

Indianapolis Public Transportation Corporation  
Disadvantaged Business Enterprise  
Policy/Program Update

Revised July 2016

# Indianapolis Public Transportation Corporation

## Disadvantaged Business Enterprise Program

### Policy Statement

Section 26.1, 26.23: Objectives/Policy Statement

Indianapolis Public Transportation Corporation (IPTC) has an established Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. IPTC has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, IPTC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of IPTC to ensure that DBEs as 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 in the development of firms that can compete successfully in the market place outside the DBE Program;

This Policy Statement is a modification to the DBE Program currently on file with the Federal Transit Administration (FTA) announcing that Chelci Hunter, Procurement Administrator, has been delegated as the DBE Liaison Officer. In this capacity, Ms. Hunter is responsible for implementing all aspects of the DBE Program. This implementation is accorded the same priority as compliance with all other legal obligations incurred by IPTC in its financial assistance agreements with the DOT.

IPTC has disseminated this policy statement to the FTA, as well as the IPTC governing board of officials and all of the components of our organization. We have also made distribution of this statement via e-mail, U. S. Mail, and personal delivery, to DBE and non-DBE business communities that perform work for us on DOT assisted contracts.

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Signature- IPTC President/CEO Michael Terry

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Date

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## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives of the Indianapolis Public Transportation Corporation (IPTC) Disadvantaged Business Enterprise Program are:

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 Department's 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 in the development of firms that can compete successfully in the market place outside the DBE Program.

### **Section 26.3 Applicability**

IPTC 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**

The definition of terms is essential to an effective DBE program. At the same time, it is apparent that no set of definitions, however drafted, can cover all of the potential questions that will arise in the operation of the program. The definitions will be interpreted to achieve the objectives of utilizing DBEs to the maximum practicable extent. The following definitions serve to aid IPTC in interpreting the various concepts so that this objective will be achieved.

1. **Affiliation** – This term has the same meaning as used 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:
  - a. One concern controls or has the power to control the other;
  - b. A third party or parties controls or has the power to control both
  - c. An identity of interest between or among parties exists such that affiliation may be found.

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 DBE program.
2. **Affirmative Action** – Positive activities undertaken to eliminate discrimination and effects of past discrimination, and to ensure nondiscriminatory practices in the future.
  3. **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.
  4. **Alaska Native Corporation (ANC)** – 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.).
  5. **Bid** – Price quotations, price negotiations, and proposals, as well as the form bid processed, depending on which procedure is required by IPTC and Contracting Policies.
  6. **Business Enterprise** – Any legal entity that is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.
  7. **Challenge** – A formal filing by a third party to question the presumption that a particular individual is socially and economically disadvantaged.
  8. **Commercially Useful Function** – Work performed by a DBE firm in a 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 recipient's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.
  9. **Compliance** – The correct implementation of the requirements of the DOT DBE program.
  10. **Contract** – 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 the purpose of this document, a lease is considered to be a contract.

11. **Contracting Opportunity** – Any decision by a recipient or contractor to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).
12. **Contractor** – One who participates, through a contract or subcontract (at any tier), in a DOT-assisted transit program.
13. **Department or DOT** – 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).
14. **Disadvantaged Business Enterprise or DBE** – A for profit small business concern that:
  - a. 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 51% of the stock is owned by one or more such individuals; and
  - b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business or stock.
15. **DOT-Assisted Contract** – Any contract between a recipient 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.
16. **DOT/SBA Memorandum of Understanding or MOU** – Refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a)DB) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.
17. **Goal** – A numerically expressed objective, (not less than 10% of authorized funds to be expended with DBEs), that the Department uses as a tool in evaluating and monitoring of DBE opportunities to participate in DOT assisted contracts.
18. **Good Faith Efforts** – Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
19. **Immediate Family Member** – Father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

20. **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. Also see definition of “Tribally-Owned Concern” in this section.
21. **Joint Venture** – 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.
22. **Manufacturer** – An individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the recipient, contractor, or TVM.
23. **Native Hawaiian** – Any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.
24. **Native Hawaiian Organization** – 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.
25. **Non-Compliance** – A recipient has not correctly implemented the requirements of this part.
26. **Operating Administration or OA** – Any of the following parts of DOT; the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.
27. **Personal Net Worth** – 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.
28. **Primary Industry Classification** – The North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual – United States, 1977, which is available from the National Technical Information

Service, 5285 Port Royal Road, Springfield, VA 22161: by calling 1(800)553-6847, or via the Internet at: <http://www.ntis.gov/products/publications.aspx>.

29. **Primary Recipient** – A grantee who receives DOT financial assistance and passes some or all of it on to another subrecipient.
30. **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.
31. **Program** – Any undertaking on a grantee’s part to use DOT financial assistance, authorized by the laws to which this part applies.
32. **Race-Conscious Measure** – Program that is focused specifically on assisting only DBEs, including women-owned DBEs.
33. **Race-Neutral Measure** – Program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
34. **Recipient** – Any 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.
35. **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. 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 manufactures or regular dealers within the context of this definition.
36. **Secretary** – The Secretary of Transportation or his/her designee.
37. **Set-aside** – A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
38. **Small Business Administration (SBA)** – The United States Small Business Administration.

39. **Small Business Concern** – 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 specified in section 26.65(b).
40. **Socially and Economically Disadvantaged Individual** – Any individual who is a citizen, or lawfully admitted permanent resident of the United States and who is:
- a. Any individual who a recipient finds to be socially and economically disadvantaged individual on a case-by-case basis.
  - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - (1) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
    - (2) 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;
    - (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - (4) 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;
    - (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - (6) Women;
    - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
41. **Subcontractor** – A business enterprise undertaking the execution of work under the terms of a contract, acting through a prime contractor or other agents or employees.
42. **Subrecipient** – Any entity that receives federal financial assistance from FTA through a primary recipient.
43. **Transit Vehicle** – A vehicle used by an FTA recipient, e.g., bus, railcar, or van, for the primary purpose of providing public mass transportation; this definition does not include locomotives or ferryboats.

44. **Transit Vehicle Manufacturer** – A manufacturer of vehicles used by FTA recipients for the primary purpose of providing public mass transportation (e.g., buses, railcars, vans). The term does not apply to firms that rehabilitate old vehicles or to manufactures of locomotives or ferryboats. The term also refers to distributors of or dealers in transit vehicles with respect to requirements of Section 26.49 of the regulations.
45. **Tribally-Owned Concern** – any concern at least 51% owned by an Indian tribe as defined in 49 CFR Part 26.
46. **You** – A recipient, unless a statement in the text of this part or the context requires otherwise (i.e., “You must do XYZ” means that the recipients must do XYZ).

### **Section 26.7 Non-Discrimination Requirements**

IPTC 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, IPTC 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)

IPTC will report DBE participation to FTA on a semi-annual basis using the form “Uniform Report of DBE Awards or Commitments and Payments.” This report is due in the Region 5 FTA office on June 1 and December 1 of every year. A copy of the form and instructions for completion are located in the Appendix, Exhibit 1.

#### Bidders List: 26.11(c)

IPTC will create a Bidders List, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. IPTC will use the Bidders List approach to calculating overall goals. The Bidders List will include the name, address, DBE or non-DBE status, age of the firm, and their annual gross receipts.

Rather than requesting exact annual gross receipts from prospective bidders, IPTC will request information by category of gross receipts (e.g., less than \$500,000; \$500,000 to \$1 million; \$1 million to \$2 million; \$2 million to \$5 million; etc.)

IPTC will utilize various ways to collect the information for a Bidders List. Among these; the collection of data from all bidders either before or after a bid due date; and a survey of DBE and non-DBE contractors and subcontractors who seek to work on IPTC Federally assisted contracts.

### **Section 26:13 Federal Financial Assistance Agreement**

IPTC has signed the following assurances, applicable to all DOT-assisted contracts and their administration.

#### Assurance: 26.13(a)

The recipient 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 the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

IPTC will see that the following clause will be placed in every DOT-assisted contract and subcontract:

#### Contract Assurance: 26.13(b)

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, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the contractor from future bidding as non-responsible.

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

Since IPTC is in receipt of more than \$250,000 in FTA planning capital and/or operating assistance in each federal fiscal year this DBE Program will be continually carried out. IPTC will provide to DOT/FTA updates representing significant changes to the program. If no significant changes are made, updates will not be provided.

**Section 26.23 Policy Statement**

IPTC has issued a signed and dated Policy Statement that expresses our commitment to this DBE Program. The Policy Statement may be found on page 2 of this Policy/Program Update. Included in the Statement are IPTC's objectives and an outline of responsibilities for their implementation. This Policy Statement has been circulated throughout the organization and to the DBE and non-DBE business communities that perform work on our DOT-assisted contracts.

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

IPTC has designated their Procurement Administrator, Chelci Hunter, to act as their DBE Liaison Officer. Contact information for Ms. Hunter is listed below:

Indianapolis Public Transportation Corporation  
Attention: Chelci Hunter  
Procurement Administrator/DBELO  
1501 W. Washington St.  
Indianapolis, IN 46222  
Office phone: 317 614-9253  
Procurement Fax: 317 266-9163  
Email: [chunter@indygo.net](mailto:chunter@indygo.net)

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that IPTC complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the President/CEO of IPTC concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in the Appendix, Exhibit 2.

The DBELO may rely on the staff and assistance of other departments at IPTC to assist with the program.

1. Legal – Provides legal interpretation of the DBE Regulations when needed.
2. Accounting and Finance – Representatives from the accounting and finance areas will assist with maintaining a computerized system of records required to keep abreast of the results and progress of implementing this program, and provide

- such information to the DBELO monthly. These records shall comply with Section 26.11 of the regulation. The Grants Manager shall also be available for consultation regarding all DOT/FTA-assisted expenditures.
3. Marketing and Business Development – Provide the DBELO with information on projected grants to be applied for during the fiscal year and identify types of federal funds projected to be received.
  4. Procurement – The DBELO is to be consulted regarding all procurements where there is a possibility of DBE participation or a DBE Goal will be set.

The duties and responsibilities of the DBELO include the following:

1. Maintains and reports accurate and up-to-date statistical data and other information as required by DOT/FTA (annual goals, bi-annual reports) and IPTC (quarterly reports to President/CEO).
2. Review third party contracts and purchase requisitions for compliance with the program.
3. Work with all departments to establish the overall DBE Annual Goals.  
Ensures that bid notices and requests for proposals are available to DBEs in a timely manner
4. Identifies contracts and procurements so that DBE goals are included in solicitations when necessary.
5. Analyzes IPTC's progress toward goal attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the President/CEO regarding all DBE matters and achievements.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Assists aspiring DBE's in getting their paperwork to the UCP for needed certification.
11. Provides outreach to DBEs and community organizations to advise them of opportunities at IPTC.
12. Maintains the updated directory on all certified DBE's willing to perform work in the Indianapolis metropolitan area.
13. Circulate the DBE Policy Statement to personnel throughout IPTC and to minority, female and non-minority community and business organizations throughout the City of Indianapolis and State of Indiana.
14. Monitor contractor and subcontractor compliance with DBE commitments throughout the life of contracts, including their Affirmative Action Programs.
15. Investigate complaints and protests filed against IPTC's DBE program and its implementation.

**Section 26.27 DBE Financial Institutions**

IPTC has thoroughly investigated its service area for banks and financial institutions owned and controlled by DBEs. The results of the investigation revealed that there are no such institutions within the Indianapolis metropolitan area. IPTC will continue to monitor new institutions as they enter the area to see if they qualify as being controlled by DBEs. IPTC will also include a paragraph in all procurements encouraging prime contractors, subcontractors, and vendors to utilize the services of financial institutions owned and controlled by DBEs.

**Section 26.29 Prompt Payment Mechanisms**

IPTC 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 15 days from the receipt of each payment the prime contract receives from IPTC. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the sub-contractors 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 IPTC. This clause applies to both DBE and non-DBE subcontracts.”

Where there are disputes, prime contractors and subcontractors will be required to use appropriate Alternative Dispute Resolution (ADR) mechanisms for resolution. IPTC will participate in the dispute resolution if necessary.

Failure to carry out prompt payment requirements will be considered a breach of contract, with the following results.

1. IPTC will not reimburse prime contractors for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
2. IPTC will not award future contracts to prime contractors who fail to pay subcontractors in a prompt manner.

**Section 26.31 Directory**

IPTC will maintain a directory identifying all firms that are ready, willing, and able to participate as DBEs in the Indianapolis area. The directory lists the following information; firm name, address, phone number, date of most recent certification, and type of work the firm is certified to perform as a DBE. The information for the directory is acquired from the Indiana Department of Transportation (INDOT) who oversees the Uniform Certification Program (UCP) for the State of Indiana. The Indiana Directory is available from the INDOT website:

[https://hr85.gmis.in.gov/psp/pa91prd/EMPLOYEE/PSFT\\_FS91PRD/c/SOI\\_APPS\\_MWBE.SOI\\_DBE\\_CERT.GBL?FolderPath=PORTAL\\_ROOT\\_OBJECT.SOI\\_DBE\\_CERT\\_SRCH\\_GBL&IsFolder=false&IgnoreParamTempl=FolderPath%25252cIsFolder](https://hr85.gmis.in.gov/psp/pa91prd/EMPLOYEE/PSFT_FS91PRD/c/SOI_APPS_MWBE.SOI_DBE_CERT.GBL?FolderPath=PORTAL_ROOT_OBJECT.SOI_DBE_CERT_SRCH_GBL&IsFolder=false&IgnoreParamTempl=FolderPath%25252cIsFolder) .

### **Section 26.33 Overconcentration**

IPTC has not identified an overconcentration in any area with regards to DBE's. The DBELO will monitor the Directory and watch NAICS Codes to see that an overconcentration does not exist that would put an unfair burden on non-DBE firms. At no time will non-DBE firms be unfairly prevented from competing for contracts and subcontracts. This is the essence of a "level playing field".

1. IPTC will ensure that DBEs have access to nontraditional NAICS code contracting areas.
2. IPTC will ensure that non-DBEs are not excluded from contracts and subcontracts in overconcentrated DBE participation NAICS Code areas if they do exist.
3. IPTC will obtain approval from FTA for the determination of overconcentration and written approval for any measures they feel are needed to address the issue.

### **Section 26.35 Business Development Program (BDP)**

Where IPTC determines that there are NAICS codes without adequate DBE participation, or determined and identified nontraditional NAICS codes for DBE participation, a mentor-protégé program may be adopted with the approval of FTA. IPTC may contract agencies for technical assistance to prepare a business development program modeled after the SBA 8(a) program. Appendix C to Part 26, Section D contains the elements of a BDP. This model will be adhered to when proposing a program to FTA for approval. All BDPs must be updated and reviewed by FTA on an annual basis.

1. Only firms already certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate.
2. During the course of the mentor-protégé relationship, IPTC will
  - a. Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by IPTC.
  - b. Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.
3. For purposes of making determination of business size under this part, IPTC will not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. Further guidance regarding this is found in Appendix D to Part 26.

All BDPs and mentor-protégé programs must be approved by the concerned operating administration of FTA before implementation. Once approved, these BDPs become a part of IPTC's DBE program.

**Section 26.37            Monitoring and Enforcement Mechanisms**

IPTC will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- We will bring to the attention of DOT and FTA 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 department or Program Fraud and Civil Penalties rules) provided in Part 26.109.
- IPTC will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
- IPTC will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by certification paperwork and site visits.
- IPTC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

To assist with all of the above, the following forms are requirements from either the prime contractor or the DBE subcontractor:

- Exhibit 3: DBE Affidavit to be completed by prime contractor
- Exhibit 4: DBE Affidavit to be completed by DBE subcontractor
- Exhibit 5: DBE Letter of Intent to Perform as DBE
- Exhibit 6: DBE Utilization Plan
- Exhibit 7: DBE Status Report
- Exhibit 8: Affidavit for DBE Subcontractor Participation/Payment

The DBELO assigns an NAICS code to each contract awarded to a prime contractor. The contracts are then tracked to make sure that the prime contractor maintains the correct level of compliance with the subcontractors.

Upon notification to the prime of contract award, the prime is required to execute subcontractor agreements or purchase orders within 5 business days of the award and prior to the start of work. DBE subcontractors are to be identified in the Utilization Plan and IPTC will monitor the work performed and the dollar amounts paid to the DBE firms during the life of the contract.

Throughout the life of the contract, the DBELO has the primary responsibility for monitoring the DBE and EEO compliance by the prime contractor. All required schedules and support documentation must be submitted to IPTC at the time of the bid opening. Documents must be fully executed at the time of the opening. Failure to do so could result in a finding of non-responsiveness.

**Award Notification:**

When a prime contractor is awarded a contract by IPTC, prime contractor and the DBE subcontractor(s) will be notified by the IPTC Contracts Manager. A copy of the fully executed contract will be mailed to the prime contractor. At the same time, the DBELO will send a copy of the contract cover letter which was sent to the prime contractor to the DBE subcontractors along with a letter notifying them, in writing that the contract has been awarded and they have been identified as a DBE subcontractor.

**Contract Monitoring:**

To insure DBE Compliance on all contracts regardless of dollar amount, the prime contractor and DBE subcontractors are required to complete a "Status Report of DBE Subcontractor Payment" to the DBELO. The DBELO will mail these reports to the prime and DBE's and they are to be submitted at specified intervals throughout contract completion: 25%, 50%, 75% and 90%.

The request will identify the names of the DBEs proposed by the prime contractor, the proposed goods or services the DBE subcontractor was to supply or perform, and the proposed DBE dollar amount. The prime contractor is requested to supply, within 5 business days, proof of payment for each of the DBEs listed in order to verify the year-to-date DBE participation.

Likewise, the DBE subcontractors are requested to provide an Affidavit for DBE Subcontractor Participation/Payment, Appendix Exhibit 4, attesting to the work performed and the amount paid to date by the prime contractor.

On construction projects, the contractors are required to submit at the time of submission of monthly payment vouchers or invoices to IPTC's Procurement Department, a DBE Status Report form to reflect the current payments to DBEs. Vouchers or invoices will not be processed by IPTC for payment until the current Status Report Form has been presented. Further, the contractor must submit partial and final waivers of liens from DBE subcontractors which are drawn up to show the true, cumulative dollar amount of subcontractor payments made to date.

On all other contracts, including one-time purchase contracts, the DBE Status Report form must be submitted to the Comptroller with submittal of payment voucher or invoice request.

The contractor must maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period of at least three (3) years after final acceptance of contract work. Full access to these records shall be granted to indigo, FTA or State authorities involved in this project, the U.S. Department of Justice, the U.S. Department of Transportation or any duly authorized representatives thereof.

**Section 26.39            Fostering Small Business Participation**

IPTC recognizes the importance of structuring contracting requests to facilitate competition by small businesses including DBEs. IPTC will not perform unnecessary and unjustified bundling of contract requirements.

IPTC will continue working in conjunction with the City of Indianapolis in the promotion of small businesses, including, but not limited to Minority-owned Business Enterprises (MBE), Women-owned Business Enterprises (WBE), Veteran-owned Business Enterprises (VBE), and Disadvantaged Business Enterprises (DBE). IPTC will strive to attain the goal amounts as set by the City of Indianapolis, but will not have actual goals or set-asides for small businesses.

- In large or multi-year contracts, IPTC will require 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 perform. If unable to award these portions to DBEs, they will be required to award them to other small businesses.
- On prime contracts not having a DBE goal, IPTC will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing.
- IPTC will work to identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete and perform as the prime.
- IPTC will work toward meeting all small business contracts in a race-neutral manner, ensuring that a reasonable number of prime contracts are of a size that small businesses including DBE's can reasonably perform the work.

To be eligible to participate in strategies designed and implemented for small businesses, the firm must meet the small business definition as defined by USDOT 49 CFR Part 26.65. IPTC will verify business size by receipt of certification(s). IPTC will recognize small business enterprise certifications performed by certifying entities, such as the United States Small Business Administration. Firms will not be allowed to self-certify. Certified DBEs are presumed eligible to participate as a small business.

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

### **Section 26.41            Statutory 10% Goal**

IPTC recognizes that the statues authorizing this program provide: Except to the extent the Secretary determines otherwise, not less than 10% of the authorized funds are to be expended with DBEs. This minimum 10% goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBE's opportunities to participate in DOT-assisted contracts.

Knowing that the national 10% goal does not authorize or require recipients to set overall or contract goals at the 10% level, or any other particular level, or to take any special administrative steps if their goals are above or below 10%, **IPTC will strive to set a realistic goal utilizing the information available from the County Business Pattern and the Indiana Department of Transportation listing of certified DBEs.**

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

IPTC does not use quotas or set-asides in any way in the administration of their DBE program.

### **Section 26.45            Overall Goals**

A description of the goal methodology used by IPTC is found in the Appendix, Exhibit 11. IPTC will calculate and update this goal every three years as required by FTA.

In accordance with Section 26.45(f), IPTC will submit its overall goal to FTA on or before August 1 of each year. Before establishing the overall goal, IPTC will consult local businesses, general contractor groups, and minority and women owned businesses in the Indianapolis metropolitan area through public meetings and outreach. These meetings may take place during public outreach performed with other City and State entities (e.g., Business Fairs, Diversity Round Table, Indiana Minority Suppliers Development Council, etc.) as well as a publicized meeting during regular business hours at the principal office of IPTC. The purpose of these consults is to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and IPTC's efforts to establish a level playing field for the participation of DBEs prior to establishing the goals. Meeting announcements for IPTC will be published in general circulation and minority-focused media and trade publications as well as posted at [www.indygo.net](http://www.indygo.net).

Following these consultations, the proposed goals will be published in trade journals, minority papers, main stream media and [www.indygo.net](http://www.indygo.net). Proposed goals and methodology will be available for review and comment at the IPTC facility during regular business hours for a minimum of 30 days. During this time the proposed goals will also be available on the IPTC web page. The public may submit comments regarding the proposed goals to the FTA and IPTC within 45 days of the date of publication. All

comments received are for informational purposes only. The published notice must include the address for IPTC's principal offices and hours the goals can be reviewed, as well as the addresses to which comments may be sent for both IPTC and FTA. This notice should be published by June 1, but no later than June 15 of each year.

When IPTC submits the overall goal to FTA on or before August 1, we will also include a summary of information and comments received during the public participation process and our responses.

IPTC will begin using their new overall goal on October 1 unless they have received other instructions from DOT or FTA. If IPTC establishes a goal on a project basis, we will begin using our goal at the time of the first solicitation for a DOT-assisted contract for the project.

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

IPTC will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, IPTC may, at its discretion and with FTA approval, establish projected-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

It is a requirement of FTA that each transit vehicle manufacturer establish and submit for FTA's approval an annual overall percentage goal. It is IPTC's policy to require TVMs to provide a copy of their annual FTA goal prior to award of a contract.

#### **Section 26.51 Break out of Estimated Race-Neutral and Race-Conscious Participation**

A breakout of estimated race-neutral and race conscious participation can be found in the Appendix, Exhibit 11, as part of the Goal Methodology. This attachment will show how much of IPTC's DBE goal will be met by race-neutral means, or race-conscious means. This section of the program is to be updated at the same time the goal calculation is updated.

It is the goal of FTA for all DBE attainment to be met through RACE-NEUTRAL means. Race-Neutral means can include, but are not limited to the following FTA suggestions:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces, etc.);

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Each time that IPTC submits their overall goal for review by the concerned operating administration, they will also submit their projection of the portion of the goal that they expect to meet through race-neutral means and the basis for this projection. This projection is subject to the approval of the concerned operating administration, in conjunction with its review of the overall goal.

The following provisions apply to the use of contract goals for DBE goal attainment:

1. Goals may be used only on those DOT-assisted contracts that have subcontracting possibilities,
2. IPTC is not required to set a contract goal on every DOT-assisted contract. The contract goals may also be set differently for different contracts. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of work, and the availability of DBEs for the work of that particular contract. However, over the period covered by the overall goal, IPTC must set contract goals so that they will cumulatively result in meeting any portion of the overall goal not projected to be met by race-neutral means.
3. FTA approval of each contract goal is not required. However, the FTA may review and approve or disapprove any contract goal established by IPTC.

4. IPTC will set contract goals to provide for participation by all certified DBEs and will not subdivide the contracts into group-specific goals.

To ensure that IPTC's DBE program continues to be narrowly tailored to overcome the effects of discrimination, contract goals will be adjusted as follows:

1. If the approved projection shows that 100% of our goal can be reached in a race-neutral manner, then IPTC will implement the program for that year without setting contract goals.
2. If, during the course of the year when using contract goals, the DBELO sees that IPTC will exceed the overall goal, then IPTC will either reduce or eliminate the use of contract goals to the extent necessary to ensure that the original goal is not exceeded. IPTC and their DBELO will make necessary adjustments in the use of race-neutral and race-conscious methods to meet their overall goal.
3. If DBE participation achieved by race-neutral means alone meets or exceeds the overall goal for two consecutive years, IPTC will not make a projection of how much to meet through race-conscious standards, but will set no contract goals for the next year and will use only race-neutral means to meet the goal. This will continue until the first year the goal is not met by race-neutral means, then IPTC will revert back to a race-conscious means of goal attainment.
4. If IPTC obtains DBE participation that exceeds the overall goal in two consecutive years through the use of contract goals, they will reduce the use of contract goals proportionately in the following year.

In any year in which IPTC projects meeting part of the goal through race-neutral means and the remainder through contract goals, data related to DBE achievements in those contracts with and contracts without contract goals will be tracked separately. This information will be reported to FTA on the bi-annual reports as required under 26.11.

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

#### Demonstration of Good Faith Efforts (26.53(a) & (c)):

The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are:

1. The contractor solicited through all reasonable and available means (e.g., attended any pre-solicitation or pre-bid meetings that were scheduled by IPTC).
2. The contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities to notify DBEs with the capacity to perform the work. The prime contractor must have solicited this interest with sufficient time to allow the DBEs to respond to the solicitation.
3. The contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in the opportunity.
4. The contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate,

breaking down contracts into economically feasible units to facilitate DBE participation).

5. The contractor provided interested DBEs with adequate information about the plans, specifications and requirements of the contract.
6. The contractor negotiated in good faith with interested DBEs. It is the responsibility of the prime contractors to make portions 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 DBEs participation. Prime contractors are required to submit evidence of such negotiations to IPTC within the sealed bid solicitation. This evidence must include the following information:
  - Names, addresses, telephone numbers of DBEs that were considered;
  - A description of the information provided regarding the plans and specifications of the work selected for subcontracting; and
  - Any evidence of why additional agreements could not be reached for DBEs to perform the work.

While IPTC recognizes that price, capacities and contract goals are factors for negotiations, they also believe that even though there may be some additional cost involved in finding and using DBEs, that possibility is not in itself, sufficient justification for a bidder's failure to meet a contract 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 required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

7. The contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor.
8. The prime contractor made efforts to assist the interested DBE in obtaining necessary equipment, supplies, materials, or related assistance or services.
9. The contractor effectively used the services of available minority community organizations, minority contractor's groups, local, state and federal DBE assistance offices, and other organizations that provide assistance in the recruitment and placement of DBEs.
10. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

The DBELO is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive or responsible. IPTC will ensure that all information is complete and accurate and adequately documented by the bidder's good faith efforts before committing to the performance of the contract by the bidder. If the bidder has failed to meet contract goals, they must provide the Certificate of Good Faith Efforts, Appendix Exhibit 10, as a part of their bid.

In determining whether a bidder has made good faith efforts, the DBELO will take into account when other bidders meet IPTC's contract goal, (e.g., when the apparent successful bidder fails to meet the contract goal, but others meet the goal, the DBELO will raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. However, if the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, IPTC will review this in conjunction with other factors as evidence of the apparent successful bidder having made good faith efforts.

Information to be submitted (26.53(b)):

IPTC treats bidder's compliance with good faith effort requirements as a matter of responsiveness or responsibility. Each solicitation for which a contracted goal has been established will require the bidders to submit the following information:

1. The name and address of the DBE subcontractors that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.

Administrative Reconsideration (26.53(d))

IPTC requires that the information described above be submitted under sealed bid and proposal procedures as a matter of responsiveness. If it is determined that the apparent successful bidder has failed to meet the requirements of the contract goal, before awarding the contract, IPTC will provide the lowest bidder an opportunity for administrative reconsideration.

Within 3 business days of being informed by IPTC that it is not responsive or responsible because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the Reconsideration Official: Jill Russell, Legal Counsel/Reconsideration Official, 1501 W. Washington St., Indianapolis, IN 46222; 317 614-9214; [jrussell@indygo.net](mailto:jrussell@indygo.net). The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or

made adequate good faith efforts to do so. IPTC will send the bidder 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))

Once a contract has been awarded with contract goals, IPTC will require a prime 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. IPTC will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. IPTC will not permit a prime contractor to terminate a DBE subcontractor for convenience or so a substituted DBE or its own forces may perform the work.

Before transmitting to IPTC its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to IPTC, of its intent to request to terminate and/or substitute, and the reason for the request. The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise IPTC and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why IPTC should not approve the prime contractor's action. If required in a particular case as a matter of public necessity, IPTC may provide a response period shorter than five days.

IPTC will require the prime contractor to obtain prior written approval of the substitute DBE and to provide copies of the new or amended subcontracts, or documentation of good faith efforts. Failure to notify the DBELO immediately (within 24 hours) will result in IPTC's Contracting Officer issuing an order stopping all or part of payment/work until satisfactory action has been taken to replace the DBE, or show good faith efforts. If deemed necessary, the Contracting Officer may issue a termination for default proceeding.

The following steps are required of the prime contractor in requesting a substitution of proposed DBEs:

1. The Contractor must notify the DBELO immediately in writing of any necessity to reduce or terminate a DBE subcontract and to propose a substitute firm for some phase of work, in order to sustain the fulfillment of the DBE contract goal.
2. The Contractor's notification shall include the specific reasons for the proposed substitution. Stated reasons that would be acceptable include any of the following examples:
  - A previously committed DBE was found unable to perform the required work, or unable to perform the required work on time;
  - A committed DBE was later discovered not to be bona fide; and/or
  - A DBE previously committed to a given price later demands an unreasonable escalation of price.

3. The Contractor's position in these cases must be fully explained and supported with adequate documentation. Stated reasons that will not be acceptable include:
  - A replacement firm has been recruited to perform the same work under terms more advantageous to the prime contractor;
  - Issues about performance by the committed DBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); and/or
  - A DBE has requested reasonable price escalation that may be justified due to unforeseen circumstances (i.e., change in scope of DBE's work).
4. The Contractor's notification shall include the name, address, and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract.
5. The same DBE affidavits, documents and letters of intent that are required of bidders, should be attached.

IPTC will evaluate the submitted documentation and when possible respond within fifteen (15) working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. The response may also be in the form of a rejection of the proposed DBE substitution with an explanation of the justification for the rejections included in IPTC's response. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, IPTC will respond as soon as practicable.

Actual substitution of a DBE to fulfill contract requirements should not be made prior to IPTC approval. Once notified of the approval, the substitute DBE subcontract must be executed within five (5) working days, and a copy of the DBE subcontract, with signatures of both parties to the agreement needs to be submitted to IPTC.

Extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary in order to comply with DBE contract requirements will not be approved by IPTC.

In the event where an enterprise under contract was previously considered to be a DBE but is later found not to be, or whose work is found not to be fully creditable toward the DBE goals as planned, IPTC will consider the following criteria in evaluating a waiver request:

- Whether the prime contractor was reasonable in believing the enterprise was a DBE or that eligibility or "counting" standards were not being violated;
- The adequacy of efforts taken to obtain a substitute DBE.

IPTC will include a provision in its contractual agreements outlining the administrative remedies that will be involved if the prime contractor fails to comply with the

requirements of 49 CFR, Parts 23 & 26. IPTC will, in this case, consider this as a material breach of its contract with the prime, which may result in termination, or another remedial action to be determined by IPTC at that time, depending upon the reason(s) and/or seriousness of the infraction.

IPTC will include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains IPTC written consent, and that, unless IPTC consent is provided, the prime contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE.

In determining whether a DBE bidder for a prime contractor has met a contract goal, IPTC will count the work the DBE has committed to perform with its own forces, as well as the work that it has committed to DBE subcontractors and DBE suppliers.

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

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

#### DBE as Prime Contractor:

When a DBE participates in a contract, only the value of the work actually performed by the DBE toward DBE goals may be counted:

1. Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph 2 of this section) 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).
2. Count 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 DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted 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 does not count toward DBE goals.

#### DBE as participant in Joint Venture:

When a DBE performs as a participant in a joint venture, 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.

DBE performing a Commercially Useful Function:

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

1. 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 negotiation 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, you must 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.
2. 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 funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, IPTC will examine similar transactions, particularly those in which DBEs do not participate.
3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of work of a contract than would be expected on the basis of normal industry practice for the type of work involved, IPTC will presume that it is not performing a commercially useful function.
4. When a DBE is presumed not to be performing a commercially useful function as provided in this section, the DBE may present evidence to dispute this presumption. IPTC may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
5. IPTC's decisions on commercially useful function are subject to review by FTA, but are not administratively appealable.

DBE Trucking Company:

IPTC will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. 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.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. 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.
4. 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.

5. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. Use of this arrangement requires IPTC to receive prior FTA approval.
6. 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 use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Expenditures with DBEs for Materials or Supplies:

The counting of expenditures with DBEs for materials or supplies toward DBE goals will be as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, IPTC will count 100% of the cost of the materials or supplies toward DBE goals.

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 by the specifications.

2. If the Materials or supplies are purchased from a DBE regular dealer, IPTC will count 60% of the cost of the materials or supplies toward their DBE goals.

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 or leased to the public in the usual course of business.

- 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.
- 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 above 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 agreement and not on an ad hoc or contract-by-contract basis.
- Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this definition.

3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, IPTC 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 IPTC determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. IPTC will not count any portion of the cost of the materials and supplies themselves toward the DBE goal.

Firm certified DBE after contract execution:

If a firm is not certified as a DBE in accordance with the standards of subpart D of 49 CFR Part 26 at the time of the execution of the contract, IPTC will not count the firm's participation toward any DBE goals.

Firm no longer certified as DBE:

IPTC will not count the dollar value of work performed under a contract with a firm after it has ceased to be a certified DBE.

DBE must be paid:

IPTC will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

**SUBPART D – CERTIFICATION STANDARD****Section 26.61 – 26.73 Certification Process**

IPTC will rely on the Indiana Department of Transportation to use the proper certification standards of Subpart D, Part 26 to determine the eligibility of firms to participate as DBE's in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. INDOT will make their certification decisions based on the facts as a whole.

For certification information firms should contact:

Derrick Casson, DBE Certification Manager  
Indiana Department of Transportation  
Economic Opportunity Division  
100 North Senate Avenue  
Indianapolis, IN 46204  
[DCasson@indot.IN.gov](mailto:DCasson@indot.IN.gov)  
317 233-4664 phone  
317 233-0891 fax

Certification application forms and documentation requirements are found in the Appendix, Exhibit 12.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

IPTC is a member of a Unified Certification Program (UCP) administered by Indiana Department of Transportation (INDOT). The UCP will meet all of the requirements of Section 26.81. A copy of the UCP agreement is located in the Appendix as Exhibit 13.

Re-certifications, No change Affidavits and Notices of Change, Denial of Initial Requests for Certification, Removal of a DBE's Eligibility, and Certification appeals are all handled through the UCP. IPTC has no direct or indirect involvement in these decisions.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

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

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

IPTC 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 IPTC, FTA, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Interim audits will be performed of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors is equal to or exceeds the dollar amounts stated in the schedule of DBE participation.

**APPENDIX**

Exhibit 1	Uniform Report of DBE Commitments and Payments
Exhibit 2	IPTC Organizational Chart
Exhibits 3 - 10	DBE Affidavit to be completed by prime contractor DBE Affidavit to be completed by DBE subcontractor DBE Letter of Intent to Perform as DBE DBE Utilization Plan DBE Status Report Affidavit for DBE Subcontractor Participation/Payment Affidavit for DBE Subcontractor Participation/Payment Certificate of Good Faith Efforts
Exhibit 11	Goal Methodology 2013 – 1015
Exhibit 12	Certification Application, Forms and Documentation Requirements
Exhibit 13	UCP Agreement