



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

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

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

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

KAT has disseminated this policy statement to the City of Kenosha Transit Commission and all of the components of our organization. We have posted this statement on our website for review by DBE and non-DBE business communities that perform work for us on DOT assisted contracts.

A handwritten signature in blue ink, appearing to read 'D. J. ...', is written over a horizontal line. The signature is somewhat stylized and includes a circular flourish at the beginning.

Signature of the Director of Transportation

11-4-19

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

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

Section 26.3 Applicability

KAT 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

KAT will adopt the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7 Non-discrimination Requirements

KAT 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, KAT 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

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

- KAT will report DBE participation to the Federal Transit Administration using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)

- KAT 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 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.
- We will collect this information by requiring all prime contractors bidding on U.S. DOT-assisted contracts to return, at the time of bid opening, information about the prime contractor and who provided a bid or were contacted by the prime. This information shall be submitted on the BIDDERS LIST provided in Attachment 1.

Section 26.13 Assurances

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

- Federal Financial Assistance Agreement Assurance: 26.13(a): KAT 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. KAT'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 KAT of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13(b)

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

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Nelson Ogbuagu, Director of Transportation
4303 39th Avenue
Kenosha, Wisconsin 53144
Phone: 262-653-4293
Email: nogbuagu@kenosha.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that KAT complies with all provisions of 49 CFR Part 26. Two organizational charts displaying the DBELO's position within the City of Kenosha and KAT are located in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of three to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.

3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Analyzes KAT's progress toward attainment and identifies ways to improve progress.
5. Plans and participates in DBE training seminars.
6. Tracks DBE payments to record participation.

Section 26.27 DBE Financial Institutions

It is the policy of KAT 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. A list of financial institutions was obtained from the website for Federal Deposit Insurance Corporation, <https://www.fdic.gov/regulations/resources/minority/mdi.html> to identify minority owned banks. The DBELO will continue to use this and other sources to solicit minority-owned banks to participate in KAT's DBE program on an annual basis. To date, the following minority-owned financial institutions offering services in the State of Wisconsin have been identified:

COLUMBIA SAVINGS AND LOAN ASSN, MILWAUKEE, WI
BAY BANK, GREEN BAY, WI

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

KAT 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 45 days from the receipt of each payment of the prime contract it receives from KAT. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of KAT. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 45 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 KAT. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

The guidelines detailed in Attachment 3 were established by KAT to monitor and enforce that prompt payment and return of retainage is in fact occurring.

Section 26.31 Directory

KAT relies on the State of Wisconsin Unified Certification Program Directory. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. A link to the Directory is included in any Request for Proposal (RFP) issued on behalf of KAT and is also located in Attachment 4.

Additionally, the Assistant Finance Director and the Purchasing Manager regularly review the Directory and reach out to applicable DBEs whenever possible.

Section 26.33 Overconcentration

Kenosha Area Transit has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

KAT has not established a business development program. We will re-evaluate the need for such a program every 18 months.

Section 26.37 Monitoring and Enforcement Mechanisms

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

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 regulation, 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 through site checks performed by the DBELO, the Operations Supervisor, or other authorized City of Kenosha or KAT employee. Documentation of these checks will be kept in the contract file and will occur for each contract/project on which DBEs are participating.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Participation

KAT has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

KAT will utilize the most current U.S. Small Business Administration's definition of a small business in its application of the following actions.

Contract Unbundling

In appropriate situations, contracts will be unbundled to allow small businesses to bid on subcomponents of the larger contract. Such instances may include but are not limited to, procurement of equipment from a larger vendor and pre-purchasing maintenance contracts with local small businesses, vehicle procurement from a larger vendor and contracting with a local small business to customize the vehicle to Kenosha Area Transit's standards, etc. In all cases,

Kenosha Area Transit will invite local small businesses to compete for subcomponents of unbundled contracts.

Not all situations will allow for contract unbundling, in which case the actions below will be taken.

Requirements of Primary Contractors to Subcontract with Small Businesses

In instances where contracts cannot be unbundled, primary contractors will be required to provide any necessary subcontracts to small businesses. KAT will work with primary contractors to identify and solicit local small businesses to compete for federal subcontracting awards. KAT will verify that subcontractors self-identifying as small businesses are indeed considered such by U.S. SBA definitions before subcontracts can be awarded.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

In accordance with Section 26.45, KAT will submit its triennial overall DBE goal to the FTA on August 1 of the year specified by FTA.

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

The process generally used by KAT to establish overall DBE goals is as follows:

KAT looked at past goals and the standards set by the City of Kenosha to help establish the goal for FY 2019-2021. The City of Kenosha set a DBE goal of 6.39%, Kenosha Area Transit has decided to adopt this goal for the next 3 years. Kenosha Area Transit will begin using the overall 3-year goals on October 1, 2018.

Methodology Used for Determining FFY 2019-2021 Goals

The overall goal for Kenosha Area Transit was determined by subtracting expenses that cannot be contracted to DBE firms; such as utilities, labor, and paratransit services; from the total mass transit fund allocated for FFY 2018.

Determination of Race-Neutral and Race-Conscious Components

To break down the overall goal into the race-neutral and race-conscious components Kenosha Area Transit relied on its goals. In the past, the City established a race conscious goal of 2.48% and has set a race neutral goal of 3.91%. In order to break the 6.39% overall goal into two categories, Kenosha Area Transit decided to rely on the City's past success of exceeding its race conscious goal by three times the amount set.

KAT will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation in accordance with Section 26.51(f). KAT will track and report race-neutral and race-conscious achievements separately. For reporting purposes, race-neutral includes, but is not limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a goal; DBE

participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Before establishing the overall goal each year, KAT will consult with the DEBLO to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and KAT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals on the KAT website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that KAT and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 for each year. 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 (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by the FTA.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on KAT'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. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Submit the plan to the FTA within 90 days of the end of the affected fiscal year.

Section 26.49 Transit Vehicle Manufacturers Goals

KAT 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, KAT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51 Meeting Overall Goals/Contract Goals

KAT will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, KAT will:

1. Arrange solicitations, times bid presentations, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.
2. Ensure distribution of the DBE directory to the widest group of potential prime contractors.
3. Provide technical assistance and other services.
4. Communicate programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBE's and other small business on mailing lists for bidders, and ensuring the dissemination to bidders on prime contractors of lists of potential subcontractors).

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

We will establish contract goals only on those DOT-assisted contracts 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 (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

Section 26.53 Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, KAT will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) document 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: 26.53(a) & (c)

City personnel and/or the Project Coordinator are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The process used to determine whether good faith efforts have been made by a bidder are as follows:

In accordance with Section 26.53, Kenosha Area Transit will require a prime contractor to submit a good faith waiver request in instances where the prime contractor is unable to meet the contract goal.

In determining whether a prime contractor has demonstrated good faith in meeting the goal, the goal will follow provisions contained in Section 26.53. Kenosha Area Transit has implemented policies and procedures to provide administrative reconsideration to contractors deemed not to have demonstrated good faith in meeting the goal. The policy is outlined below:

It is the policy of the City of Kenosha to require that all prospective contractors be accorded fair and equal consideration in the solicitation and award of contracts. To that end, any "Interested Party" shall have the right to protest alleged inequities in the procurement process and to have its grievances heard, evaluated, interpreted and responded to administratively. An "Interested party" is herein defined as an actual or prospective contractor, offeror, bidder, or proposer

whose direct economic interest would be affected by the award of a contract or by failure to award a contract.

- 1.0 The Right to Protest: Any actual or prospective "Interested Party" that feels aggrieved in connection with a solicitation or award of a contract may protest in written form, to the Purchasing Manager and/or the Director of Finance, at 625-52nd Street, Room 208, Kenosha, Wisconsin 53140-3480.
- 2.0 Submittal Procedures:
 - 2.1 An "Interested Party" wishing to protest a matter involving a proposed procurement or contract award shall file a written submission of protest with the City of Kenosha Purchasing Manager and/or Director of Finance, hereafter referred to as "City agent", by certified mail or other delivery method by which receipt of the protest can be verified, within ten (10) days after such aggrieved parties know of or should have known of the facts pertaining to an award of contract, specifications, terms and conditions or addenda. Minimally, the formal protest submittal shall include the following elements:
 - 2.1.1 The name and address of the protesting party and its relationship to the procurement sufficient to establish that the protest is being filed by an "Interested Party";
 - 2.1.2 The identity of the contact person for the protestor, including name, title, address, telephone, cell phone (if desired), fax and email addresses. If the contact point is a third party representing the protestor, the same information must be provided, plus a statement defining the relationship between the protestor and the third party;
 - 2.1.3 The identification of the specific procurement;
 - 2.1.4 A description of the nature of the protest, referencing the portion(s) of the procurement that are involved in the protest;
 - 2.1.5 The identification of the provision(s) of any law, regulation, or other governance upon which the protest is based;
 - 2.1.6 A complete discussion of the basis for the protest, including all supporting facts, citations, documentation and data; and
 - 2.1.7 A thorough statement of the specific relief requested through the protest.
 - 2.2 The protestor is solely responsible for the completeness and validity of the information provided to the City agent. Any documents relevant to the protest should be attached to the written submission of the protest. Documents which are readily available on the internet may be referenced to an appropriate link.
 - 2.3 The City agent may decide a protest solely upon the written submission. The protest submission shall be comprehensive and include all materials necessary to support the protestor's position. Additional or supplemental materials may only be submitted at the request of, or with the permission of, the City agent.
 - 2.4 No solicitation shall proceed or contract awarded while a protest is pending.

- 2.5 A protest that is untimely or fails to clearly substantiate the reason for the protest will be considered invalid by City agent.
- 3.0 Evaluation of Protests.
 - 3.1 A protest decision should ordinarily be written and published within ten (10) working days of receipt of the protest. The City agent reserves the right to extend the response period if additional time is required for good cause.
 - 3.2 City agent may request written supplementary information from the protestor or other parties, as necessary to determine the validity of the protest.
- 4.0 Appeal of Protest Decision.
 - 4.1 The decision(s) of City agent may be appealed to the Office of the City Administrator within five (5) working days after issuance to the protestor. The appeal shall be in writing, and shall state with specificity the basis for the appeal. The City Administrator shall review the written record of the protest and may conduct such further investigation as is deemed necessary to render a decision. The decision of the City Administrator shall be issued within fifteen (15) working days of receipt of the appeal and decision shall be final and conclusive, except for such remedies that state or federal law or regulation may provide.
- 5.0 Appeals to Federal Transit Administration (for Federally Funded Transit Projects).
 - 5.1 A notice of the receipt of protests for all solicitation(s) above the small purchase threshold shall be sent to the FTA regional office, per FTA Circular 4220.1F, Chapter VII, Sec. 1.a(2).
 - 5.2 A protestor may file a protest with FTA only after exhausting all administrative remedies provided by the City agent and its Administrator, on the basis described in FTA Circular 4220.1F, Chapter VII, Sec. 1.b.
 - 5.2 The protest of appeal must be filed in writing with the Federal Transit Administration (FTA) Region V Office, 200 W. Adams Street, Chicago, IL 60606 no later than five (5) days after receiving notification of an adverse decision by the City Administrator. The protest of appeal must be filed with the FTA in accordance with procedures set forth in the FTA Circular 4220.1F.
 - 5.3 In filing a protest with the FTA, the protestor shall include the following detail:
 - 5.3.1 The solicitation description and number reference;
 - 5.3.2 A statement of the grounds of protest and all requisite supporting documentation;
 - 5.3.3 All documentation from the local protest that was filed with the City agent and Administrator; and
 - 5.3.4 A copy of the City agent's and/or Administrator's written decision to the protesting party.

5.4 Notice of Protest Policy.

5.4.1 All solicitation(s) above the small purchase threshold shall contain, as part of the instructions to bidders/proposers, the following notice:

Policy and procedure for the administrative resolution of protests is set forth in Section 09.07 of the City of Kenosha Purchasing Policy and Procedures Manual (PPM). The PPM contains rules for the filing and administration of protests. Chapter VII, Sec. 1.b. of Federal Transit Administration (FTA) Circular 4220.1 F addresses protests where federal funds are involved. FTA will only review protests regarding the alleged failure of the grantee to have a written protest procedure(s); an alleged failure to follow such procedure(s); or violations of Federal law or regulation. A protestor must exhaust all administrative remedies defined in its PPM prior to pursuing protest with FTA Region V Office, Chicago, IL.

Information to be Submitted: 26.53(b)

KAT treats bidder/offers' compliance with good faith effort requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms 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 and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors' commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration: 26.53(d)

Within 5 calendar days of being informed by KAT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Purchasing Manager and/or the Director of Finance
625 52nd Street
Room 208
Kenosha, WI 53140

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with

our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. 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.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

KAT requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without KAT'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 KAT 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 KAT prior to consideration of the request to terminate. The DBE will then have five days to respond and advise KAT why it objects to the proposed termination (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, KAT 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 contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

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 KAT 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/offerors, including those who qualify as a DBE. A DBE contract goal of 5.03% has been established for this contract. The bidder/offeror 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/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm

participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

SUBPARTS D & E– CERTIFICATION

Section 26.81 Unified Certification Programs

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

Section 26.83-26.91 Procedures for Certification Decisions

KAT will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT assisted contracts. A link to the Wisconsin UCP website is included in Attachment 4.

For information about the certification process or to apply for certification, firms should contact the [DBE](#) Support Services Office:

DBE Support Services Office
6150 W. Fond Du Lac Avenue
Milwaukee, WI 53218
(414) 438-4583 Phone
(414) 438-5392 Fax

Any firm or complainant may appeal a Wisconsin 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

We 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).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard third party's 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

We 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 Kenosha Area Transit or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

ATTACHMENTS

Attachment 1: Bidders List

Attachment 2: Organizational Charts

Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies

Attachment 4: DBE Directory Link

ATTACHMENT 1: BIDDERS LIST



BIDDERS LIST

All bidders/proposers are required to provide the following information for all DBE and non-DBE contractors, who provided a proposal, bid or quote. This information is also required from the proposed prime contractor, and must be submitted with their bid/proposal. Kenosha Area Transit (KAT) will use this information to maintain and update a "Bidders" List to assist in the overall annual goal DBE goal setting process. To the extent permitted by law, all information submitted will be held in strict confidence and will not be shared without your consent.

Firm Name: _____ Phone: _____

Address: _____ Fax: _____

Contact Person: _____ No. of Yrs. In Business _____

Is the firm currently certified as a DBE? No Yes

Type of work/services/materials provided by firm? _____

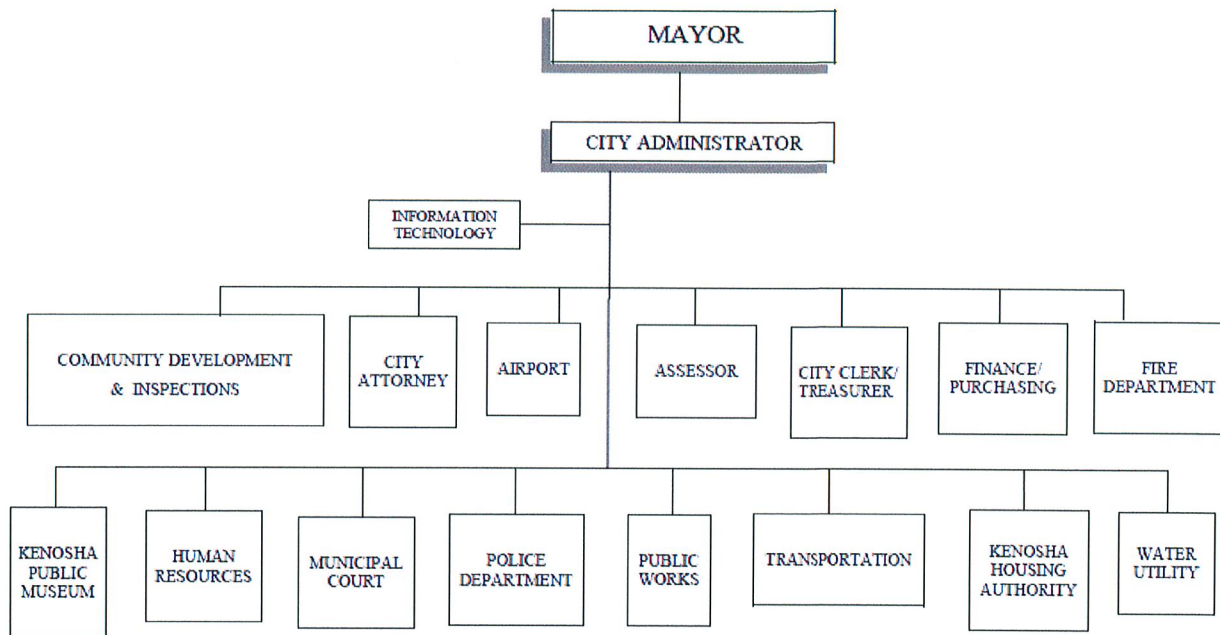
What were your firm's Gross Annual receipts for last year?

- Less than \$1 million
- Less than \$5 million
- Less than \$10 million
- Less than \$15 million
- More than \$15 million

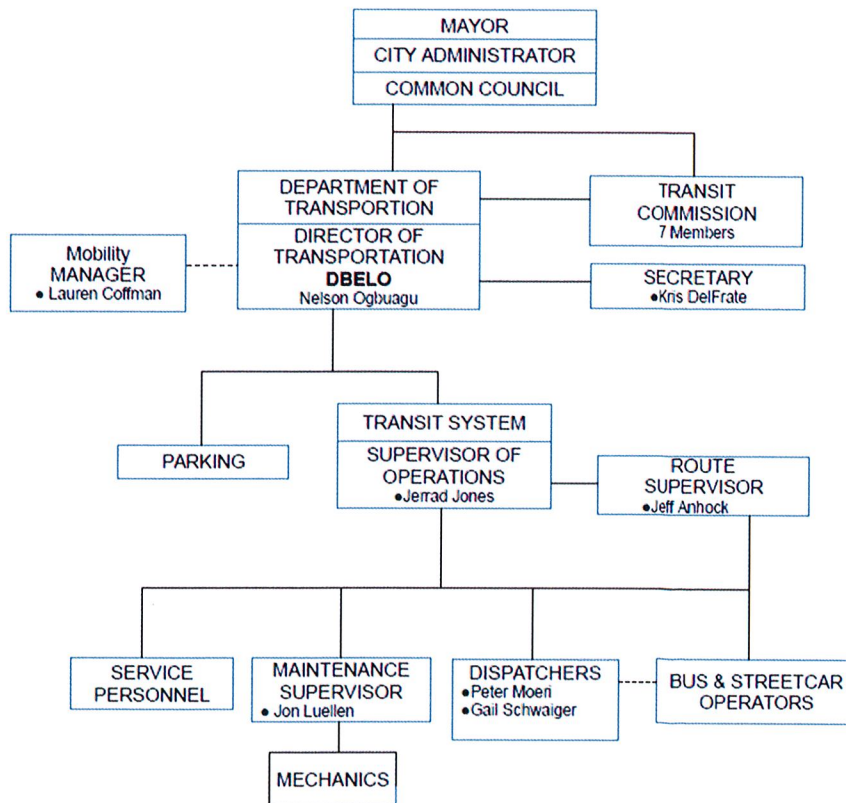
KAT will use this information to maintain and update its Bidders List.

ATTACHMENT 2: ORGANIZATIONAL CHARTS

City of Kenosha:



Kenosha Area Transit:



ATTACHMENT 3:

Monitoring Payments to DBEs (Section 26.37)

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Kenosha Area Transit (KAT) or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

KAT will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

KAT may 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 stated in the report of proposed DBE participation.

Reporting to U.S. DOT (Section 26.11)

KAT will continue to report DBE participation and overall annual goal setting methods to U.S. DOT agencies as directed. Statistical data will be maintained as prescribed on a quarterly basis to provide reports to U.S. DOT agencies reflecting the DBE participation on KAT's federally-assisted procurement activities. These reports will provide DBE participation information on the KAT's race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally assisted procurement activities.

Contract Remedies (Section 26.37)

KAT will monitor compliance of its contractors on federally assisted contracts with the requirements of the Regulations and the DBE Program. KAT may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retention's, imposition of liquidated damages, and termination of the contract in whole or in part.

ATTACHMENT 4:

WisDOT DBE Directory

<https://wisconsin.gov/Pages/doing-business/civil-rights/dbe/certified-firms.aspx>