

SOUTHWESTERN PENNSYLVANIA CORPORATION (SPC)

SOUTHWESTERN PENNSYLVANIA COMMISSION (SPC)

FFY 2021-2022-2023

Disadvantaged Business
Enterprise (DBE)
PROGRAM

Prepared By:

SOUTHWESTERN PENNSYLVANIA COMMISSION
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3451

49 CFR Part 26 (Final Rule 11/3/2014)

October 1, 2020

SOUTHWESTERN PENNSYLVANIA CORPORATION (SPC)
SOUTHWESTERN PENNSYLVANIA COMMISSION (SPC)

POLICY STATEMENT

Ref: (Parts 26.1, 26.23)

SPC has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, as amended.

SPC receives Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, SPC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the SPC to ensure that DBE's, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by SPC;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The SPC Finance Director has been designated as the DBE Liaison Officer. In that capacity, this person 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 SPC in its financial assistance agreements with the Department of Transportation.

SPC has disseminated this policy statement to its Board of Directors and Executive Committee and through all departments of the organization. We have distributed this statement to DBE and non-DBE business communities that perform work for SPC on DOT- assisted contracts. Distribution will be via posting on SPC's website: www.spcregion.org/about/doing-business-with-spc/

Vincent Valdes
President and CEO

Date

Subpart A -- GENERAL REQUIREMENTS

Objectives

Ref: (Sec. 26.1)

The objectives of SPC's DBE Program are detailed in the policy statement on the first page of this document.

Applicability

Ref: (Sec. 26.3a)

SPC is a recipient of:

(1) pass-through Federal-aid highway planning funds authorized under the Fixing America's Surface Transportation (FAST) Act legislation, and

(2) is a direct recipient of Federal transit planning 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, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405, and the Fixing America's Surface Transportation (FAST) Act legislation, and

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

Ref: (Sec. 26.3c)

If SPC is letting a contract and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

Ref: (Sec. 26.3d)

If SPC is letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

Definitions

Ref: (Sec. 26.5)

The definitions used in this program have the meanings defined in 49 CFR Part 26.5 as amended.

Nondiscrimination

Ref: (Sec. 26.7)

(a) SPC 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.

(b) In administering its DBE program, SPC 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 program with respect to individuals of a particular race, color, sex, or national origin.

SPC will not use quotas in any way in the administration of its DBE program.

Record-Keeping Requirements

Ref: (Sec. 26.11)

Reporting to the Department of Transportation (DOT)

Ref: (26.11[b])

SPC will report DBE participation as follows:

For Pennsylvania Department of Transportation (PennDOT)contracted pass-through Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) federal aid funds, the SPC will report to PennDOT, as instructed, all DBE participation for each U P W P planning projects. These reports will reflect payments actually made to DBE's on DOT assisted contracts.

Reporting to the Federal Transit Administration (FTA)

Ref: (26.11[b])

SPC will report DBE participation as follows:

(a) will transmit the Uniform Report of DBE Awards or Commitments and Payments at the intervals stated on the form

(b) will continue to provide data about our DBE program to the Department as directed by DOT operating administrations

(c) will create and maintain a bidders list

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) will obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

(3) will acquire this information in various ways that meets its needs.

(d) will maintain records documenting a firm's compliance with this requirement.

Bidders List

Ref: (26.11[c])

SPC will create and maintain a bidders' list containing information about all DBE and non-DBE firms which bid or quote on DOT assisted contracts. The bidders' list will include the name, address, DBE/non-DBE status, and annual gross receipts of firms.

SPC will collect this information by including a notice in all solicitations asking prime bidders to include the names and addresses of all firms who quote to them on subcontracts and by maintaining a bid list, by category of work, identifying firms which have bid on contracts or which have requested to be notified of appropriate bid opportunities in the future.

Federal Financial Assistance Agreement

Ref: (Sec. 26.13)

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

Assurance

Ref: (26.13[a])

SPC will not discriminate on the basis of race, color, national origin, or gender 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 SPC will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The SPC'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 will be treated as a violation of this agreement. Upon notification to the SPC of its failure to carry out its approved program, the DOT may impose sanction as provided for under 49 CFR 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.)

Contractor Contract Assurance

Ref: 26.13[b])

SPC will ensure that the following clause is placed in every DOT assisted contractor contract and c o n t r a c t o r subcontracts:

The contractor, sub-recipient, or subcontractor will not discriminate on the basis of race, color, national origin, or gender in the performance of this contract. The contractor will 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

DBE Program Updates

Ref: (Sec. 26.21)

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

DBE Liaison Officer (DBELO)

Ref: (Sec. 26.25)

SPC has designated the following individual as its DBE Liaison Officer:

*Vincent M. Massaro
SPC Finance Director
Two Chatham Center - Suite 500
Pittsburgh Pa 15219-3451
412-391-5590, vmassaro@spcregion.org.*

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has limited staff to assist in the administration of the program. The 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 provide information concerning 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 SPC's progress toward attainment of annual performance goals and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Informs the CEO on DBE matters and achievements.

DBE Financial Institutions**Ref: (Sec.26.27)**

It is the policy of the SPC 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 contracts to make use of these institutions.

SPC utilizes the Pennsylvania Association of Community Banks – “The Pennsylvania Financial Institutions Directory & Fact Book” and the PA UCP directory in order to identify such institutions. To date, no such institutions have been identified. SPC will reevaluate the availability of such institutions on an annual basis.

Prompt Payment Mechanism**Ref: (sec. 26.29)**

SPC includes the following clause in all DOT financial assisted contract documents:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days after receipt of each payment the prime contract receives from SPC. The prime contractor further 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 SPC. This clause applies to both DBE and non-DBE subcontracts”

If, for any reason, SPC fails to provide written approval of postponed or deferred payment on the part of the prime contractor, SPC will proceed with appropriate legal action in support of its own interests in the performance of the subcontracted work.

The following procedures are followed for all DOT-assisted procurements and purchases:

- Completion of the Procurement Request and Approval Process
 - Procurement Plan Approval
- Completion of Procurement
 - Procurement Review and Approval
- Draft Contract Approval
- Final Contract Approval and Execution

Following is a brief summary of each of the steps listed in the forgoing:

SPC Procurement Request/Approval Process

The Southwestern Pennsylvania Corporation (SPC) Comprehensive Competitive Procurement Process – August 2019 contains specific instructions to be followed for any and all types of procurements. Processes are defined for: Micro-Purchase Threshold (less than \$10,000); Small-Purchase Threshold (\$10,000 - \$250,000) requiring 3 written price quotes; Competitive Proposals (R F P / R F Q) ; and Sole Source. All proposed purchases require the purchasing agent to complete a procurement request form [Attachment B of Document] including an outline/description of the proposed procurement, the procurement type and a plan for how the purchase will be completed. These forms are reviewed and approved by: immediate Supervisor; Project Manager; department Director; Finance Director; and the SPC Executive Director. For FTA-funded projects, this process includes a review by t h e SPC Grant Manager.

Procurement Processes

Each individual procurement made on behalf of the SPC follows a specific process depending on the type of procurement. Final Purchase orders are not generated until all procurement documentation has been reviewed and approved by: Program Supervisor; Project Manager; Department Director; Finance Director; and the SPC President/Executive Director. For FTA direct funded projects, this review also includes review by the SPC Grant Manager.

Draft Contract Review and Approval

Each approved purchase order is designed to generate an obligation and/or agreement. In the case of micro and small purchases, these agreements are constituted on the basis of SPC's purchase order execution, invoicing and standard payment accounting processes. For all other types of procurements, a formal contract is drafted and executed. Draft contract documents are reviewed prior to execution by the SPC Finance Director and the SPC Executive Director.

Final Contract Approval and Execution

Contract awards are made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract.

Responsibility is determined by SPC after receiving bids or proposals but prior to making contract award and according to the following minimum criteria:

The contractor is determined:

- To have a satisfactory record of integrity and business ethics;
- Is neither debarred nor suspended from Federal programs under DOT regulations;
- Is in compliance with the Common Grant Rules' affirmative action and FTA's Disadvantaged Business Enterprise requirements;
- Is in compliance with the public policies of the Federal Government;
- Has the necessary organization, experience, accounting, and operational controls,

- and technical skills, or the ability to obtain them;
- Is in compliance with applicable licensing and tax laws and regulations;
- Has, or can obtain, sufficient financial resources to perform the contract;
- Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
- Is able to comply with the required delivery or performance schedule,
- Is able to provide satisfactory current performance record, and a satisfactory past performance record in view of its records.

Prior to contract execution, final contract documents are reviewed by the SPC Finance Director and the SPC Executive Director.

DBE Directory

Ref: (Sec. 26.31)

The SPC relies on the data found in the Pennsylvania Unified Certification Program (PAUCP). The purpose of the PAUCP is to provide “one-stop shopping” for firms seeking certification as a Disadvantaged Business Enterprise (DBE) in accordance with 49 CFR Part 26 and as an Airport Concession Disadvantaged Business Enterprise (ACDBE) in accordance with 49 CFR Part 23. The PAUCP makes certification decisions on behalf of various agencies and organizations in the Commonwealth with respect to participation in the DBE and ACDBE Programs. SPC will utilize the current PAUCP Directory as the listing of certified DBE firms.

Overconcentration

Ref: (Sec. 26.33)

SPC has not identified that overconcentration exists in the types of work that DBE’s perform. SPC will re-evaluate for overconcentration as a normal part of the three-year goal-setting process for FTA-directly funded projects.

Business Development Program

Ref: (Sec. 26.35)

SPC has not established a specific business development program linked to its contracting opportunities as a sub-recipient of PennDOT FHWA and FTA Unified Planning Work Program funds or as a sub-recipient or direct recipient of FTA Urban Area funds. SPC will re-evaluate the need for such a program every three years, coinciding with the three-year goal-setting process for FTA-directly funded projects.

Monitoring and Enforcement Mechanisms

Ref: (Sec. 26.37[b])

SPC will take the following monitoring and enforcement steps to ensure compliance:

- *SPC will bring to the attention of the Pennsylvania Department of Transportation (PennDOT) any false, fraudulent, or dishonest conduct in connection with the program, so that PennDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under the suspension and debarment or Program Fraud and Civil Penalties rules) provided in Sec. 26.107.*

- *SPC will consider similar action under its own legal authorities, including responsibility determinations in future contracts.*
- *SPC will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. Specifically, the DBE must demonstrate that it is responsible for the materials and supplies used on the contract, for negotiating pricing, determining quality and quantity, ordering material, and installing (where applicable) and paying for the material itself. Determinations relative to whether the DBE has actually met its burden, so to speak, require the recipient to evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work the firm is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. Moreover, a DBE does not perform a commercially useful function if it appears to be an extra participant in a transaction; and is presumed not to be doing so if it is responsible for less than 30% of the total cost of the contract. (See 49 CFR 26.55 (c)).*
- *SPC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.*
- *SPC will perform on-site visits as needed to ensure that work committed to DBEs at contract award is actually performed by the DBEs.*

Fostering Small Business Participation

Ref: (Sec. 26.39)

SPC has incorporated the following non-discriminatory and race-neutral 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).

Identifying Small Business Sub-Contracts on Large Procurements

SPC's existing competitive procurement processes for large procurements (in excess of \$250,000) offers various opportunities to encourage and promote small business participation. SPC averages about 15 of these large contract offerings in a normal business year. Over the next fiscal year, SPC will begin to formalize and document these opportunities. The following methods will be used:

- Large procurements require detailed scope of work analysis prior to bid/qualification solicitation. As a matter of course, such analysis will include the general specification of project scope elements that may represent opportunities for small business participation.
- All competitive proposals require the completion of a Cost and Price Analysis review prior to release of the request for proposal or bid. These analyses offer an opportunity to identify elements of the total project that could be "called out" in a request for proposal of bid document as small business opportunities.
- All competitive proposals and bids received in response to large contract procurement requests are evaluated according to evaluation factors and their relative importance. These are specified in the solicitation, although numerical or percentage ratings or weights are not necessarily disclosed for all procurements. When

establishing rating factors and their weights, SPC will begin to include small business participation as a factor for large contracts. This process will be similar to the process currently in place that seeks to identify DBE participation opportunities in some procurements. For procurements with no DBE participation specified, this process will be particularly emphasized.

- Final contract awards for large contracts take into account factors that are most advantageous to the project. Evaluation factors for a specific procurement reflect the subject matter and the elements that are most important to the project. SPC will begin to account for the advantages of small business participation in various contract elements as this portion of the DBE program is implemented.

In order to implement this additional element of its DBE program going forward, SPC will begin as part of the initial bid or qualification solicitation processes for large contracts, to provide appropriate assistance to potential prime contractors in the identification of small business participation opportunities. Such assistance would consist of sharing information on related firms from SPC's bidders list and/or directing potential bidders to public information concerning small business development within the region.

Assessments of Contract Size/Creating Alternative Acquisition Strategies

SPC initiates, on average, about 5 large (in excess of \$250,000) contracts per year. This makes the strategy of identifying small business opportunities through sub-contracts as part of large procurements only partially effective in terms of an over-all program.

SPC determines the number of and project amounts for ongoing contracting opportunities as a component of its annual budgeting processes. On an ongoing basis, SPC also examines existing micro-purchases (\$10,000 or less) and small-purchases (\$10,001 to \$250,000) procurements in order to find lower costs and more responsive contractors.

Required cost and price analyses are updated on a regular basis. In addition, new small purchases require a cost and price analysis be completed. SPC will continue to utilize these methods to determine, on a contract-by-contract basis, the appropriate size of micro and small contracts for the procurement of goods and services.

Currently, SPC requires cost and price analysis accompany all purchase order requests for small purchases. During the normal review of these requests, SPC determines that the price is fair and reasonable and that the description of the proposed procurement adequately documents the rationale for the given cost proposal. Also, information on the proposed contractor is included. This information is normally reviewed and compared to any additional information available concerning alternative contractors. This is the natural stage of the procurement process to explore potential small business participation.

SPC requires informal price and/or rate written quotations from a minimum of three qualified bidders. SPC also requires that information on these bidders be somewhat comprehensive – either the bidder's information is already contained in SPC's active bidders list, or this information is collected and retained prior to bid. Information contained in the request for purchase is normally reviewed and compared to any additional information available concerning alternative contractors. This is the natural stage of the procurement process to explore potential small business participation.

Going forward, SPC will incorporate an increased emphasis on sizing contracts to encourage small business participation in its ongoing contracting opportunities. SPC will continue to use its existing cost and price analysis tools; processes for qualifying bidders; increased research on small business development in the region; and, enhanced communications with small business developers to increase the emphasis of sizing and structuring micro and small contracting opportunities in order to make more contracts viable for small business to bid on.

Exploring Small Business Development Opportunities with Regional Partners

Currently, SPC has established relationships with two important regional entities that specialize in small business development activities. These relationships are a product of both proximity and partnership in ongoing regional economic development activities. These partnerships are part of SPC's regional planning efforts resulting from the long range land-use and economic development strategies developed as part of SPC's regulatory responsibilities as the region's Metropolitan Planning Organization.

SPC will continue to enhance existing relationships with the Small Business Development Centers at the University of Pittsburgh and Duquesne University to identify and support the development of small business opportunities to participate in SPC's DOT assisted contracts.

University of Pittsburgh – SBDC
Office of Sponsored Programs
123 University Place
B21 University Club
Pittsburgh, PA 15213
www.business.pitt.edu/entrepreneur/sbdc

and

Duquesne Small Business Development Center
Rockwell Hall, Room 108
600 Forbes Avenue
Pittsburgh, PA 15282
www.sbdc.duq.edu/

Definition of Small Business

For this program, SPC will define “Small Business” utilizing the small business size standards developed by the U.S. Small Business Administration and promulgated at 13 CFR, Part 121.201 Small Business Size Regulations – Table of Small Business Size Standards Matched to North American Industry Classification System Codes.

SPC relies on the certification/verification processes used by the Pennsylvania Unified Certification Program (PA UCP) to confirm eligibility consistent with small business criteria consistent with those of Part 26. The purpose of the PAUCP is to provide “one-stop shopping” for firms seeking certification as a Disadvantaged Business Enterprise (DBE) in accordance with 49 CFR Part 26. A certified DBE is presumed eligible to participate in a small business

program developed to comply with 49 CFR §26.39. The PAUCP makes certification decisions on behalf of various agencies and organizations in the Commonwealth with respect to participation in the DBE and ACDBE Programs. SPC will utilize the current PAUCP Directory as the listing of certified DBE Firms.

Implementation

This small business provision will be an active part of SPC's DBE program, but will not act as a substitute for other critical elements of this DBE program, including use of contract goals (as appropriate), good faith efforts and outreach activities.

SPC will continue to incorporate small business participation elements into the structure of its contracting opportunity documents, specific contract language and procurement processes.

Subpart C -- Goals, Good Faith Efforts and Counting

Set-Asides or Quotas

Ref: (Sec. 26.43)

SPC does not use quotas in any way in the administration of this DBE Program.

Overall Goals

Ref: (Sec. 26.45)

- (A) Per MASTER AGREEMENT with the Commonwealth of Pennsylvania Department of Transportation (PennDOT), the SPC is required to follow PennDOT's current FHWA/FTA DBE Methodology and Goal Program. A description of the specific methodology used to calculate the overall goals and goal calculations can be found in Attachment B of this Program document. This section of the program will be updated each time PennDOT is required to submit a new goal statement. PennDOT's 2021-2023 FHWA /FTA DBE Methodology and Goal setting program is in effect as of August 1, 2020.
- (B) For SPCs FTA direct recipient funding, a new goal statement will be submitted every three years for FTA direct funded projects. SPC's current FTA direct recipient DBE Policy and Goal program is included in this document.

Before establishing the FTA direct funded overall goal each year (or every three years as applicable), SPC will review its current contract status; conduct research on current conditions; and, communicate with regional minority, women's and general contractor groups, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Information received from these consultations will be kept on file and that information will be utilized in development of the annual goals.

Following this analysis, SPC will publish a notice of the proposed fiscal year (or three-year as applicable) DBE goals, informing the public that the proposed goals and rationale are available for inspection during normal business hours at its principal office for 30

days following the date of the notice, and informing the public that SPC and FTA will accept comments on the goals for 45 days from the date of the notice. SPC will notify the public via a posting on its website: www.spcregion.org/about/doing-business-with-spc/.

SPC's required goal submissions to FTA will include a summary of information and comments received during this public participation process and its responses.

SPC will submit its DBE goal and goal-setting methodology to FTA by August 1st at three-year intervals based on a schedule determined by FTA. SPC may adjust its three-year goal during the three-year period to which it applies in order to reflect changed circumstances. SPC will submit such adjustment to FTA for review and approval. FTA may direct SPC to undertake a review of its goal to ensure that the goal continues to fit the circumstances appropriately.

SPC will begin using its FTA-directly funded projects goals on October 1st of each year, unless it has received other instructions from FTA. If a goal is established on a project basis, SPC will begin using the goal amount by the time of the first solicitation for a FTA-assisted contract for the project.

Goal Setting and Accountability

Ref: (Sec. 26.47)

If the awards and commitments shown on SPC'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, SPC 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 FTA within 90 days of the end of the affected fiscal year that will establish and implement a corrective action plan. SPC will also maintain records regarding the analysis and efforts made.

Transit Vehicle Manufacturers Goals

Ref: (Sec. 26.49)

SPC 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, SPC 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.

Breakout of Estimated Race-Neutral & Race-Conscious Participation

Ref: (Sec. 26.51 [a-c])

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment B to this program. This section will be updated annually or according to the three-year cycle required by FTA.

Contract Goals

Ref: (Sec. 26.51 [d-g])

SPC will establish contract goals in order to meet any portion of its overall goals not projected to be met by race-neutral means. The following provisions will apply to SPC's use of contract goals:

- Contract goals will be used only on those DOT-assisted contracts that have subcontracting opportunities.
- Contract goals will not be set on every DOT-assisted contract.
- Contract goals will not be set at the same percentage level as SPC's overall goal, depending on type of work to be performed and the availability of DBE's.
- Contract goals will provide for participation by all certified DBE's.

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

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and,
- If the contract goal is not met, evidence of good faith efforts will be required.

Good Faith Efforts Procedures

Ref: (Sec. 26.53)

Demonstration of Good Faith Efforts

Ref: (Sec. 26.53 [a & c])

The obligation of any bidder/offeror is to make good faith efforts to meet specified DBE goals. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

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

Information to be submitted

Ref: (Sec. 26.53 [b])

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

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

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. 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;
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; and
 5. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 6. If the contract goal is not met, evidence of good faith efforts (see Attachment C of this document). 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.

Administrative reconsideration

Ref: (Sec. 26.53 [d])

SPC has established detailed good faith effort administrative procedures. These procedures are listed in Attachment C to this program.

Good Faith Efforts when a DBE is replaced on a contract

Ref: (Sec. 26.53 [ff])

SPC has established detailed good faith effort administrative procedures. These procedures are listed in Attachment C to this program.

Counting DBE Participation

Ref: (Sec. 26.55)

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

Subpart D -- Certification Standards

Certification Process

Ref: (Sec's. 26.61-26.73)

SPC will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

For information about the certification process or to apply for certification, firms should contact the Pennsylvania Unified Certification Program at:

<http://www.paucp.com/Default.aspx>

or at one of these certifying participants:

Organization	Address	Phone	Fax	Email
Allegheny County Dept. of MBE/WBE/DBE	204 County Office Building Pittsburgh, PA 15219	412-350-4309	412-350-4915	mwdbe@county.allegheny.pa.us
PA Department of Transportation (PENNDOT)	P.O. Box 3251 Harrisburg, PA 17105-3251	717-787-5891	717-772-4026	penndotucpinfo@state.pa.us
Port Authority	345 Sixth Avenue Pittsburgh, PA 15222	412-566-5257	412-566-5434	cwilliams@portauthority.org
Southeastern Pennsylvania Transportation Authority (SEPTA)	DBE Program Office 1234 Market Street 11th Floor Philadelphia, PA 19107	215-580-7278	215-580-7261	LClaitt@septa.org
City of Philadelphia	Philadelphia International Airport DBE Program Office Executive Offices - Terminals D & E, Third Floor Philadelphia, PA 19153	215-937-1801	215-937-5497	kathleen.padilla@phl.org

Subpart E -- Certification Procedures

Unified Certification Programs and Procedures **26.91)**

Ref: (Secs. 26.81 –

The PA UCP makes all certification decisions on behalf of all agencies and organizations in the Commonwealth with respect to participation in the DBE and Programs. In other words, firms certified as a DBE with the PA UCP are eligible to participate on [Federal Highway Administration \(FHWA\)](#) and the [Federal Transit Administration \(FTA\)](#) funded contract as a Disadvantaged Business Enterprise.

Subpart F -- Compliance and Enforcement

Information, Confidentiality and Cooperation

Ref: (Sec. 26.109)

SPC will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, Commonwealth, and Local law.

Notwithstanding any contrary provisions of Commonwealth or local law, SPC will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Monitoring Payments to DBE's

SPC will require prime contractors to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records are to be made available for inspection upon request by any authorized representative of SPC or USDOT. This reporting requirement extends to any certified DBE subcontractor.

SPC will perform interim audits of contract payments to DBEs. The audit will encompass the review of payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors agrees to the dollar amounts states in the schedule of DBE participation.

ATTACHMENT B: GOALS AND GOAL-SETTING METHODOLOGIES

PennDOT pass-through FHWA & FTA funds:

In accordance with its agreement with the Pennsylvania Department of Transportation (PennDOT) for carrying out transportation planning activities, SPC will defer to PennDOT's triennial DBE goal setting methodology when determining its goals for participation of DBE's in contracts awarded utilizing Federal Aid Highway and Federal Aid Transit funds authorized where contracting opportunities exist.

SPC will meet the maximum feasible portion of its overall goal by using race-neutral means, as described in Section 26.51.

SPC will establish contract goals in order to meet any portion of its overall goal not projected to be met by race-neutral means. The following provisions will apply to SPC's use of contract goals:

- Contract goals will be used only on those DOT-assisted contracts that have subcontracting opportunities.
- Contract goals will not be set on every DOT-assisted contract.
- Contract goals will not be set at the same percentage level as SPC's overall goal, depending on type of work to be performed and the availability of DBE's.
- Contract goals will provide for participation by all certified DBE's.

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

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and,
- If the contract goal is not met, evidence of good faith efforts will be required.

ATTACHMENT C: GOOD FAITH EFFORTS REVIEW PROCESS

Background and Reference Documents:

The SPC has entered into a contractual relationship with the Pennsylvania Department of Transportation (PennDOT) which mandates a percentage DBE participation in all its procurement activities relating to work as a recipient and sub-recipient of Federal Aid Highway funds and Federal Transit Administration funds authorized under Titles I, III, V and VI of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005.

In cooperation with PennDOT and in accordance with the Federal DBE regulation set forth in 49 Code of Federal Regulations Part 26 (Part 26), and as a sub-recipient of Federal funds received from PennDOT, SPC is required to establish a good faith efforts review process to evaluate the efforts of prospective successful bidders on all projects with DBE goals when the goal is NOT met. Section 26.53 of Part 26 requires that contracts carrying a DBE goal requirement be awarded to a bidder who makes a good faith effort to meet the contract goal. Section 26.53(a) states that a good faith effort is established by documentation that a bidder has obtained sufficient DBE participation to meet the prescribed contract goal or documentation that the bidder made an adequate good faith effort to meet the goal even though it did not succeed in this endeavor.

Each case ultimately turns on its own facts, and there is no one-size-fits-all checklist or formula for making good faith efforts determinations. Institutional guidance on good faith efforts determinations issued by USDOT's Office of General Counsel is set forth in Section 26.53 and Appendix A of 49 C.F.R. Part 26 (Part 26). Appendix A, in particular, outlines factors to be used in a good faith effort analysis and is the best reference document available. Additional USDOT guidance is also included in the questions and answers that appear on the official DBE program website.

The Genesis of Good Faith Effort Review and Reconsideration

The good faith effort review process is triggered when a question arises as to whether or not the apparent successful bidder has documented a good faith effort. Where this occurs, a two-tiered good faith effort review process is in force and is used to resolve good faith effort issues that cannot be resolved by SPC officials tasked with reviewing documentation of the DBE participation.

Questions to be asked to determine if a good faith efforts review is needed:

- In any bidder response to an SPC RFP/RFQ, did the bidder meet all the requirements of the RFP/RFQ including DBE participation? If the apparent successful bidder has met or exceeded the stated goal amount then NO review is needed and successful bidder can be recommended for approval.
- If the apparent successful bidder has NOT met the stated goal amount but has submitted

documentation supporting its good faith efforts, then a formal internal SPC good faith efforts review is needed before the apparent successful bidder can be recommended for approval. In this case, the following review procedures must be followed.

Good Faith Efforts Review Procedures:

Tier I: The Interdisciplinary Review Team (IRT) Recommendation

When an issue arises relative to the adequacy of a good faith effort submission and there is a request for a good faith effort review, the SPC's Interdisciplinary Review Team (IRT), comprised of SPC senior management personnel (Transportation Planning Director; Planning and Development Director; and the Information Systems Director), will be tasked with reviewing the submitted documentation. The IRT is assigned the task of evaluating a bidder's good faith effort in accordance with the regulatory references delineated in these procedural guidelines as well as the SPC's Competitive Procurement Guidelines. In the event that the IRT requires clarification of a document submitted by the bidder on the required submission date, it will be authorized to contact the bidder in writing via letter, or by e-mail, or by fax to obtain the requisite explanation. However, it is anticipated that communications between the bidder and the IRT will be infrequent.

Because good faith effort issues are time-sensitive, the IRT will be required to complete its review of the submitted documentation within seven (7) business days. Upon completion, the IRT will forward its findings to the SPC Executive Director for acceptance. If accepted, a memo indicating that the "good faith effort" put forth by the apparent successful bidder has been approved and a copy will be forwarded to the SPC DBE Officer to be included in the files.

In the event that the good faith effort review findings are NOT accepted, the second tier of the SPC's Good Faith Efforts Review process will be initiated. Section 26.53(d) requires that the SPC provide the apparent successful bidder with an opportunity for administrative reconsideration. As part of this reconsideration, bidder/offeror (bidder) can elect to provide written documentation or request a meeting before the SPC's Good Faith Efforts Review Committee (Committee). Section 26.53 (d)(1) refers to this procedure as "reconsideration" and states that the SPC's decision on reconsideration must be made by an official who did not take part in the original determination that the bidder failed to meet the goal or failed to make adequate good faith efforts to do so. Consistent with this provision, any member of IRT will not participate in the second tier determination.

Tier II: Administrative Reconsideration - Good Faith Effort Review Committee (Committee)

Purpose: In the event that the good faith effort documentation submitted by a bidder is not accepted as to meeting the requirements of Part 26.53 (a), the bidder will be afforded an opportunity for administrative reconsideration before the SPC's Good Faith Effort Review Committee (Committee). The Committee will meet on an as-needed basis. As noted above, this body is independent of the IRT. The Committee will conduct inquiries of the following types of matters: (1) Review of the apparent successful bidder's DBE data and good faith effort to meet the DBE contract goal to determine whether to approve or disapprove the submission; (2)

Review of the bidder's good faith effort when a DBE firm fails to perform and the bidder's effort to replace the DBE results in a shortfall in the DBE goal: and, (3) Review of the bidder's DBE effort during the performance of the contract or at the completion of the contract and necessary sanctions for unwarranted shortfalls in the DBE contract goal.

Committee Composition: The Committee will be comprised of three (3) members. The SPC Executive Director will serve as Chairperson along with the SPC DBE Liaison Officer and the SPC HR Coordinator. Designated alternates will be available should a need arise. The Committee meetings are not subject to the Sunshine Law and are not open to the public. Attendance is limited to the impacted bidder, the Committee members, and legal counsel if needed. The SPC DBE official will prepare the background information that generated the appeal and will attend the hearing to clarify material contained in the source documentation provided to Committee members.

Good Faith Effort Review Documentation Package: A complete good faith effort review package will be provided to the Committee prior to the scheduled review meeting. The information will include the IRT information and findings. Each Committee member will evaluate the good faith effort submission in accordance with the established SPC guidelines, as well as the applicable regulatory guidelines for DBE good faith effort submissions. The evaluation will consider the record evidence as well as Part 26, Appendix A, Section 26.53.

Bidder Notification: Whenever a Committee meeting is intended to be convened, the impacted bidder will be notified, in writing, and invited to attend a meeting on a date certain. The bidder will be advised that the purpose of the meeting is to clarify documentation previously submitted to the SPC within the time limits set forth in the bid documents and DBE Special Provisions. The bidder will not be required nor authorized to submit new good faith effort written documentation not in existence at the time of the DBE participation submissions consistent with Part 26 regulatory guidelines. The bidder will be expected to address questions posed by Committee members and will have the opportunity to clarify points resulting from questions asked or from review of its good faith effort submissions. The bidder will then be excused and the Committee will deliberate in an executive session. The legal adviser will participate in the executive session to address regulatory questions.

At the conclusion of the Committee executive session and deliberation, the Committee will vote to accept or NOT accept the good faith effort submission. The decision will be determined by a simple majority vote. The majority must reach a consensus as to the reason for accepting or rejecting the bidder's good faith effort. The Committee's decision will be outlined in a letter sent to the bidder by first-class mail. The decision letter will be prepared by the legal adviser and will be signed by the Committee's Chairperson. Consistent with Section 26.53, the Committee's decision is not administratively appealable to USDOT and no further Department appeal will be available. All decisions of the Committee are final and binding.

Within 15 days of being informed by SPC 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: Southwestern Pennsylvania Corporation, DBE Official, Two Chatham Center - Suite 500, Pittsburgh, Pa 15219. 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. SPC 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.

SPC will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. 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.

ATTACHMENT D: MONITORING AND ENFORCEMENT MECHANISMS

SPC will take the following monitoring and enforcement steps to ensure compliance:

- SPC will bring to the attention of the Pennsylvania Department of Transportation (PennDOT) any false, fraudulent, or dishonest conduct in connection with the program, so that PennDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under the suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- SPC will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
- SPC will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. Specifically, the DBE must demonstrate that it is responsible for the materials and supplies used on the contract, for negotiating pricing, determining quality and quantity, ordering material, and installing (where applicable) and paying for the material itself. Determinations relative to whether the DBE has actually met its burden, so to speak, require the recipient to evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work the firm is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. Moreover, a DBE does not perform a commercially useful function if it appears to be an extra participant in a transaction; and is presumed not to be doing so if it is responsible for less than 30% of the total cost of the contract. (See 49 CFR 26.55 (c)).
- SPC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
- SPC will perform on-site visits as needed to ensure that work committed to DBEs at contract award is actually performed by the DBEs.