE Liaison Officer. In that capacity, the Bi-State Administrative Services Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Bi-State in its financial assistance agreements with the Department of Transportation.

Bi-State staff has disseminated this policy statement to the Bi-State Regional Commission and all of the components of our organization. Bi-State has distributed this statement to DBE and non-DBE business communities that perform work for Bi-State on DOT-assisted contracts through its Regional Transportation Advisory Group and the Iowa and Illinois Departments of Transportation which maintain DBE directories.



Mark W. Schweibert, Chair

7/12/04

Date

## **SUBPART A - GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

Bi-State is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, 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.

### **Section 26.5 Definitions**

Bi-State will utilize the definitions contained in Section 26.5 for this program. They are as follows:

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly: One concern controls or has the power to control the other; or A third party or parties controls or has the power to control both; or

An identity of interest between or among parties exists such that affiliation may be found. In determining whether affiliation exists, Bi-State will consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates will be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native** means 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** (ANC) means 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.).

**Bi-State** means the Bi-State Regional Commission, as primary recipient and/or recipient under Part 26, whose address for purposes of notice under this Plan is Bi-State Regional Commission, c/o DBE Liaison Officer, P.O. Box 3368, 1504 Third Avenue, Rock Island, Illinois 61204-3368.

**Compliance** means that Bi-State has correctly implemented the requirements of 49 CFR Part 26 through this Plan.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this Plan and Part 26, a lease is considered a contract.

**Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted transit program.

**DBE Liaison Officer** means Bi-State's DBE Liaison Officer, responsible for implementing all aspects of the Plan. The name of the person acting as DBE Liaison Officer will be included in Attachment A to this Plan and changed from time to time as conditions warrant.

**DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged Business Enterprise** or DBE means a for-profit small business concern: That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent 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.

**DOT-Assisted Contract** means any contract between Bi-State and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**Good Faith Efforts** means efforts to achieve a DBE goal or other requirement of this Plan which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Plan's requirement.

**Immediate Family Member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**Indian Tribe** means 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 this Plan.

**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 the parties 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.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of



Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**Noncompliance** means that Bi-State has not correctly implemented the requirements of Part 26.

**Operating Administration** means the Federal Transit Administration (FTA). The "Administrator" of the Operating Administration includes the Administrator's designees.

**Part 26** means 49 CFR Part 26, as set out in the final rule as published February 2, 1999, and as may be further amended from time to time.

**Personal Net Worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Plan** means the Bi-State Regional Commission's Plan to Implement a Disadvantaged Business Enterprise Program under Department of Transportation Guidelines.

**Primary Industry Classification** means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics) ).

**Primary Recipient** means Bi-State or other recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

**Principal Place of Business** means 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, Bi-State will determine the principal place of business for DBE program purposes.

**Program** means this Plan or any undertaking on Bi-State's part to use DOT financial assistance, authorized by the laws to which Part 26 applies.

**Race-Conscious Measure or Program** means one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-Neutral Measure or Program** means one that is, or can be, used to assist all small businesses. For the purposes of this Plan, race-neutral includes gender, color and national origin neutrality.

**Recipient** means Bi-State or any other entity, public or private, to which DOT 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.

**Secretary** means the Secretary of Transportation or the Secretary's designee.

**Set-Aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

**Small Business Administration** or SBA means the United States Small Business Administration.

**Small Business Concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts.

**Socially and Economically Disadvantaged Individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is: Found by Bi-State to be a socially and economically disadvantaged individual on a case-by-case basis.

A member in any of the following groups, members of which are refutably presumed to be socially and economically disadvantaged:

*Black Americans*, which includes persons having origins in any of the Black racial groups of Africa;

*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;

*Native Americans*, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

*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;

*Subcontinent Asian Americans*, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; and

*Women.*

Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Tribally-Owned Concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

### **Section 26.7 Non-discrimination Requirements**

Bi-State will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin. In administering its DBE program, Bi-State 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.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT: 26.11(b)**

Bi-State will report DBE participation on a quarterly basis, using DOT Form 4630, for direct receipt of Federal Transit Administration Section 5309 Grant of \$297,004 authorized by Bi-State Regional Commission February 25, 2004. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### **Bidders List: 26.11(c)**

Bi-State will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status.

Bi-State will collect this information in the following way as a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to Bi-State, etc.

### **Section 26.13 Federal Financial Assistance Agreement**

Bi-State has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### **Assurance: 26.13(a)**

Bi-State shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Bi-State of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). This language will appear verbatim, as stated in 26.13(a) in financial assistance agreements with sub-recipients.

**Contract Assurance: 26.13(b)**

Bi-State will ensure that the following clause is placed verbatim in every DOT-assisted contract and subcontract:

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 DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS****Section 26.21 DBE Program Updates**

Since Bi-State has received a grant of \$250,000 or more in FTA planning, capital and/or operating assistance in a federal fiscal year, Bi-State will continue to carry out this program until all funds from DOT financial assistance have been expended. Bi-State will provide to DOT updates representing significant changes in the program.

**Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this program.

**Section 26.25 DBE Liaison Officer (DBELO)**

Bi-State has designated the following individual as our DBE Liaison Officer:

Donna Moritz, Administrative Services Director, Bi-State Regional Commission, P.O. Box 3368, 1504 Third Avenue, Rock Island, IL 61204-3368, [dmoritz@bistateonline.org](mailto:dmoritz@bistateonline.org).

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Bi-State complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Denise Bulat, Bi-State Executive Director, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
6. Analyzes Bi-State's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid materials development.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Participates in DBE training seminars, as appropriate.
11. Monitors State Illinois and Iowa certifications of DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in States of Illinois and Iowa.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Monitors State of Illinois and Iowa directory updates on certified DBEs.

### **Section 26.27 DBE Financial Institutions**

It is the policy of Bi-State to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. At the time when the FTA threshold for DBE requirements is met and prime contractors would require financial institution service, Bi-State will make efforts to identify and use such institutions. To date Bi-State has not identified such institutions.

### **Section 26.29 Prompt Payment Mechanisms**

Bi-State will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [*specify number*] days from the receipt of each payment the prime contract receives from Bi-State. The prime contractor agrees further to return retainage payments to each subcontractor within [*specify same number as above*] days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Bi-State. This clause applies to both DBE and non-DBE subcontracts.

*[Note - This is sample language, and recipients can use existing prompt payment clause or draft their own, as long as they meet the substantive requirements of 26.29. This portion of the program must also state what sanctions/consequences the recipient attaches to noncompliance with the prompt payment clause and the procedures through which they are enforced. In addition, this portion of the program may also include other prompt payment - related provisions, such as an alternative dispute resolution mechanism that the recipient chooses to use.]*

### **Section 26.31 Directory**

Bi-State will utilize directories identifying all firms eligible to participate as DBEs prepared and/or maintained by the Illinois and Iowa Departments of Transportation. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of

work the firm has been certified to perform as a DBE. Bi-State makes these directories available via links to the DOTs websites from the Bi-State website [www.bistateonline.org](http://www.bistateonline.org).

### **Section 26.33 Overconcentration**

Bi-State has not identified that overconcentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

Bi-State has a business development program, known as the Revolving Loan Fund (RLF). The RLF program provides gap financing for business startups or expansions that create or retain jobs. It is open to businesses in Rock Island and Scott Counties. The program assists businesses primarily related to industry, light manufacturing and service industry. It is tied to job creation/retention with loan terms of \$7,500 per job (additional dollars per job may be considered with high paying job offering generous benefit packages). It requires a 10% equity injection by the owner along with a personal guaranty. Interest rates are as low as 4% below prime with a minimum of 4% allowed and a term not to exceed 10 years. Bi-State's RLF program loaned to date \$6.7 million to 75 businesses creating over 2,300 jobs. The RLF program targets businesses that cannot obtain full financing because of conventional interest rates and lending/exposure limits applied by local lending institutions. It is intended to provide the funds that complete the financial package by financing the "gap" created by these conditions. The program offers low interest loans to industrial, commercial, light manufacturing, retail and service industries for expansion and development purposes. Funds can be used towards the purchase of fixed assets (land, building and equipment) and for working capital purposes.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The Bi-State will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26. Bi-State will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. Bi-State will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Bi-State will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs through contract billing arrangements. Bi-State will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

## **SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

Bi-State does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment B to this program. This section of the program will be updated annually, based on meeting the DOT-assisted threshold for contracting opportunities and/or through the

end of the contract period for direct receipt of Federal Transit Administration Section 5309 Grant of \$297,004 authorized by Bi-State Regional Commission February 25, 2004.

In accordance with Section 26.45(f) Bi-State will submit its overall goal to DOT on August 1 of each year or other date specified by FTA. Before establishing the overall goal each year, Bi-State will consult with the Illinois and/or Iowa DOTs and FTA and notify its Regional Transportation Advisory Group (RTAG) to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Bi-State's efforts to establish a level playing field for the participation of DBEs. Following this consultation, Bi-State 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 the Bi-State Regional Commission office for 30 days following the date of the notice, and informing the public that Bi-State and DOT will accept comments on the goals for 45 days from the date of the notice. Bi-State will issue this notice by approximately June 1 of each year, if the DBE threshold is met. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

Bi-State will begin using our overall goal on October 1 of each year for direct DOT-assisted contracts of \$250,000 or more, unless Bi-State has received other instructions from DOT. If Bi-State establishes a goal on a project basis, Bi-State will begin using the goal by the time of the initiation of a DOT-assisted contract for the project.

#### **Section 26.49 Transit Vehicle Manufacturers Goals**

Not applicable.

#### **Section 26.51 Other Goals**

##### **Section 26.51 (a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment B to this program. This section of the program will be updated annually when the goal calculation is updated, based on meeting the DOT-assisted threshold for contracting opportunities.

##### **Section 26.51(d-g) Contract Goals**

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

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

of work.). Bi-State will express the contract goals as a percentage of the Federal share of a DOT-assisted contract.

## **Section 26.53 Good Faith Efforts Procedures**

### **Demonstration of good faith efforts 26.53(a) & (c)**

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

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as project manager in consultation with the DOT and DBELO.

Bi-State will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before Bi-State commit to the performance of the contract by the bidder/offeror.

### **Information to be submitted 26.53(b)**

Bi-State treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information: The names and addresses of DBE firms that will participate in the contract; a description of the work that each DBE will perform; the dollar amount of the participation of each DBE firm participating; written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and If the contract goal is not met, evidence of good faith efforts.

### **Administrative reconsideration 26.53(d)**

Within 30 days of being informed by Bi-State that it is not responsive 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: Executive Director, Bi-State Regional Commission, P.O. Box 3368, 1504 Third Avenue, Rock Island, IL 61204-3368. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. Bi-State will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.



**Good Faith Efforts when a DBE is replaced on a contract 26.53(f)**

Bi-State will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. Bi-State will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, Bi-State will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

**Sample Bid Specification:**

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Bi-State to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of "x" percent has been established for this contract. The bidder/offers shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offers will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offers's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

*[Note: When a contract goal is established pursuant to the recipient's DBE program, the sample bid specification can be used to notify bidders/offers of the requirements to make good faith efforts. The sample forms found as part of the Sample DBE Program can be used to collect information necessary to determine whether the bidder/offers has satisfied these requirements. The sample specification is intended for use in both nonconstruction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.]*

### **Section 26.55 Counting DBE Participation**

Bi-State will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## **SUBPART D - CERTIFICATION STANDARDS**

### **Section 26.61 - 26.73 Certification Process**

Bi-State will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Bi-State will defer its certification decisions to existing State of Illinois and/or Iowa DBE programs based on the facts as a whole and guidance provided through the DOT through their respective DBE certification programs.

For information about the certification process or to apply for certification, firms should contact the Illinois and/or Iowa Departments of Transportation.

## **SUBPART E - CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

Bi-State is not a member of a UCP at this time. Bi-State does not intend to have a program established and will rely on State of Illinois and/or Iowa programs, based on meeting DOT-assisted project thresholds.

### **Section 26.83 Procedures for Certification Decisions**

#### **Re-certifications 26.83(a) & (c)**

Bi-State will consult on the eligibility of DBEs certified by the State of Illinois and/or Iowa certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26. Bi-State will complete this review on a contract basis.

For firms that the States of Illinois and/or Iowa have certified or reviewed and found eligible under part 26, Bi-State will again consult on their eligibility based on project related contracting opportunities.

#### **"No Change" Affidavits and Notices of Change 26.83(j)**

Bi-State will require all DBEs involved in a given contracting opportunity to inform Bi-State, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided during a given contracting opportunity.

Bi-State will also consult State of Illinois and/or Iowa programs for changes in status.

### **Section 26.85 Denials of Initial Requests for Certification**

Not applicable. Bi-State will defer to existing State of Illinois and/or Iowa DBE programs related to denials for certification.

**Section 26.87 Removal of a DBE's Eligibility**

Not applicable. Bi-State will defer to existing State of Illinois and/or Iowa DBE programs related to removal of DBE Eligibility.

**Section 26.89 Certification Appeals**

Not applicable. Bi-State will defer to existing State of Illinois and/or Iowa DBE programs related to certification appeals.

**SUBPART F - COMPLIANCE AND ENFORCEMENT****Section 26.109 Information, Confidentiality, Cooperation**

Bi-State will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, Bi-State will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

**Monitoring Payments to DBEs**

Bi-State will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Bi-State or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Bi-State will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

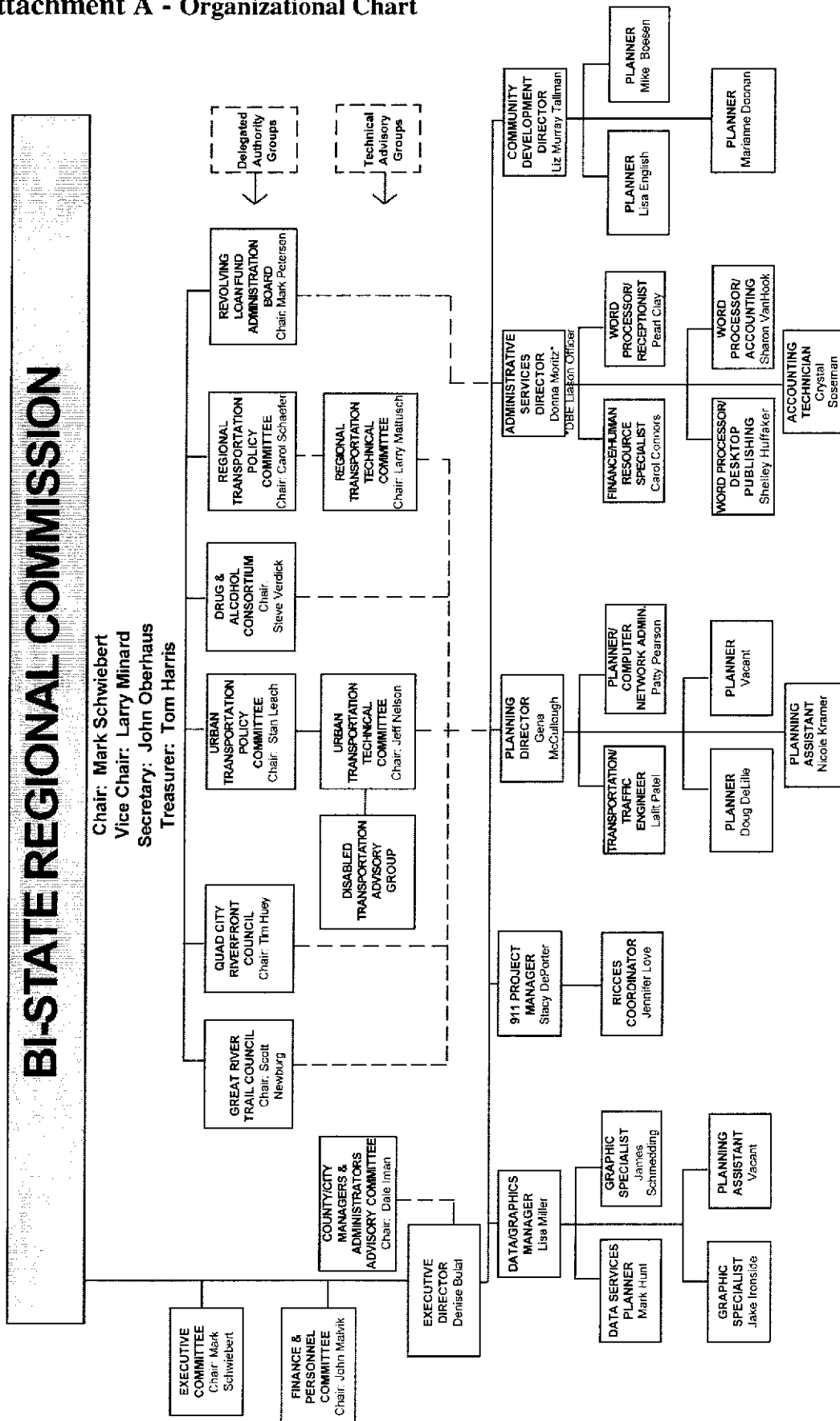
## **- ATTACHMENTS -**

**Attachment A:** Organizational Chart

**Attachment B:** Overall Goal Calculation and Breakout of Estimated  
Race-Neutral and Race-Conscious Participation

**Attachment C:** Sample “Good Faith” Forms

# Attachment A - Organizational Chart



## **Attachment B**

### **Section 26.45: Overall Goal Calculation**

#### **Amount of Goal**

1. Bi-State's overall goal for the following time period October 1, 2004- December 31, 2005 is the following: 0.7% of the Federal financial assistance Bi-State will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.
2. \$297,004 is the federal dollar amount of DOT-assisted contracts that Bi-State expects to award during FFY2004. This means that Bi-State has set a goal of expending at least \$2,079 in federal funds with DBEs during this fiscal year/project.

#### **Methodology used to Calculate Overall Goal**

##### **Step 1: 26.45(c)**

##### **Determine the base figure for the relative availability of DBEs.**

The base figure for the relative availability of DBE's was calculated using the DBE goal established by the State of Iowa for FFY04. Bi-State prior to FFY04 has not had direct DOT-assisted contracting opportunities that amount to \$250,000 or more. Using the State of Iowa DBE threshold provided the initial framework for establishing a project goal triggered by a DOT-assisted project exceeding \$250,000.

To determine the overall DBE Goal for the State of Iowa, a two-step process was used. It is documented at: ([http://www.dot.state.ia.us/contracts/contracts\\_eeoaa.htm](http://www.dot.state.ia.us/contracts/contracts_eeoaa.htm) in general and specifically at:

[http://www.iatransit.com/updates/files/statewide%20dbe%20goal%20approved%20by%20fta\\_files\\_109/fy2004%20dbe%20goal%20narrative%20no%20attachment.doc](http://www.iatransit.com/updates/files/statewide%20dbe%20goal%20approved%20by%20fta_files_109/fy2004%20dbe%20goal%20narrative%20no%20attachment.doc) ). Iowa's Step 1 base figures were calculated to determine the relative availability of DBE's in specific areas of expertise using the State of Iowa Directory of Certified DBE and IADOT's bidders list. Iowa's Step 2 included an assessment of known relevant evidence available to IADOT, the data in 35 SIC Codes was analyzed to determine what adjustment, if any, were needed to narrowly tailor the base figures to IADOT's and its subrecipients' marketplace. IADOT's data of the actual DBE participation in US DOT-assisted contracts during the previous fiscal year was also considered in order to adjust the base figures.

**TABLE 1**

**FFY 2004 DBE GOAL - PROPOSED BY IADOT, MARCH 24, 2004**

	<b>04 FTA Contracting Opportunities</b>	<b>% of Total</b>	<b># of DBEs</b>	<b># Firms</b>	<b>Relative Availability</b>
Fringe Benefits	\$361,682	5.5%	0	237	0.0%
Services	\$1,094,923	16.7%	10	7,615	0.1%
Materials & Supplies	\$1,187,227	18.1%	0	3,346	0.0%
Casualty & Liability	\$498,225	7.6%	0	231	0.0%
Purchased Transportation	\$1,477,051	22.5%	0	112	0.0%
Miscellaneous	\$253,624	3.9%	1	671	0.1%
Leases & Rentals	\$201,545	3.1%	0	454	0.0%
Special Planning Studies	\$150,000	2.3%	14	78	17.9%
Non-Rolling Stock Capital	\$1,331,249	20.3%	20	1,629	1.2%
<b>TOTAL</b>	<b>\$6,555,526</b>		<b>45</b>	<b>14,373</b>	
Weighted DBE Goal					<b>0.69%</b>
Race Conscious:	0.1%				
Race Neutral:	0.6%				

IADOT and its subrecipients will continue to advise prospective contractors for new contracts *of* areas *of* possible subcontracting, and *of* the availability *of* ready, willing and able subcontractors, including DBE firms, to perform such work.

**Step 2: 26.45(d)**

After utilizing a base figure of the relative availability of DBEs from the IADOT, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation Bi-State would expect in the absence of discrimination Bi-State would not have adjusted its base figure, coinciding with the IADOT overall goal and would accept the race-neutral/race-conscious split.

To make this determination, Bi-State used the following process of determination. The IADOT overall goal is based on a variety of contracting opportunities. The Bi-State contracting opportunity related specifically to a planning study which required consultant services. Examining the IADOT prequalified list of consultants for "Public and Rapid Transit Planning" for a project specific contract, it was determined that none of twelve prequalified consultants listed were also listed as DBEs in the State of Iowa DBE directory. In reviewing IADOT's DBE directory, there were no qualified DBE under the same heading as the prequalified list. On further examination, the IADOT DBE directory included a list of consultants for transit planning, none located in state. Further, based on the study size/dollar amount, it was assumed that DBEs within a 100-mile radius may be ready and able to participate. None of the DBEs listed in the

Iowa directory under transit planning would meet this criteria, as a Chicago listing was the nearest qualified. It was determined then to use the IADOT goal and encourage prime contractors to subcontract portions of the work to DBE(s) that they might otherwise perform themselves. A key point for this program is that a prime contractor and/or subconsultant can be added to the bidder list although not prequalified with the IADOT for this project planning effort. Additional outreach may be necessary outside the 100 mile radius, and/or advertising in major metropolitan areas if ready and able DBEs are not willing and/or able to participate.

### **Public Participation**

Bi-State will publish its goal information in these publications: *Quad City Times* newspaper. The IADOT goal also followed a public participation process and is outlined on the IADOT website noted above.

Bi-State may receive comments from these individuals or organizations: Regional Transportation Advisory Group and Bi-State Regional Commission board. If comments are received they will be included with this program.

Summaries of these comments are as follows: None to date.

Our responses to these comments are: None to date.

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

The U.S. DOT regulations require that the maximum feasible portion of the DBE Overall Annual Goal be met by using race-neutral methods. Race-neutral methods include making efforts to assure that bidding and contract requirements facilitate participation by DBE's and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves; providing technical assistance, communication programs and other support services to facilitate consideration of DBE's and other small businesses.

To coincide with IADOT, Bi-State estimates that, in meeting our overall goal of 0.7%, Bi-State will obtain 0.6% from race-neutral participation and 0.1% through race-conscious measures. In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if Bi-State use contract goals Bi-State will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and Bi-State will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

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



## Attachment C

### Forms 1 & 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 may be provided as part of the solicitation documents.]

#### FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No.: \_\_\_\_\_

By: \_\_\_\_\_  
Signature Title

## FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$\_\_\_\_\_.

### Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
Signature Title

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)