

Metropolitan Transit Authority of Black Hawk County Disadvantage Business Enterprise Program

Applicability

MET 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.

Definitions

MET will adopt the definitions contained in 49 CFR Section 26 for this program.

Non-discrimination Requirements

MET 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, or national origin.

In administering its DBE program, MET 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.

Record Keeping Requirements

MET will report DBE participation to the DOT in accordance with FTA regulations using a DOT-approved format. These reports will reflect payments made to DBEs on DOT-assisted contracts. Section 26.11(c) Bidders List

MET 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, age and annual gross receipts of firms. MET will collect this information using a contract clause to require bidders, including subcontractors, to report such information.

Federal Financial Assistance Agreement

MET has signed the following assurances, applicable to all DOT-assisted contracts and their administration and will include this assurance language in financial assistance agreements with sub-recipients:

Assurance:

MET 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 MET 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.).

Contract Assurance

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

The contractor, 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.

DBE Program Updates

MET will continue to carry out this program until all funds from DOT financial assistance have been expended. MET will provide updates to the DOT representing significant changes in the program.

DBE Liaison Officer

We have designated MET's Finance Manager as our DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MET complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the

General Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

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

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- 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).
- Analyzes MET's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO / governing body on DBE matters and achievement.
- Plans and participates in DBE training seminars
- Provides outreach to DBEs and community organizations to advise them of opportunities.

MET's designated DBELO:

Peggy Trost
1515 Black Hawk St
Waterloo, IA 50702
319-234-5714 x 109
P.trost@mettransit.org

DBE Financial Institutions

It is the policy of MET 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. MET has researched for such institutions in the community, but to date, none have been identified. MET will re-evaluate the availability when a new goal is submitted.

Prompt Payment Mechanisms

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

Retainage

The prime contractor agrees to return retainage payments to each subcontractor within 30 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 MET. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement Mechanisms

MET shall require in all FTA funded contracts language that allows MET to monitor and enforce that prompt payment and return of retainage is in fact occurring on any contract, which involves subcontracting (see Attachment 3).

Directory

MET uses the latest edition of the State of Iowa Directory of Certified Disadvantaged Business Enterprises as a directory identifying all firms eligible to participate as DBEs. The directory contains a list of firms which the IDOT currently recognizes as certified DBEs pursuant to 49 CFR Part 26 IDOT's DBE Program and Iowa's Unified Certification Program (UCP). The directory can be viewed at www.dot.state.ia.us/contracts/contracts_eeoaa.htm or by contacting the Iowa Department of Transportation, Office of Contracts, 800 Lincoln Way, Ames, IA 50010 or 515-239-1414.

Overconcentration

The Iowa DOT has not identified that overconcentration exists in the types of work that DBEs perform. MET will re-evaluate the availability when a new goal is submitted.

Business Development Plan

MET has not established a business development program. MET will re-evaluate the availability when a new goal is submitted.

Monitoring and Enforcement Mechanisms

1. We 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.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the provisions and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also 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 onsite visits to any DBE contractor to ensure compliance, which must include a written certification that you have reviewed contracting records and monitored work sites on which DBEs are performing, and will occur for each contract/project on which DBEs are participating. In the situation where the DBE is the main contractor, the completion of the project to the satisfaction of the scope of work shall be considered compliance and no onsite inspection shall be required unless it appears the contractor is not satisfactorily complying with the identified scope of work.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Fostering Small Business Participation

In an effort to facilitate small business participation, MET will eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirement that may preclude small business participation in procurements as prime contractors or subcontractors. This will include the following strategies:

- The majority of all FTA funded contracts (excluding the purchase of transit buses and providing operating assistance for public transit) are smaller contracts under \$100,000. Due to their smaller size, they are well designed to allow small businesses to actively compete with larger firms.

- For any project that is larger in scope, the RFP should be developed in a manner, which the project allows for the use of small businesses to participate in the project. MET staff shall use one of the following methods to ensure participation:
 1. Unbundle the contract into smaller segments that would be of the size and scope that small businesses can actively complete with larger firms in the bid for the individual projects.
 2. If the project does not lend itself to unbundling, the RFP shall be written to require the bidder to provide specific subcontracts appropriate for small businesses.
 3. MET staff shall keep a listing of all contacted small businesses for each project and identify if any of them bid on the project.
 4. Identify if firm is identified as a small business by any organization (i.e. US Small Business Association, IDOT, etc.)

State of Iowa Program

A certified Targeted Small Business (TSB) is a small business, defined by Iowa Code Section 15.102(4), which is 51 percent or more owned, operated and actively managed by women, minorities, or persons with disabilities. This is a for-profit small business enterprise under single management, which is located in Iowa.

To access a complete listing of firms certified through the State of Iowa's TSB Program, log on to the internet at: <https://dia.iowa.gov/tsb/> and select search targeted small businesses.

5. Identify if firm is registered as an Iowa DBE and when that registration expires.
 6. MET will implement this provision within 30 days of approval of MET's DBE program.
 7. MET staff will follow up on any registration as a small business or DBE to ensure the information they are providing is accurate.
- In addition, after the approval of MET's annual budget by the Metropolitan Transit Authority's Board of Trustees, MET will publish a notice in our local newspaper to invite small businesses to participate in MET's contracting opportunities. This information will also be available on MET's website at www.mettransit.org. MET will keep a copy of the published notice, the annual budget and any small business participation.

The MET small business provision shall be an active part of the DBE program and not replace or act as a substitute for other critical elements of MET's DBE program, including use of contract goals (as appropriate), good faith efforts evaluations, etc.

Quotas

MET does not use quotas in any way in the administration of this DBE program.

Overall Goals

In accordance with Section 26.45 (f), MET will submit its triennial overall goal to DOT on August 1st every 3 years.

MET will also request use of project-specific DBE goals as appropriate, and / or will establish project-specific DBE goals as directed by FTA.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this program. This section of the program will be updated with our triennial goal submission to FTA.

Before establishing the overall goal, MET will consult with the Iowa UCP most recent directory, Targeted Small Businesses (<https://dia.iowa.gov/tbs/>) and Small Business Administration (www.ccr.gov) to establish a list of disadvantaged and non-disadvantaged businesses. The list shall be broken down by specialty to identify overall goals. Each firm in the listing shall be identified by the specific types of projects they perform as followed by the US Census North American Industry Classification System (NAICS) code. The total number of firms under each NAICS code shall be added together to identify the total number of firms per specialty. Based on firms NAICS codes, the US Census of Business shall be used to identify the number of firms in Iowa per NAICS code. From that information, the total number of firms per NAICS codes shall be matched to the DBE NAICS code to identify the total number of firms in Iowa for each code, Based on specialty the total number of firms identified as DBE shall be divided by the total number of firms in Iowa to identify the DBE goal. This process must conform to the most current options described in Section 26.45 of the DBE regulation.

MET 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 your principal office for 30 days following the date of the notice, and informing the public that MET and DOT will accept comments on the goals for 45 days from the date of the notice.

This notice will be published in the legal section of the Waterloo Courier and on MET's website (<http://www.mettransit.org/index.html>). Normally, we will issue this notice by June 1st. 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:

- The goal
- A copy of the methodology and worksheets, used to develop the goal

- a summary of information and comments received during this public participation process and our responses.
- Proof of publication of the goal in media listed above.
- We will begin using our overall goal on October 1st, unless we have received other instructions from DOT. If we establish a separate goal for a particular project, we will begin using the project goal by the time of the first solicitation for a DOT-assisted contract for the project.

Goal Setting and Accountability

If the awards and commitments shown on MET's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Identify by project all DBE's and small-businesses that were contacted to bid on projects (if there are no applicable DBE's in the region that should also be identified)
2. If none of those contacted bid on a project a random sample of contacted businesses shall be asked to identify reasons why they did not apply;
3. Establish specific steps and milestones to correct the problems identified in the analysis; and submit the plan to FTA within 90 days of the end of the affected fiscal year.

Transit Vehicle Manufacturers

MET will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, to supply the required certifications issued from the Federal Transit Administration.

Meeting Overall Goals/Contract Goals

MET will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation.

Race-neutral means include, but are not limited to, the following:

- 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)

- 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)
- Providing technical assistance and other services
- 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)
- Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

Contract Goals

MET will use contract goals to meet any portion of the overall goal. MET does not project being able to meet the goal using race-neutral means. Contract goals are established so that, over the period to which the overall goals apply, 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. MET will establish contract goals only on those DOT-assisted contract that have subcontracting possibilities. We 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. MET will express goal amounts as a percentage of the total amount of a DOT-assisted contract.

Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal:

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, MET will not award the contract to a bidder who does not either:

- (1) meet the contract goal with verified, countable DBE participation; or
- (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts:

MET's DBE Liaison Officer (listed below) is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive and responsible.

Peggy Trost
1515 Black Hawk St
Waterloo, IA 50702
234-5714 x 109
p.trost@mettransit.org

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

Information to be submitted

MET treats bidder / offeror's compliance with good faith efforts' requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidder / offeror 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

Within 30 business days of being informed by MET 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 Operations Manager. This person 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 the General Manager to discuss the issue of whether it met the goal or

made adequate good faith efforts to do so. We 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.

MET's General Manager is:

Mark Little
1515 Black Hawk St
Waterloo, IA 50702
319-234-5714 x 101
m.little@mettransit.org

Good Faith Efforts when a DBE is terminated / replaced on a contract with contract goals

MET requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without MET's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to MET its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to MET prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise MET of why it objects to the proposed termination. Note: the five-day period may be reduced if the matter is one of public necessity (e.g., safety).

In those instances where "good cause" exists to terminate a DBE's contract, MET will require the 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. We 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, we 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 legal 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 legal 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 MET 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 [insert goal according to specific type of project] 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:

- If the bidder/offers is themselves a DBE
- the names and addresses of DBE firms that will participate in the contract;
- a description of the work that each DBE firm will perform;
- the dollar amount of the participation of each DBE firm participating;
- Written documentation of the bidder/offers' s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (5); and
- 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 forms found at Attachment 5 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.]

Counting DBE Participation

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

Certification Process

MET, through the Unified Certification Program administered by the Iowa DOT, will use the certification standards of Subpart D of 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 the certification eligibility standards. For information about the certification process or to apply for certification, firms should contact the IDOT - Office of Contract, EEO Section, 800 Lincoln Way, Ames, Iowa 50010; or Phone: 515-239-1422; or www.dot.contracts@dot.gov

Unified Certification Programs

MET is a member of the Unified Certification Program (UCP) administered by the Iowa Department of Transportation. The UCP will meet all of the requirements of this section. MET will use and count for DBE credit only those DBE firms certified by the Iowa UCP.

Pursuant to the requirements of the federal regulations, 49 CFR part 26, all recipients of federal-aid must implement a "one-stop" certification process for Disadvantaged Business Enterprises (DBEs). The directory can be found at www.ia.bidx.com/lettings/index.html or www.iowadot.gov/contracts/contracts_eeoaa.html

MET is a member of the Unified Certification Program administered by the IDOT. The UCP will meet all of the requirements of this section. A description of the UCP is available by contacting the IaDOT- Office of Contract, EEO Section, 800 Lincoln Way, Ames, Iowa 50010; or Phone: 515-239-1422; or www.dot.contracts@dot.gov

MET's FY12 goal submission, a description of the methodology to calculate the overall goal and the goal calculations, and a description of the United Certification Process can be found in Attachment 2 of this program. The goal submission of the program will be updated in accordance with FTA requirements.

Certification appeals

Any firm or complainant may appeal Iowa's UCP decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

MET will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g. certify a firm if DOT has determined that our denial of its application was erroneous).

Confidentiality

MET 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, we 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.

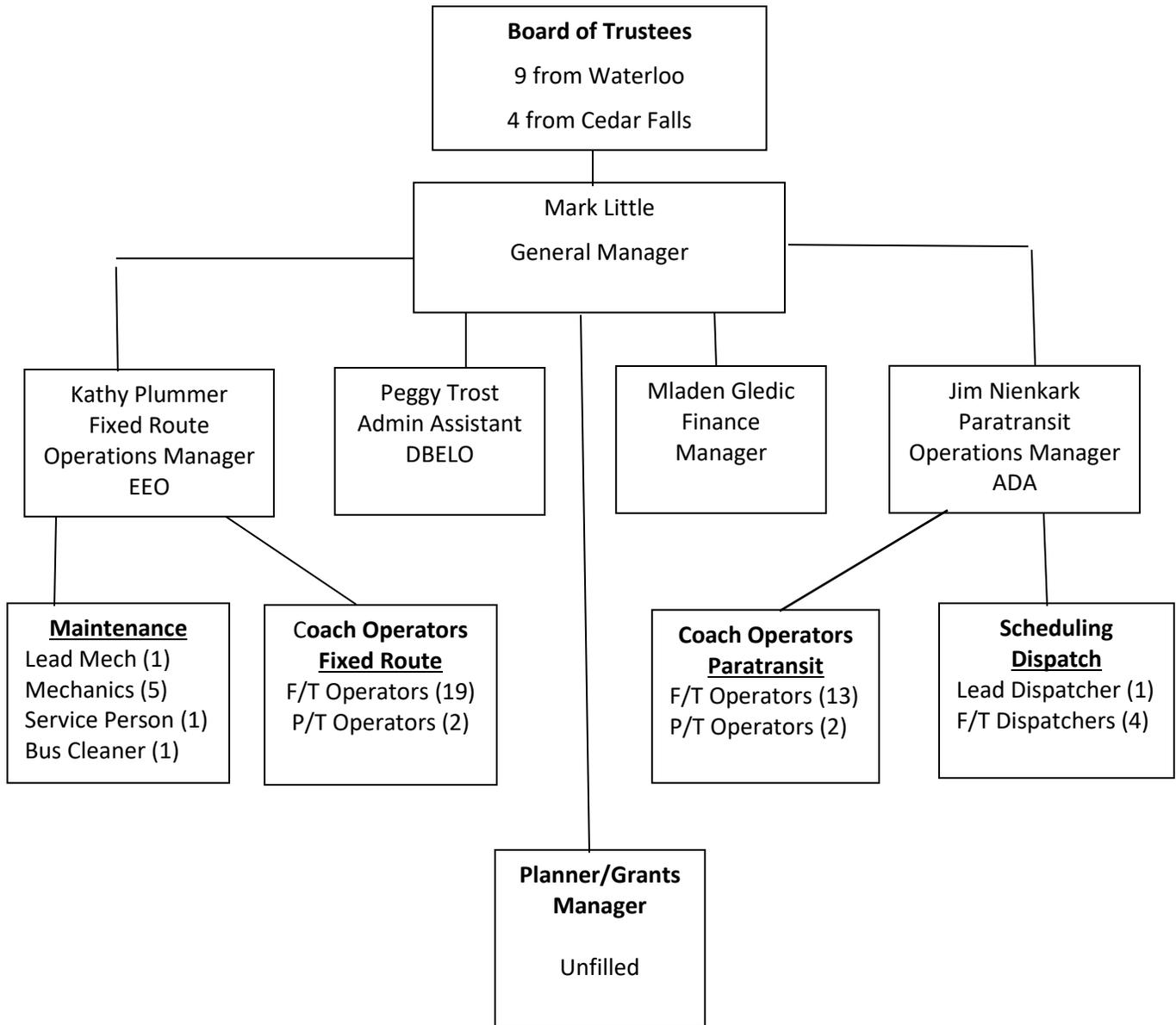
Monitoring Payments to DBEs

MET will require prime contractors to maintain record and documentation 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 MET or DOT. This reporting requirement also extends to any certified DBE subcontractor.

MET will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

MET 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 in the schedule of DBE participation.

ATTACHMENT 1- MET Organizational Chart



Attachment 2

DBE Directory

See www.ia.bidx.com/lettings/index.html or www.dot.state.ia.us/contracts/contracts_eoaa.htm
for link to Iowa's DBE Directory.

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

Contractor agrees and covenants that it shall comply with all applicable requirements contained herein.

1. **Timely Payment:** The Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from MET. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

2. **Subcontractor Agreements:** The Contractor agrees that it shall maintain a written contract with any subcontractors, which subcontract shall refer to and incorporate the terms of this Addendum by reference. Each such subcontract shall require each Disadvantaged Business Enterprise ("DBE")/small business firm/subcontractor to contact MET and notify MET when the DBE/small business firm/subcontractor receives payment from the Contractor, and shall require each DBE/small business firm/subcontractor to notify MET if such subcontractor is not paid within 30 days of the date on which the Contractor receives payment for the subcontractor's work from MET. Contractor and DBE/small business/subcontractors shall all affirm and commit to compliance with all applicable FTA2. rules, regulations, and statutes.

3. **Notice of Subcontracts:** The Contractor shall identify all activities to be completed by DBEs, small business firms, or subcontractors, in writing, to MET, after contracting with such entities and before they begin completion of work on the Project. MET shall have the authority to review the qualifications of each subcontractor and to inspect the work of the subcontractor to confirm that all required work is being performed. Contractor shall cooperate with MET in providing access for such inspections. Nothing contained herein shall operate to waive or limit the primary obligation of the Contractor to manage and supervise all subcontractors and to be responsible for their performance of work related to the Project. Further, nothing contained herein shall create any duty or obligation on the part of MET to review the work methods or safety precautions employed by the Contractor or Subcontractor, nor shall MET be responsible for the means or methods of performance of work relating to the Project.

4. **Notice of Termination or Default:** The Contractor must promptly notify MET, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of MET

5. **Compliance Monitoring:** Contractor and MET will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

a) Contractor and MET 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 49 CFR 26.109.

b) MET will consider similar action under our own legal authorities, including responsibility determinations in future contracts. The regulation, provisions, and contract remedies available to in the events of non-compliance with the DBE regulation by a participant in MET's procurement activities include: actions for breach of contract; prosecution for any criminal activity or violation of City Code or Ordinance; enforcement of claims against any retainage, bond, surety or insurance provided by Contractor or any subcontractor; legal action on any MET cause of action created under the applicable provisions of state or federal law; revocation, cancellation or termination of the contract between MET and the Contractor for the Project; any other action permitted at law or in equity; or, any self-help measures that MET may lawfully undertake to rectify the default.

c) MET and the Contractor will also jointly provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This compliance monitoring shall include the following steps:

- The Contractor shall, prior to undertaking work on the Project, provide MET with an accurate list of all DBEs who are or who are anticipated to be subcontractors working on the project, which list shall include an accurate, detailed description of all work to be done by each DBE. This list shall be updated any time there is a change in the DBEs working on the project or a change in the allocation of work between or among DBEs. The Contractor shall provide this list with a sworn certification that it is true and accurate.
- MET shall review the sworn DBE list provided by the Contractor and confirm its accuracy. MET may request, and the Contractor shall provide, copies of any subcontracts or other contractual documentation between Contractor and any subcontractors to confirm the scope of work for each.
- The Contractor shall notify MET of the dates/times when the DBEs are anticipated to be performing each contractual task related to the Project, so that MET can verify DBE participation in the Project, and can verify that the DBEs identified on the sworn list are participating in the project. This shall be performed as a component of construction inspection and supervision relating to the project, or may be performed as a standalone compliance verification process if MET determines the same to be necessary.

- On all payment notifications required to be provided to MET under this agreement, the Contractor shall identify each DBE receiving payment, and any DBE receiving payment shall indicate its status as a DBE on its payment notifications.
- Contractor and its subcontractors shall agree to comply with any further measures that MET determines to be necessary or appropriate to impose for the purpose of verifying DBE participation in the Project.
- The Contractor shall provide and MET shall maintain a running tally of actual payments to DBE firms for work committed to them at the time of contract award, verified at the time of any payments to Contractor for the Project, and verified at the time DBE firms certify to MET that they have been paid, as required under Section 2 above.

6. Other Terms: MET and Contractor agree and acknowledge that this Agreement is a binding addendum and supplement to any other contractual undertakings between MET and Contractor relating to the Project, and affirm that but for the execution of this Addendum, MET would not be undertaking the Project or retaining the Contractor. In the event that Contractor identifies a conflict between this Addendum and any term in the other contractual or regulatory undertakings between MET and Contractor, the Contractor shall refer such conflict to MET, and MET shall, in its absolute and sole discretion, determine which conflicting term shall prevail, in order to ensure compliance with all applicable laws and regulations. In the event that applicable FTA regulations change during the course of the Project, MET and Contractor agrees that they shall negotiate in good faith to prepare an amendment to this Addendum, if required by the change in regulations.

7. Penalty: If the Contractor (or any DBE, small business firm or subcontractor working under the Contractor) fails to satisfy any obligation contained herein:

- a) further progress payments to the Contractor shall be withheld until the default is cured to MET's satisfaction
- b) if the Project is fully paid, the Contractor may be required by MET to return a specified percentage of the Project cost, as determined in MET's sole and absolute discretion, that relates to the scope and magnitude of the default.

In addition, the federal government has available several enforcement mechanisms that it may apply to participating DBE firms, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001

MET

Contractor

BY: _____

BY: _____

ITS: _____

ITS: _____

ATTACHMENT 4

Forms 1 & 2 for Demonstration of Good Faith Efforts

DBE 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):

1.

____ The bidder/offer is a registered DBE and is identified as a certified DBE in the Iowa UCP.

If identified as a DBE in another program, please identify here:

2. **Small Business Certification:**

____ The bidder/offer is identified as a :

3. **For Contracts for which there is no subcontracting opportunities:**

____ The bidder/offer performing all activities identified in the scope of work in-house and therefore is not subject to DBE subcontractor goals.

4. **For Contracts where a DBE subcontracting goal is required:**

____ The bidder/offeror is committed to a minimum of % DBE utilization on this contract (if contractor is a registered DBE, their work performed can be considered as part of the DBE goal).

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

Name of bidder / offeror's firm: _____

DUNS No. _____

By _____ (Signature) _____ (Title)

Attachment 5

Certification Forms

MET does not certify DBEs but rather uses the list of DBEs identified in the Iowa UCP. To register as a DBE in Iowa you should register on the link below:

<https://forms.iowadot.gov/BrowseForms.aspx?templateid=650194>

Attachment 6

Regulations: 49 CFR Part 26

The text of 49 CFR Part 26 can be found at the link:

http://www.access.gpo.gov/nara/cfr/waisidx_08/49cfr26_08.html